

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

JASPREET SINGH..... PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS..... RESPONDENTS

1.	Judgment reserved on	13.01.2026
2.	Judgment pronounced on	10.04.2026
3.	Judgment uploaded on	10.04.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced.	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	Nil

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Argued by : Mr. Lalit Pathak, Advocate
for the petitioner.

Ms. Aiman J. Chishti, AAG, Punjab.

Mr. G.S. Brar, Advocate with
Mr. Abhishek Narang, Advocate and
Mr. J.S. Khaira, Advocate for respondent No.4.

YASHVIR SINGH RATHOR, J.

1. The present writ petition has been filed under Section 226 of the Constitution of India for the issuance of Writ in the nature of habeas corpus and for appointment of a Warrant Officer with a roving Writ to search for the detenues namely Divleen Kaur daughter of Jaspreet Singh aged about 5 years and Samrathjot Singh son of Jaspreet Singh aged about 3½ years at the premises of respondent No.4 or at any other place, and get the detenues released from the illegal custody of respondent No.4.



2. Case of the petitioner is that his marriage was solemnized with one Rajbir Kaur and two children namely Divleen Kaur and Samrathjot Singh were born out of said wedlock. However, the relations between him and his wife were not cordial and on 11.09.2024, petitioner as well as Rajbir Kaur consumed some poisonous substance due to which both of them were hospitalized in DMC Hospital, Ludhiana. However, during treatment, Rajbir Kaur died on 13.09.2024. Thereafter, FIR No.152 dated 14.09.2024 was registered under Section 108, 3(5) of BNS, 2023, Police Station Basti Bawa Khel, Jalandhar against the petitioner as well as his sister Harkirtan Kaur for abetment of suicide by Rajbir Kaur and the petitioner was arrested. In the meanwhile, respondent No.4-who is sister of Rajbir Kaur, took over the custody of his children. Petitioner was released on bail vide order 11.12.2024 passed by the learned Additional Sessions Judge, Jalandhar. Thereafter, he approached respondent No.4 to hand over the custody of his children to him but respondent No.4 refused to hand over the custody of the children. It is further submitted that the act of respondent No.4 is illegal and in gross violation of the fundamental rights of the petitioner and the children and respondent No.4 is not the lawful guardian of the children under any law. The custody of both detenuess has been forcibly taken away from the biological father, which is illegal. It is further submitted that petitioner is the natural guardian of the minor children under Section 6 of the Hindu Minority and Guardianship Act, 1956 (for short 1956 Act) and respondent No.4 has no legal authority or right over the minor children and she has wrongfully confined his minor children with herself. Petitioner is doing a



Government job and is fit to take care of the children. It is further submitted that respondent No.4-sister-in-law of petitioner has filed one case No.GW-12-2025 under the Guardians and Wards Act, 1890 before District Court Kapurthala for appointing her as legal guardian of the minor children and for restraining the petitioner from obtaining the custody of the minor children.

3. By way of present petition, it has been prayed that present petition be allowed and respondent No.4 be directed to immediately release the detenues/minor children from her illegal and unlawful detention and their custody be handed over to him.

4. Reply has been filed on behalf of the State. As per the reply, both the minor children are being taken care of by respondent No.4-Harmandeep Kaur. The respondent No.4 has filed one case No.GW-12-2025 under the Guardians and Wards Act, 1890 before Family Court Kapurthala. Since the aforesaid case is already subjudice before Family Court, Kapurthala, the petitioner is at liberty to raise the pleas in the present petition before that forum. Therefore, no interference is called for by the police at this stage.

5. The parties have been heard and material placed on the file has been perused.

6. Learned counsel for petitioner argued that petitioner is the natural guardian of the minor children being their father under Section 6 of 1956 Act. He is an educated person and is a government employee. His financial condition is sound and he is in a better position to look after the minor children. He can shape the career of the minor children in a better



manner. Respondent No.4, who is the sister of petitioner's wife has taken the custody of the minor children illegally and she is not entitled to keep them in her custody and as such, the custody of minor children be handed over to the petitioner. In support of his contentions, learned counsel has relied upon 2019 (3) RCR (Civil) 104, **Tejaswini Gaud Vs. Shekhar Jagdish Prashad Tewari** and 2024 (4) RCR (Civil) 98, **Gautam Kumar Das and NCT of Delhi and others.**

7. On the other hand, learned counsel for respondent No.4 argued that petitioner was married with the sister of respondent No.1 and both the children were born out of their wedlock. He was not having cordial relations with his wife and on 11.09.2024, petitioner as well as his wife Rajbir Kaur consumed some poisonous substance, as a result of which, they both were hospitalized. Petitioner luckily survived but his wife unfortunately died and thereafter, one FIR has been registered against the petitioner under Section 108 and 3(5) BNS, 2023 for abetment of suicide by his wife and he was arrested. In his absence, both the minor children were taken care of by respondent No.4, who is their aunt/Mausi. Petitioner is facing trial for abetting the suicide by his wife, who is mother of the minor children and he certainly has suicidal tendencies and the custody of the minor children should not be handed over to him, who are being looked after very well by respondent No.4. Learned counsel next contended that a petition for guardianship has already been instituted before the Family Court which will decide the rival contentions of both the parties and the custody of minor should not be handed over to the father under Writ of Habeas Corpus. Detailed inquiry is required to be



held as to whom custody of minor children should be handed over and this Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India in view of the peculiar facts and circumstances of the present case and learned counsel prayed that the petition in hand be dismissed.

