



**110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-9834-2025
Date of decision: 09.09.2025

RAMANDEEP KAUR

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present: Mr. H.S. Sandhu, Advocate for the petitioner.

Mr. G.S. Dhaliwal, AAG, Punjab.

YASHVIR SINGH RATHOR, J. (Oral)

1. The present petition has been filed under Article 226/227 of the Constitution of India read with Section 6 under Hindu Minority and Guardianship Act, 1956 for issuance of Writ in the nature of Habeas Corpus for directing respondent No.2 to produce the minor daughter of petitioner, who is in the custody of respondent No.3 i.e. father of the detenue.

2. It is submitted that petitioner was married with respondent No.3 in the year 2019 and one daughter namely Rehmatpreet Kaur was born on 23.12.2020. The behavior of respondent No.3 was cruel towards petitioner and he assaulted her but thereafter, he had apologized and taken her back to the matrimonial home. On 25.07.2025, they dissolved their marriage by executing a divorce deed in a Panchayat and the custody of the daughter was also given to respondent No.3-husband of the petitioner.



It is submitted that daughter namely Rehmatpreet Kaur, who is detenue is about 4 years of age and she is not being taken care of and is not able to attend the school. Her in-laws are old aged persons and suffering from various ailments and husband cannot take care of the minor girl and respondent No.2 be directed to produce the minor girl and her custody be handed over to the petitioner. It is also submitted that since, the daughter is minor, mother alone is entitled to her custody and the welfare of the minor child has to be taken into consideration, which is the only paramount consideration.

3. I have heard learned counsel for the petitioner and have gone through the material on file.

4. Learned counsel for the petitioner argued that the minor child is aged about 4 years and in view of her tender age, the custody of the child should be handed over to the mother, being the natural guardian. The welfare of child is of paramount consideration and mother alone can rear and look after the girl child better than anyone else. The grandparents are aged persons and suffering from various ailments and they as well as her husband cannot take care of the minor girl and respondent No.2 be directed to produce the minor daughter and her custody be handed over to the petitioner.

5. The short question to be decided in the present petition is as to whether the custody of the minor daughter of the petitioner and respondent No.3 can be handed over to the petitioner by this Court in exercise of the jurisdiction in a Habeas Corpus Writ Petition or not, particularly when the child has not been forcibly taken away from her custody but rather



petitioner has voluntarily handed over the custody of the child to the father.

6. The answer is certainly in the negative. Hon'ble Supreme Court in a judgment reported as 2001(2) RCR (Criminal) 591 titled as '**Syed Saleemuddin Vs. Dr. Rukhsana**', has held that in an application seeking a Writ of Habeas Corpus for custody of minor children, the principal consideration for the Court is to ascertain whether custody of the children can be said to be unlawful or illegal and whether the welfare of the child requires that the present custody should be changed and the child should be left in the care and custody of somebody else. The principle is well settled that in the matter of custody of a child, the welfare of the child is of paramount consideration. As per own averments in the present petition, the marriage between the petitioner and respondent No.3 was allegedly dissolved by way of divorce deed in a Panchayat (though illegal) but the petitioner herself handed over the custody of the child to the father at the time of execution of the said alleged divorce deed and it is not the case of petitioner that minor child has been forcibly taken away from her custody. It is well settled that Writ of Habeas Corpus is essentially a procedural writ dealing with machinery of justice. The object underlying the Writ is to secure the release of a person, who has been illegally deprived of his liberty and it is a command addressed to the person, who is alleged to have another in unlawful custody, requiring him to produce the body of such person before the Court and the High Court in such proceedings conducts an inquiry for immediate determination of the right of a person's freedom and his release when the detention is found to be unlawful. In holding so, I



have relied upon 1974(4) SCC 141 titled as **Kanu Sanyal Vs. District Magistrate, Darjeeling & Ors.**

7. As already discussed above, the custody of the minor daughter with respondent No.3 is not unlawful as petitioner had herself handed over the child to the father-respondent No.3. In these circumstances, no Writ of Habeas Corpus can be issued for producing the minor child in the Court and to hand over her custody to the petitioner and petitioner has got the efficacious remedy to approach the Family Court under Hindu Minority and Guardianship Act, which is a complete code in itself and seek the custody of the child. It is, however, ordered that in case, petitioner approaches the Family Court for seeking custody of the child, the proceedings especially relating to interim custody shall be disposed of expeditiously as welfare of the child is of paramount importance.

8. The present petition stands disposed off accordingly.

9. Pending application(s), if any, shall also stand disposed of.

09.09.2025

Priyanka Thakur

(YASHVIR SINGH RATHOR)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes/No
Yes/No