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

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CRWP-3633-2025 (O&M)
Date of decision: 18.02.2026

Simran Chanana**...Petitioner****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Simranjot Singh, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Senior DAG, Punjab.

Mr. Lakshay Bector, Advocate
for respondents No. 6 to 8.

MANISHA BATRA, J. (Oral)**1. CRM-W-68-2026**

Allowed as prayed for, subject to all just exceptions.

Documents are taken on record.

2. CRWP-3633-2025 (O&M)

The present petition has been filed by the petitioner under Article 226 of the Constitution of India seeking issuance of writ in the nature of habeas corpus for obtaining the custody of her minor daughter namely Radhya, who is alleged to be in illegal custody of respondents No. 6 to 8.

3. It is argued by learned counsel for the petitioner that her marriage was solemnized with respondent No. 6-Deepam Khurana on 22.11.2019. Out of the said wedlock, a female child, namely Radhya, was born on 23.08.2020, who is the alleged detainee. It is further submitted that sufficient dowry was given by her parents in the marriage but respondents No. 6 to 8 raised demand of more dowry,

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due to which, their relations became sour and due to non-fulfillment of their demand, she was extended beatings and thrown out of her matrimonial house on 21.04.2024. Subsequently, these respondents had taken the custody of the minor child on 06.11.2024 from outside of her school on the pretext that her grandparents wanted to see her but they never handed over her custody to the petitioner. The petitioner had made complaints to the police authorities but to no avail. Subsequently, a compromise was effected between the parties on 31.07.2024 but the same was not honoured by these respondents. The petitioner has filed a petition under the provisions of the Guardians & Wards Act for obtaining permanent custody of the child, which is pending before the Family Court, Ferozepur. Apart from that, the petitioner has filed some other litigations against respondents No. 6 to 8, which are pending adjudication.

4. Learned counsel for the petitioner has further submitted that respondents No. 6 to 8 have fraudulently taken the custody of the minor child from the petitioner and the act of these respondents is not only illegal but also amounts to cruelty to the petitioner as well as to the child as she was of tender age and needed the care and company of her mother for her upbringing. Since her birth, the child has been in custody of the petitioner and she has been the sole caregiver of the child. The petitioner had got the child admitted in a reputed school and he was pursuing her studies. However, by removing her from the lawful custody of the petitioner, respondents No. 6 to 8 have seriously posed danger to her overall development. While submitting that respondent No. 6 to 8 are mistreating the minor child and not maintaining her properly, it is urged that a writ of habeas corpus be issued for release of the alleged detainee.

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5. Learned State counsel has submitted that the directions issued by this Court shall be complied with.

6. Reply, on behalf of respondents No. 6 to 8, has been filed, wherein while denying the allegations as levelled by the petitioner, it is submitted that since respondent No. 6 is natural father of the child, she cannot be stated to be in illegal custody of the father and the present petition is not maintainable. It is submitted that respondent No. 4 has never mistreated the child and rather, he is properly taking care of the child, being her father and is also discharging his responsibilities properly. It is also submitted that even he had never caused any harassment to the petitioner and she had left the company of respondent out of her own free will. The child has been admitted in a better school and is getting her preliminary education. Learned counsel for respondents No. 6 to 8 has relied upon *Pawan Kumar Kathuroju vs. State of Telangana, 2024 SCC Online SC 31*, *Nirmala vs. Kulwant Singh and others, 2024 AIR Supreme Court 23445* and *Rajeswari Chandrasekar Ganesh vs. State of Tamil Nadu and others, 2022 SCC Online SC 885* to contend that the custody of the child with father cannot be held illegal or unlawful and that the writ of habeas corpus is a prerogative remedy and the same should be exercised sparingly and only in extraordinary circumstances. Hence, the dismissal of the petition is prayed for.