8. Hon'ble Supreme Court in 2001(2) RCR (Criminal) 591 titled as '**Syed Sleemuddin 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.

9. Hon'ble Supreme Court in **Tejaswini Gaud's case (supra)**, while deciding whether writ petition is maintainable or not has held that ordinarily remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act, as the case may be. It is only in exceptional cases that the rights of the parties seeking the custody of minor can be determined in exercise of extraordinary jurisdiction in a petition for habeas corpus. Relevant extract from the said judgment is reproduced as under:-

"14. Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived



of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.

19. 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.

20. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and 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."



10. It is well settled that habeas corpus is a prerogative Writ which is an extraordinary remedy. Recourse to such a remedy should not be permitted unless the ordinary remedy provided by law is either not available or is ineffective. 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 the person, who is not entitled to his custody. The writ of Habeas Corpus is maintainable where it is proved that detention of a minor child by the parents or others was illegal and without any authority of law. The ordinary remedy for custody of a child lies under Hindu Minority and Guardianship Act or the Guardians and Wards Act, as the case may be. The exercise of power by a Writ Court is summary in nature, whereas, detailed inquiry is to be held under Guardians and Wards Act taking into consideration the welfare of the child and where the Court is of the view that a detailed inquiry is required, the Court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the Family Court. As such, as to whether, Writ Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India or not will depend on the facts and circumstances of each case.

11. In the present case, there is no dispute that petitioner is the natural guardian of the minor children. His wife has already died. Both of them consumed some poisonous substance on account of which his wife died but he luckily survived. He was arrested by the police and was later on released on bail but during this period, the custody of children was taken over by respondent No.4, who is the Aunt/Mausi of the children and they are living with her since then. Petitioner thus has suicidal



tendencies and it is thus to be determined whether he is fit to be a guardian or not for which detailed inquiry is required to be held by the Family Court in the petition under Guardians and Wards Act which has already been instituted. Hon'ble Supreme Court in 2010 (2) SCC 654, **Athar Hussain vs. Syed Siraj Ahmed and others**, has held that Court has no jurisdiction to appoint guardian other than father, but interim custody can be given to other person where proceedings for appointment of guardian are pending and in that case, interim custody was given to the maternal grandfather as the children were residing with maternal grandparents since the death of their mother and it was held that interest of the children will be duly served if their current residence was not disturbed and irreparable injury will be caused to the children if they, against their will, are uprooted from their present settings. In 2020 SCC Online All 1372, **Shaurya Gautam (Minor) and Another Vs. State of U.P. and 4 Others**, custody of the minor was denied to father as he was facing trial on the charge of murder of his wife and rather the minors were placed in the care and custody of the Ashram.

12. Learned counsel for the petitioner has also relied upon **Tejswani Gaud's case (supra)** to contend that merely because respondent No.4 being a relative took care of the child for some time, she cannot retain custody of the children and the decision of the High Court handing over custody of the child to the father was upheld. However, the **Tejswani Gaud's case (supra)** is not applicable to the facts of the case in hand as in that case, the mother of the child had died a natural death due to cancer and father was also suffering from tuberculosis meningitis, as a



result of which the custody of the children was handed over to sister of the mother/Aunt of the children under unavoidable circumstances and when father got cured, he was given the custody of the minor children and it was held that custody cannot be handed over to the relatives. Likewise, **Gautam Kumar Das’s case (supra)** is also not applicable to the facts of the case in hand, in which the custody of the minor girl was given to sister-in-law as a temporary measure and it was held that custody cannot be denied to natural guardian.

13. As already mentioned above, petitioner himself is facing trial for abetting suicide by his wife, who was mother of the children and he himself had attempted to commit suicide but he survived and as such, a detailed inquiry is required to be held by the Family Court as to whether petitioner is fit to get the custody of the minor children or not and this Court in exercise of its powers under Article 226 of the Constitution of India cannot order handing over of the custody to the petitioner.

14. As a result of aforesaid discussion, the petition in hand is dismissed.

15. Pending misc. application(s), if any, also stand disposed of.

(YASHVIR SINGH RATHOR)
JUDGE

10.04.2026
Priyanka Thakur

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No