



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRWP-9139-2025

Date of decision: 26.08.2025

HAJRU DIN ANSARI

....Petitioner

Versus

STATE OF PUNJAB AND ORS.

....Respondents

CORAM:- HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present:- Mr. Suresh Singla, Advocate for the petitioner.

Mr. Ravinder Singh, DAG Punjab.

.....

RUPINDERJIT CHAHAL, J. (ORAL)

1. Present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus to produce the minor daughters of the petitioner from the custody of respondent No.4 who is the mother of the detenues.

2. Learned counsel for the petitioner, inter alia, contends that the petitioner is father of the alleged detenues. Out of the wedlock, two children (detenues) were born. There has been a matrimonial dispute between the petitioner and respondent No.4 who has left the company of petitioner on 04.10.2024. Consequently, an FIR was lodged alleging cruelty and demand of dowry and later a civil suit was filed by respondent No.4 seeking restitution of conjugal rights. He further contends that since respondent No.4 had left the company of the petitioner, the detenues/minor daughters were living with the petitioner. Thereafter, a civil suit was filed by respondent No.4 under Guardian & Wards Act seeking custody of minor



daughters. He further contends that thereafter another false FIR was registered against the petitioner at the behest of respondent No.4. It is on 06.08.2025 when the petitioner along with the detenues/minor daughters had gone to Ludhiana to meet his relatives, respondent No.4 accompanied with two police men forcefully took both the detenues/minor daughters.

3. Mr. Gopal Singh Nahel, Advocate has put in appearance on behalf of respondent No.4 and has filed his vakalatnama. The same is taken on record. He contends that the *lis* regarding the custody of the minor daughters is already pending before the learned Trial Court and as such any direction in this writ petition is not warranted in the facts of the present case.

4. Vide order dated 22.08.2025 passed by this Court, a notice was issued to respondent No.4 and respondent No.3-SHO was directed to appear with alleged detenues as well as respondent No.4 in Court.

5. In compliance thereto, the concerned SHO has produced the alleged detenues along with respondent No.4. It is not disputed by either of the parties that the elder daughter(detinue) is a special child requiring constant medical attention and care.

6. Since the relationship between the parties became sour, due to this reason they are living separately. As per allegations of the petitioner, respondent No.4 has forcibly taken the custody of the minor children/detenues. The question that arises before this Court is whether custody of minor children/detinue with their mother can be stated to be illegal, requiring writ in the nature of habeas corpus?



7. This Court has noticed an increasing tendency amongst disgruntled parents and other family members to move a writ petition in the nature of habeas corpus, in order to settle custody of the children. A two Judge Bench of the Hon'ble Supreme Court in '**Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari**', 2019 AIR SC 2318, speaking through Justice R. Banumathi, has opined as follows:

"18. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court . Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law. 19. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is of summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus."(emphasis added)



8. It is trite law that welfare of the minor would reign supreme, while deciding the matter of his custody. The Hon'ble Supreme Court in ***Rosy Jacob Vs. Jacob A. Chakramakkal, (1973) 1 SCC 840 and Mausami Moitra Ganguli Vs. Jayant Ganguli, 2008(4) RCR (Civil) 551 and this Court in Saurabh Sharma Vs. Nishi, 2023(4) RCR (Civil) 586*** has consistently held that the welfare and interest of the child are of paramount consideration with respect to custody of a child. Section 6 of Hindu Maintenance and Guardianship Act, 1956 (for short 'HMG Act') categorically states that the custody of minor child upto the age of 05 years shall ordinarily be with the mother. In doing so, the legislature has recognized the indispensable and inimitable role of a mother in upbringing of a young child. A mother's love for her children is selfless and the lap of the mother is God's own cradle for them. Therefore, children of tender age ought not to be deprived of said love and affection. A two Judge Bench of the Hon'ble Supreme Court in ***Rajeshwari Chandrasekar Ganesh Vs. State of Tamil Nadu and others, 2022 SCC OnLine SC 885***, speaking through Justice J.B. Pardiwala, observed as under:

“91. Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for



the exercise of 4 of 6 the jurisdiction of a court of equity. The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parens patriae, has in promoting the best interests of the child.

92. *The general principle governing the award of custody of a minor is succinctly stated in the following words in Halsbury's Laws of England, Fourth Edition, Vol. 24, Article 511 at page 217:*

"... Where in any proceedings before any court the custody or upbringing of a minor is in question, then, in deciding that question, the court must regard the minor's welfare as the first and paramount consideration, and may not take into consideration whether from any other point of view the father's claim in respect of that custody or upbringing is superior to that of the mother, or the mother's claim is superior to that of the father."
(emphasis added)

9. In the present case, both the detainees/minor children are less than 10 years of age and one of them is a special child requiring special care and attention, whose custody is sought by the petitioner by availing the extraordinary jurisdiction of this Court. So far as the custody of the children is concerned, the mother *per se* is considered to be the best suited to take care of children during their tender age particularly in cases where the children require special care and attention. However, at the same time custody of minor children with either of the natural guardians cannot be said to be illegal.

10. Considering, the position of law as discussed above, this Court is of the considered opinion that no further order/direction is



required to be made in the writ of habeas corpus as the detenues are with their natural guardian-mother. Needless to add, the parties would be at liberty to settle the custody of the detenues by pursuing appropriate remedy as per law.

11. In view thereof, finding no merit in the petition, the same is dismissed.

26.08.2025
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(RUPINDERJIT CHAHAL)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |