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

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Mandeep

...Petitioner

V/s

State of Punjab and others

...Respondents

Date of decision: 21.04.2026**Date of Uploading : 22.04.2026****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. G.S. Bhullar, Advocate for the petitioner.

Mr. Adhiraj Singh Thind, AAG Punjab.

Mr. Malkiat Singh Hundal, Advocate
for the respondent Nos.4 and 5.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of *habeas corpus* for production of the minor child, namely Gurshan Sandhu and for his release from the alleged illegal custody of respondent Nos.4 and 5. In addition thereto, ancillary relief(s), including appointment of a Warrant Officer to search the detinue and to produce him before this Court have also been sought.

2. Shorn of non-essential details, the relevant factual matrix of the *lis* in hand is adumbrated, thus:

The case set up by the petitioner is that she is the biological mother and natural guardian of the minor child aged about 10 years. It has been stated in the petition that the father of the child namely Bikram Singh

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@ Bikaram Sandhu, is lodged in District Jail Mansa, in connection with a criminal case and taking undue advantage of his incarceration, respondent Nos.4 and 5 have forcibly and illegally detained the minor child. The petitioner has further alleged that the child is being kept at Tarn Taran and she has been restrained from meeting him. It has been further contended that such custody is wholly illegal, without any authority of law and violative of the fundamental rights guaranteed under Article 21 of the Constitution of India.

It is in this factual backdrop, the petitioner has invoked the writ jurisdiction of this Court seeking issuance of a writ of habeas corpus and for issuance of search warrants for production of the minor child before this Court.

3. Learned counsel for the petitioner has iterated that the petitioner is the biological mother and natural guardian of the minor child namely Gurshan Sandhu, who is of tender age and requires care, protection and emotional support under her supervision. Learned counsel has further iterated that the continued separation of the minor from the petitioner is detrimental to his welfare and overall development. It has been further contended that the present petition has been filed due to the illegal and unlawful custody of the minor child by respondent Nos.4 and 5. Learned counsel has emphasized that the petitioner, being the natural mother, has an inherent and indefeasible right to the care, custody and companionship of the minor child and the action(s) of the respondent Nos.4 and 5 in depriving her of such access are arbitrary and unlawful and against the welfare of the child. It has been further contended that the father of minor child was in

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judicial custody and taking undue advantage of the said situation, respondent Nos.4 and 5 forcibly and illegally took custody of the minor child without any authority of the law. It has been further submitted that entrusting the custody of a minor child to a third party, particularly in the absence of the father and without the consent of the mother, is *per se* illegal and contrary to the welfare of the child. It has been further contended that the petitioner has approached the local police authorities seeking intervention, however, no effective action has been taken which compelled the petitioner to invoke the extraordinary jurisdiction of this Court. Moreover, the alleged illegal detention of the minor child amounts to a violation of his fundamental rights guaranteed under Article 21 of the Constitution of India. Learned counsel has emphasized that the welfare of the minor child is of paramount consideration and his continued custody with respondent Nos.4 and 5 is neither lawful nor in his best interest. On the basis of aforesaid submissions, it has been prayed that this Court may issue a writ of habeas corpus for production of the minor child from the alleged illegal detention.

4. Referring to status report by way of an affidavit dated 18.04.2026 on behalf of respondent Nos.1 to 3, learned State counsel has submitted that during the course of inquiry, statements of respondent Nos.4 and 5 as well as the father of the minor child were recorded. According to learned State counsel, the father has stated that the petitioner has earlier contracted multiple marriages and was not maintaining proper conduct and due to disputes, he has arranged for the upbringing of the child through his acquaintances during incarceration. It has been further

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contended that the minor child is presently residing with his father and is not in the custody of respondent Nos.4 and 5. Furthermore, the allegations of illegal detention have been found to be false and frivolous.

5. Learned counsel appearing on behalf of respondent Nos.4 and 5 has vehemently opposed the present petition by arguing that the same is wholly misconceived, not maintainable and an abuse of the process of law. Learned counsel has iterated that respondent Nos.4 and 5 have neither detained nor confined the minor child at any point of time and have been falsely implicated due to their acquaintances with the father of the child. It has been further contended that the present petition is, in substance, a custody dispute between the parents of the minor child which cannot be adjudicated in writ jurisdiction. Learned counsel has pointed out that the father, who is a necessary party, has not been impleaded in the present petition. Learned counsel has further iterated that the custody of a minor with a natural guardian can, by no stretch of imagination, be termed as illegal or unlawful detention so as to invoke the extraordinary writ jurisdiction of this Court. According to learned counsel, the petitioner has deliberately suppressed the material facts from this Court. Accordingly, it has been prayed that the present petition needs to be dismissed as no case of illegal detention is made out and the petitioner be relegated to avail appropriate remedies before the competent forum.

6. I have heard learned counsel for the rival parties and have perused the available record.



7. It would be apposite to refer herein to a judgment passed by this Court titled as ***Veerpal Kaur vs. State of Punjab and others*** = ***2025:PHHC:113490***, relevant whereof reads as under:

“16. As a sequitur to the above rumination, the following postulates emerge:

I. The High Court’s jurisdiction to issue a writ of Habeas Corpus in minor child custody matter is predicated on the basic jurisdictional fact, namely, the minor child’s custody is demonstrably illegal/unlawful. In appropriate cases, the High Court may relax this jurisdictional prerequisite, in the interest of welfare of minor child.