7. This Court has heard the rival submissions.

8. The petitioner has invoked jurisdiction of this Court for issuance of a writ in the nature of habeas corpus. Such writ is primarily issued calling upon a person who had detained another to produce the detained individual in order to let the Court to know on what ground a detenue has been confined and set her/him at liberty if there is no legal justification for such detention. When once the Court

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comes to the conclusion that the detention is unlawful, the confinement cannot be permitted and consequently direction has to be issued to set the detinue at liberty. Reliance in this context can be placed upon a Full Bench judgment of the High Court of Madras reported as ***Kuppammal and others vs. The Dist. Collector and Dist. Magistrate, Thiruvallur District, Thiruvallur and Others***, decided on 13.02.2001 in ***HCP Nos.11,41,66, 76 and 103 of 2000***, wherein it was observed that the confinement of a person is either unlawful or considered to be unlawful in cases where the detention is not authorised or under the shelter of any law or the detention law under which the detention ordered is void, where the authority who had ordered detention is not the one specified or authorised in that behalf, where though the specified authority ordering detention is competent and also acts under a valid law yet if such authority had failed to follow the procedure prescribed in that behalf and in some cases even when the authority had followed the procedure prescribed if action of said authority is vitiated by one or more of the defects or infirmity recognised in this respect by principles of administrative law such as abuse of power, mala fides, perversity, non-application of mind, arbitrariness or extraneous consideration or a fortiori reason or like.

9. Reference can further be made to ***Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others, 2019 SCC OnLine SC 713***, wherein it was observed by Hon'ble Supreme Court that habeas corpus proceeding is not to justify or examine the legality of the custody. Habeas corpus proceeding 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

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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 is 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. Even in *Manisha Gupta vs. State of Punjab and others, 2023 (3) RCR (Civil) 46*, it has been held by this Court that although the custody of a child with his father cannot be held illegal or unlawful but the same should not be in breach of any order of law.

10. Now, adverting to the present case. Admittedly, the petitioner and respondent No. 6 have been residing separately. The minor child had been residing with the petitioner but on 06.11.2024, his custody was handed over to respondent No. 6 by the petitioner. The petitioner is claiming that the child was given to respondents No. 6 to 8 only for a few days so that she could meet her grandparents. Other allegations levelled by the petitioner against respondent No. 6 involving his conduct, morality and nature have been candidly denied by these respondents. They have taken a stand that it is the child herself who is not willing at all to go back in the custody of the petitioner, which facts finds strength from the assessment report of the Mediator of this Court also. The petitioner has not placed anything on record to show that the custody of child with respondent No. 6 is illegal or without any authority of law or she has any order of the Court of law bestowing her custody of the child. The child has been enrolled by respondent No. 6 in a school and is attending school. While interacting with her in the chamber of this Court, the child has expressly desired to continue under the canopy of her

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father. The parties are stated to be contesting their claim for getting permanent custody of the child before the Family Court, Ferozepur in a petition filed by the petitioner under the provisions of the Guardians & Wards Act and the rival claims of the parties that only one of them can look after the best interest of the minor can be ascertained by the said Court as it would be seized of the entire material to be produced by the parties in support of the competing claims and would obviously be more equipped to determine the welfare of the child by giving complete opportunity to the contesting parties. Certain allegations and counter allegations with regard to misbehavior and conduct of the parties to *lis* have also been made by them. However, at this stage, there is no need to dilate upon the same and without casting any aspersion on the moral character of the petitioner or respondents No. 6 to 8 and considering the position of law as laid down in aforecited judgments, this Court is of the considered opinion that no case has been made out to issue any writ of habeas corpus directing respondents No. 6 to 8 to hand over the custody of the minor child to the petitioner. In view thereof, finding no merit in the petition, the same is dismissed.

11. Till the claim of the parties for permanent custody of the child is decided by the Family Court, Ferozepur, the custody of the child shall remain with respondent No. 6 and the petitioner shall have visitation rights and shall be at liberty to meet the child on every Saturday or Sunday, if she so desires, by fixing a time on that day, which is convenient to respondent No. 6 as well.

18.02.2026

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No