



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

136

CRWP-13020-2025 (O&M)

Date of decision: 01.04.2026

Major (Dr.) Ashish Choudhary

...Petitioner(s)

VERSUS

State of Punjab and others

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Pratham Sethi, Advocate,
Ms. Surekha, Advocate;
Ms. Prabhjot Kaur, Advocate for the petitioner(s).

Mr. Mohit Kapoor, Sr. DAG Punjab.

Mr. Saurabh Bahmani, Advocate for
Mr. M.S. Longia, Advocate for respondents No.2 to 7.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for issuance of a writ in the nature of Habeas Corpus for release of two minor children of the petitioner i.e. Aryan Choudhary and Arya Choudhary, from the unlawful custody of respondent No.5-Paramjit Singh (father-in-law of the petitioner), respondent No.6-Paramjit Kaur (mother-in-law of the petitioner) and respondent No.7-Sohandeep Singh (brother-in-law of the petitioner).

2. Learned counsel appearing for the petitioner contends that the marriage of the petitioner was solemnized with respondent No.4- Major

(Dr.) Shiv Kamal Kaur on 07.02.2018. Both, the petitioner and respondent No.4 are commissioned officers in the Indian Army and presently posted at Kalimpong, West Bengal. Twin children i.e. Aryan Choudhary and Arya Choudhary were born out of the said wedlock on 15.10.2023. He contends that owing to temperamental differences between the petitioner and respondent No.4 and the resultant marital discord, respondent No.6 (mother of respondent No.4) visited the petitioner and his family in March 2025. Later in September-2025, respondent No.4, alongwith her mother and minor children, left Kalimpong and has now left their children under the care of her mother, father and brother at Rupnagar. He contends that the said custody is unlawful, hence, the present petition has been filed.

3. The matter came up for hearing on 03.12.2025. On the request of learned counsel for the petitioner, the matter was referred to the Mediation and Conciliation Centre of this Court to explore the possibility of amicable resolution of the dispute, keeping the objections open.

4. On resumed hearing, a report has been received from the Mediator, as per which, despite best efforts, the parties could not reach at an amicable resolution.

5. An emphatic argument has been made by the petitioner that the custody of respondent(s) is unlawful and should be restored. However, while father is the natural guardian, the law favours custody of the mother when children are less than 6 years of age. The dispute herein is hence not just in relation to the restoration of the custody of the children but in relation to the vesting of custody in the father.

6. Counsel for respondent No.4 contends that the children are

being taken care of by parents of respondent No.4, in her absence, when she is on duty as the Rules do not allow her to bring the children to her work place. Hence, it is just an arrangement, while on service and it cannot be deemed as abandonment of custody.

7. I have heard counsel for the parties and have gone through gone through the documents.

8. The issue pertains to guardianship and custody. A case of seeking custody, it would not fall strictly within the domain of a habeas corpus petition since, it would require a detailed inquiry to be conducted by a Family Court. The overall well being of the children has to be seen after recording of evidence and taking into consideration the totality of circumstances. The criminal writ petition in the nature of habeas corpus would not ordinarily be resorted to as a bye-pass to the procedure prescribed by law where ordinarily such custody matters are required to be preferred before a Family Court.

9. In view of the above, the present criminal writ petition is ***disposed of***, at this stage, with liberty to the parties to move an appropriate application/petition before the competent Family Court for seeking custody/guardianship of the children.

10. Counsel appearing on behalf of respondent No.4 submits that he shall ensure an early appearance of respondent No.4, on an advance notice, so that there is no unnecessary delay and that in the event, the petitioner emails and sends the copy of application/petition on her email i.e. dr.silvi90@gmail.com and WhatsApp the same on mobile number i.e. 96460-37325, respondent No.4 shall appear before the Court on the date

fixed for her appearance, in person or through a counsel.

11. Needless to mention that in case any application/petition for interim relief is moved before the competent Family Court, the same shall be decided expeditiously and preferably within a period of 03 months of filing of such an application/petition.

01.04.2026

Mangal Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(VINOD S. BHARDWAJ)

JUDGE