II. The writ of Habeas Corpus is not a substitute for the comprehensive and evidence based procedures available under applicable guardianship statutes (such as Hindu Minority and Guardianship Act, 1956; Guardians and Wards Act, 1890 etc.). As a matter of general judicial principle, the writ Court ought to ordinarily exercise restraint and defer dispute(s) to statutory forums unless accentuating circumstances necessitate such intervention by High Court

III. In all matters relating to the custody of minor child, the paramount consideration is the welfare of such child. In exercise of its parens patriae jurisdiction; the High Court may, in appropriate cases, upon a holistic examination of facts, take an inquisitorial role to ensure that the custodial arrangement serves the best interest of the child, superseding the adversarial claims of the parties.

IV. In furtherance of a minor child’s welfare, the writ Court may issue interim order(s) concerning custody and other incidental aspects as warranted by exigencies of the situation, ensuring that the minor child’s well being remains the ultimate determinant of justice and thereafter refer parties to remedy(s) before statutory forum(s) for final/further determination of the lis.

V. The High Court, in its writ jurisdiction has unbridled, unfettered and plenary powers. No inflexible and comprehensive guidelines can conceivably be enumerated governing the exercise of these intrinsic powers. There is no gainsaying that the nature, mode and extent of such exercise of this jurisdiction by the High Court shall depend upon the judicial discretion exercised by the High Court in the facts and circumstances of a given case.”

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8. The present petition under Article 226/227 of the Constitution of India has been filed seeking issuance of a writ in the nature of *habeas corpus* for production of the minor child namely Gurshan Sandhu, aged about 10 years, alleging that he has been in the illegal custody of respondent Nos.4 and 5. The brief factual matrix, as emerging from the record, is that the minor child is not in the custody of respondent Nos.4 and 5 but the child is residing with his father. This Court cannot lose sight of the fact that the dispute raised by the petitioner essentially pertains to the custody of a minor child between the parents. In the considered opinion of this Court, such matters involve adjudication of rights, evaluation of welfare of the child and appreciation of evidence which are to be decided or ratiocinated upon by the competent civil/guardianship Court. Furthermore, the omission to implead the father of the minor child reflects lack of bona fides in invoking the extraordinary jurisdiction of this Court.

9. Upon consideration of the pleadings and material on record, this Court finds that the minor child has been residing with his father, who is his natural guardian. There is no material on record, at this stage to *prima facie* indicate that the custody of the minor child is illegal or that he is under any form of unlawful confinement. It is well settled that a writ of habeas corpus in child custody matters is maintainable only where the detention is shown to be illegal or without authority of law. When the child is in the custody of a natural guardian, such custody cannot ordinarily be termed as illegal so as to justify issuance of a writ; unless there are exceptional or compelling circumstances demonstrating immediate threat to the welfare of the child. In the present case, the dispute between the parties appears to be a

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fallout of matrimonial discord which has given rise to the custody of the minor child. In the considered opinion of this Court, such issues necessarily require adjudication on the touchstone of paramount consideration of the welfare of the child, upon appreciation of evidence, which falls within the domain of the competent Court exercising jurisdiction under the relevant guardianship/family laws. The allegation regarding temporary custody of the child with respondent Nos.5 and 6, in the absence of respondent No. 4, by itself does not establish illegal detention particularly when the custody of the child remains with the father. The documents placed on record and the submissions made by the petitioner raise disputed questions of fact, which cannot be adjudicated in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India. This Court is conscious of the fact that a writ of habeas corpus, in a factual matrix such as the present one, is essentially invoked to secure the life and personal liberty of an individual. The main grievance raised by the petitioner pertains to the custody of the minor child, which is essentially within the domain of the Family Court. Undoubtedly, the right to life and personal liberty under Article 21 of the Constitution of India is sacrosanct and inviolable. However, mere apprehension and without *prima facie* material of imminent threat, cannot be the sole basis for issuance of directions for appointment of a Warrant Officer. From the material brought/placed on record, this Court does not find sufficient ground to conclude that there exists an imminent or extraordinary threat perception warranting interference by this Court in exercise of writ jurisdiction. The allegations made are yet to be tested before

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the competent forum and cannot be accepted at face value in writ proceedings.

10. It is trite law that in matters concerning a minor child, the welfare and best interest of the child is the paramount consideration, which overrides the legal rights of the parties. The concept of welfare is of wide amplitude and includes not only the physical well-being of the child but also her emotional, psychological, educational and overall developmental needs. However, such an assessment necessarily requires appreciation of evidence, interaction with the child, expert inputs, and a holistic evaluation of all attending circumstances, which can be effectively undertaken only by the competent Family Court and not in exercise of writ jurisdiction under Article 226 of the Constitution of India.

10.1 The present petition involves disputed questions of fact which are not amenable to adjudication in writ proceedings. In the considered opinion of this Court, the petitioner has efficacious alternative remedies available under the relevant provisions of law, including the Code of Criminal Procedure as well as before the competent Family Court, where all issues relating to custody and visitation can be comprehensively adjudicated on the touchstone of the welfare of the minor child.

11. In view of the *prevenient ratiocination*, it is ordained thus:

(i) The writ petition is dismissed as not maintainable. However, it is made clear that the petitioner is at liberty to avail/raise appropriate remedy(s) in accordance with law before the competent forum/Court.



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- (ii) It is further clarified that any observations made herein are confined only to the adjudication of the present writ petition and shall not prejudice the rights or contentions of either party in any other proceedings.
- (iii) Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

April 21, 2026
Ajay

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