



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

CRWP No.11730 of 2024
Date of decision: 17.01.2025

Shalinder Kumar
.....Petitioner

Versus

State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

Prayer in this criminal writ petition filed Article 226 of the Constitution of India, is for issuance of a writ in the nature of habeas corpus for releasing the detainee namely Siddharth Kumar, aged about 02 years and 04 months (son of the present petitioner) from the illegal custody of the private respondents. Further prayer has been made to appoint a Warrant Officer for the search of the premises where the alleged detainee has been illegally detained and to produce him before this Court.

2. Learned counsel for the petitioner *inter alia* contends that the son of the petitioner is being abused by the private respondents and he has been compelled to smoke and his pictures are being circulated on the social media. He further submits that the action of the private respondent is violative of the provisions of the Cigarettes and Other

2025:PHHC:006766



Tobacco Products Act, 2003 (COTPA), which explicitly prohibits the sale, use and exposure of tobacco products to minors and also amounts to child abuse as per Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

3. Per contra, learned State counsel submits that the present petition is totally mis-conceived and not maintainable and the petitioner has equally efficacious remedy to seek custody of his child by filing an appropriate application under Section 7 of the Hindu Minority and Guardianship Act, 1956.

4. Having heard the learned counsel for the parties and after perusal of the record, this Court finds no force in the arguments advance by learned counsel for the petitioner.

5. Admittedly, the son of the petitioner is 02 years and 04 months old and the petitioner and respondent No.4 are having strained relationship and the child is below 06 years and as per the statutory provisions contained in Hindu Minority and Guardianship Act, 1956, natural mother is the best person to look after the child. Section 6 of the Hindu Minority and Guardianship Act, 1956, reads as follows:-

6. Natural guardians of a Hindu minor.—

The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother; (b) in case of an illegitimate boy or an illegitimate unmarried girl—the

2025:PHHC:006766



mother, and after her, the father; (c) in the case of a married girl—the husband.

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—(a) if he has ceased to be a Hindu, or (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

6. In view of the ratio of law laid down by the Hon’ble Apex Court in **“Rosy Jacob vs Jacob A. Chakramakkal”** (1973) 1 SCC 840 and Division Bench judgment of this Court in **FAO No.5116 of 2023**, titled as **“Saurabh Sharma vs Nishi”**, decided on 27.09.2023, this Court finds no ground to issue any such direction.

7. Dismissed.

(HARPREET SINGH BRAR)
JUDGE

17.01.2025
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No