

217

CRWP-9506-2025

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2025.PHHC.120998



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

CRWP-9506-2025

Date of decision: 05.09.2025

SAPNA

....Petitioner

Versus

STATE OF HARYANA AND ORS.

....Respondents

CORAM:- HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present:- Mr. Deepak Girotra, Advocate for the petitioner.

Mr. Mohit Chaudhary, AAG Haryana.

.....

RUPINDERJIT CHAHAL, J. (ORAL)

1. Mr. Gagandeep Singh Virk, Advocate has put in appearance on behalf of respondent No.6 and has filed his vakalatnama. The same is taken on record.

2. By filing the instant petition under Articles 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner has sought writ in the nature of habeas corpus for release of her minor son, namely Himanshu aged about 11 months, from the illegal custody of respondent No.6.

3. The case of the petitioner, as set out in the petition is that she got married to respondent No.6-Bunty @ Banti on 23.02.2023 and out of the said wedlock, Himanshu (detenue) was born on 01.09.2024. However, the marriage of the petitioner could not go well as the petitioner was subjected to cruelty and physical abuse at the hands of private respondent who used



to abuse and give merciless beatings on account of demand of dowry and it is alleged that the petitioner and the minor child (detenue) were shunned out of the matrimonial house and threatened not to come back without bringing dowry as demanded.

4. As a matter of fact, one panchayati compromise was effected between the parties on 08.04.2025 wherein the private respondent/husband assured that he would not beat the petitioner and subsequently the petitioner along with the minor child (detenue) went with the husband. However, again the husband of the petitioner dealt the petitioner and the child with cruelty for demand of dowry and again the petitioner and the minor child (detenue) were shunned out of the matrimonial home on 22.04.2025. Later, on 05.05.2025 both the parties including the respectables of the society were called at P.S. Kuk, Kurukshetra to resolve the issue but no compromise could take place and private respondent sought time till 11.06.2025. However, when the petitioner and her minor child (detenue) was about to leave the premises of police station, the private respondent forcibly and illegally snatched the minor child (detenue) from the petitioner without the consent of the petitioner and ran away.

5. As per the directions given vide order dated 01.09.2025 the private respondent is present in Court with the alleged detenue.

6. Learned counsel for the petitioner further submits that a petition under Guardian and Wards Act was filed by the present petitioner in the Family Court, Camp Assand, Karnal which is pending adjudication.



7. I have considered the submissions advanced by learned counsel appearing on behalf of the petitioner and have gone through the documents appended along with the petition.

8. 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.”

20. 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.

9. The issue before the Court is whether habeas corpus can be used as an alternative to a guardianship order when it comes to deciding custody of a child. Habeas corpus is usually applied to secure the release of a person unlawfully detained, but it can also be used to ensure a child's safety and protection. However habeas corpus does not involve the detailed inquiry into welfare and best interest that is central to guardianship proceedings. Therefore, while habeas corpus can serve as a means of temporary custody, it does not replace the comprehensive process of guardianship under the relevant statute.

10. Further, a Division Bench of this Court in its judgment dated 23.05.2019 passed in LPA No.3716 of 2018 in case titled as ***Reetu Verma vs. State of Haryana and others***, observed as under:



“ The parties are husband and wife, having a minor son namely Jiyanishu Verma. Admittedly, on account of matrimonial dispute minor son is in the custody of the father-respondent, as every time they have appeared before us, the child has been brought by him. Habeas Corpus petition was filed by the appellant-wife seeking custody of the minor child for herself Learned Single Judge dismissed the habeas corpus petition on the ground that the custody of a minor child with a natural guardian cannot be said to be illegal and relegated the parties to avail the remedy under the Guardian and Wards Act. Before this Court innumerable efforts have been made by us for an amicable settlement between the two, to secure the interest of the child so that he is not deprived of either love of father or the mother. On more than two occasions we interacted with the parties in the Chamber to bring an amicable settlement but the same failed. Lastly, on the suggestion of learned counsel appearing for the parties, we referred the matter to the mediation, where also the parties have failed to arrive at an amicable settlement. Since the question of the custody of the minor child and the welfare of the child being supreme it can only be decided on the basis of evidence as to which of the two parents are in a better position to look after the welfare of the child and a conclusion in respect of same only be arrived at by way of an evidence. Hence, in our considered opinion the impugned order and judgment does not require any interference and it would be in the interest of justice that the appellant is relegated to avail the remedy under the Guardian and Wards Act to seek the custody of the minor child before the appropriate Court. With this, intra court appeal stands dismissed.”

11. Apart therefrom, in the matter of ***Manohar Lal and another Vs. State of Punjab*** and others passed in LPA No.476 of 2020 decided on 05.08.2020, by Division Bench of this Court observed as under:

“14.....Of course, the position would be viewed from a different perspective, where there are competing claims between the biological parents of the child or where parties to the lis purport to have an authority or lawful right to retain/claim custody of the child. Something that requires evidence and full scale inquiry.....”

12. From the judgments cited, it is clear that in matters of child custody, a prerogative writ of *Habeas Corpus* may be initiated by the mother where the minor is being detained by a person who does not have lawful custody of the child.

13. Considering the facts on record and the settled legal principles, this Court is of the opinion that the custody of the father, being the natural guardian, cannot be regarded as illegal or unlawful unless shown to be contrary to a specific legal order or authority. Though the availability of an alternative remedy is not an absolute bar to the issuance of a writ of *Habeas Corpus*, disputes between natural guardians are best examined by the Court of Guardians and Wards, which is vested with the jurisdiction and expertise to determine the welfare of the child and to provide both parties a full opportunity to present their claims and lead evidence.

14. Moreover, where such remedies exist, the Writ Court must exercise restraint, as contested factual issues are more appropriately resolved through detailed proceedings before the competent forum. In the present matter, no circumstance has been established that would warrant intervention by this Court through a writ of *Habeas Corpus*.

15. Resultantly, the present writ petition being devoid of merits is dismissed.

05.09.2025
puneet

(RUPINDERJIT CHAHAL)
JUDGE

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