



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

(260)

**CRWP-9399-2025(O&M)
DATE OF DECISION: 25.02.2026**

Girija Kapoor

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM HON'BLE MR. JUSTICE SUBHAS MEHLA

Present Mr.Inderjit Sharma, Advocate, for the petitioner.
Mr. Subhash Godara, Addl. AG, Punjab.
Mrs.Vishali Thakur, Advocate,
for Mr. Vivek K. Thakur, Advocate,
for respondent no.6.

SUBHAS MEHLA, J (ORAL)

1. Present petition has been filed under Article 226 of the Constitution of India, 1950 for issuing writ in the nature of Habeas Corpus seeking the release of minor children/ward a son named as Vivaan, aged three years, and a daughter namely Gaurangi, aged less than one year, of the petitioners from the illegal custody of respondent no.6.

2. Learned counsel for the petitioner submitted that a divorce petition was pending between the petitioner and respondent no.6; that on 03.02.2025 during proceedings under Section 13-B of Hindu Marriage Act, 1955, on pretext of entering a compromise, respondent no.6 managed to get incorporated the condition that the children would remain in custody of respondent no.6; respondent no.6 had managed to take away the minor children of the petitioner by making manipulations with the help of his relatives. Later, the petitioner withdrew from the above mentioned compromise, and consequently, the petition under Section 13-B of the Hindu

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Marriage Act, 1955 was dismissed. Accordingly, the above said compromise also became void. On 28.08.2025, a Co-ordinate Bench of this Court directed respondent no.6 to appear in person on 09.09.2025 along with minor children and on that date, the matter was referred to Mediation and Conciliation Centre of this Court for amicable settlement, however, mediation failed; since 09.09.2025 respondent no.6 has not allowed the petitioner to meet and see the minor children. For children below 5 years of age, it is the settled principle of law that children shall ordinarily be in custody of the mother; that both children are below the age of five years as the son is three years old (DOB 16.09.2022) and the daughter is 1 year old (DOB 06.10.2024) respectively; that they require constant supervision, control and care of the natural mother but the petitioner is deprived of her rights being natural mother, and hence, the present petition.

3. Status Report by way of an affidavit of Sumeer Singh, PPS, Deputy Superintendent of Police, Sub Division City, District Pathankot, on behalf of respondents no.1,3,4 and 5 filed by learned State counsel. Learned State counsel submitted that as per the report, petition under Section 13-B of Hindu Marriage Act, 1955 was filed by the petitioner and respondent no.6 to obtain divorce by mutual consent. On 04.02.2025, first motion statements were recorded and a compromise was effected, in accordance whereof, petitioner accepted Rs.5,00,000/- vide cheque No.00026 dated 05.02.2025, and petitioner voluntarily handed over the custody of the minor children to respondent no.6. However, on 07.04.2025, petitioner filed an application withdrawing her consent. However, in the said application she did not claim

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the custody of the children. Accordingly, petition under Section 13-B of the Hindu Marriage Act, 1955 was dismissed and petitioner was directed to return the amount of Rs.5,00,000/- to respondent no.6 within 15 days but the same has not been done so far. So, it is not the case that respondent no.6 forcibly or illegally took the custody of the minor children.

4. Learned counsel for the complainant/respondent no.6 contended that the present Habeas Corpus petition is not maintainable as the minor children are not in illegal custody of respondent no.6. Petitioner voluntarily left the children in custody of respondent no.6 when she left the matrimonial home. Since 04.02.2025, respondent no.6 alone has been attending to and looking after the needs of the minor children. Petitioner was earlier also married wherein she got divorced under Section 13-B of Hindu Marriage Act, 1955 and received alimony of Rs.17,00,000/-. During divorce proceedings with respondent no.6 under Section 13-B of Hindu Marriage Act, 1955, alimony amount of Rs.8,50,000/- was settled out of which Rs.5,00,000/- were paid to petitioner on the day of first motion i.e on 04.02.2025, and on that day itself, as per compromise effected, petitioner agreed that children would remain in custody of respondent no.6. Later even though consent for mutual divorce was withdrawn, but petitioner never sought custody of minor children; rather petitioner failed to return Rs.5,00,000/- despite order of the Family Court. Hence, respondent no.6 does not have illegal custody of the minor children and present Habeas Corpus petition is liable to be dismissed.

5. Heard.

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6. Keeping in view the facts and circumstances of the case and the contentions of the learned counsel for the parties; owing to marital discord between petitioner and respondent no.6, petitioner left her matrimonial home, leaving her children behind in custody of respondent no.6; petition under Section 13-B of Hindu Marriage Act was filed jointly by petitioner and respondent no.6 to seek divorce by mutual consent; during the said proceedings, petitioner and respondent no.6 effected a compromise, whereby petitioner voluntarily agreed that minor children would remain in custody of respondent no.6 and in exchange petitioner received Rs.5,00,000/- as part of compromise. However, the compromise did not materialized as the petitioner withdrew her consent, and hence, petition under Section 13-B of Hindu Marriage Act, 1955 was dismissed. While withdrawing consent, petitioner did not seek for custody of minor children to be handed over to her; but the family Court vide order dated 01.08.2025 directed the petitioner to hand over Rs.5,00,000/-, which she received as part of compromise, within 15 days, and till now i.e approximately six months, petitioner has failed to return the said money. Thus, it is not the case that respondent no.6 i.e husband of petitioner has forcibly or illegally taken the custody of the minor children. Despite the settled principle that custody of minor children should ordinarily remain with the mother, but the same does not apply to facts of present case as petitioner firstly left the matrimonial home while leaving children as young as two years and three months old at that time, and later agreed that custody of minor children shall remain with



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respondent no.6. Hence, this Court does not deem it a fit case to allow the present writ petition of Habeas Corpus, as it lacks merits.

- 6. Accordingly, dismissed.
- 7. However, petitioner is at liberty to take legal remedy by filing appropriate application before the Family Court and also move an application for interim custody of the children keeping in view their age.
- 8. All pending misc. applications, if any, be also disposed of.

25.02.2026		(SUBHAS MEHLA)
mamta		JUDGE
	Whether speaking/reasoned	Yes/No
	Whether reportable	Yes/No