

142 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH



CRWP-3500-2026 (O&M)
Date of Decision: 25.03.2026

JYOTI KUMARI ... PETITIONER
VERSUS
STATE OF HARYANA AND OTHERS ... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE H.S.GREWAL

Present:- Mr. Ajay Singh Kalsan, Advocate with
Mr. Vikas Singh Chawra, Advocate for the petitioner.

H.S. GREWAL, J. (ORAL)

1. The present petition under Article 226 of the Constitution of India is for issuance of a writ in the nature of Habeas Corpus and for appointment of a warrant officer, for obtaining custody of the minor children of the petitioner namely Baby Disika Attri, aged about 4 years & Master Yuvan Attri, aged about 1½ years from the respondent no. 4 (Mother-in-law of the petitioner) & respondent No.5 (Brother-in-law of the petitioner).

2. Learned counsel for the petitioner submits that the husband of the petitioner had committed suicide and petitioner was nominated as an accused in the FIR and she was taken into Police custody while custody of the minors was retained by respondent Nos. 4 and 5.

3. Notice of motion.

4. Mr. Rakesh Kumar Jangra, A.A.G., Haryana accepts notice on behalf of the State.

5. I have considered the submissions made by learned counsel for the parties and have gone through the case file.

6. 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 Apex Court in ***Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari***, 2019 AIR SC 2318, has observed 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 14 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.”

7. 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.

8. Considering the facts on record and the settled legal principles, this Court is of the opinion that 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.

9. 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 case, no circumstance has been established that would warrant intervention

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by this Court through a writ of Habeas Corpus. Accordingly, the same being devoid of merit, is hereby dismissed with liberty to the petitioner to avail alternative remedy, in accordance with law.

25.03.2026
Janki

(H.S.GREWAL)
JUDGE

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