



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

**CRWP-6963-2025 (O&M)
Reserved on : 02.08.2025
Pronounced on : 05.08.2025**

Monika Poonia

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Roshneel Singh Brar, Advocate and
Mr. Sandeep Vats, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Mandeep Singh Bedi, Senior Advocate with
Mr. Abhishek Thakur, Advocate,
Mr. Navrajdeep Singh, Advocate,
Mr. Akash Mehta, Advocate,
Mr. Tajender Joshi, Advocate and
Mr. Ajit Kumar, Advocate
for respondent No. 5.

MANISHA BATRA, J.

1. 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 son namely Vihaan, who is alleged to be in illegal custody of his father/respondent No. 5.

2. Brief facts of the case as set up by the petitioner are that the marriage of the petitioner was solemnized with respondent No. 5-Naveen Dahiya on 17.01.2017 as per Hindu rites and rituals. Out of the said wedlock, a male child, namely Vihaan, was born on 23.02.2020, who is the alleged detinue. Due to abuse and ill treatment by respondent No. 5, the petitioner left her matrimonial house on 27.03.2020 and started living separately. Subsequently, due to irretrievable breakdown of the



marriage, the petitioner and respondent No. 5 got their marriage dissolved by filing a petition under Section 13-B of the Hindu Marriage Act, 1955, vide decree of divorce dated 08.02.2023 passed by the Additional Principal Judge, Family Court, Kharkhoda. During the said proceedings, it was agreed by the parties that the custody of the child shall remain with the petitioner/mother and respondent No. 5/father shall have no visitation right. However, out of good will, the petitioner allowed him to meet their son on a few occasions. On 05.06.2025, respondent No. 5 came to see the child and was allowed by the petitioner for the same. However, he deceitfully removed the child from the lawful custody of the petitioner and since then, he has kept the child with him. Several attempts to resolve the matter amicably were made but all in vain. A complaint was also made on 09.06.2025. Instead of handing over the custody of the child to the petitioner, respondent No. 5 filed a suit seeking mandatory injunction before the Court of Civil Judge (Senior Division), Gurugram, whereby interim relief was granted in favour of respondent No. 5 restraining the petitioner from recovering the custody of the child except through due process of law, vide order dated 20.06.2025. The petitioner has even filed an application before the Family Court, Kharkhoda seeking initiation of contempt proceedings against respondent for violating its order. However, the child is still in illegal custody of respondent No. 5.

3. Learned counsel for the petitioner has submitted that respondent No. 5 has forcibly taken the custody of the minor child from the petitioner and the act of respondent No. 5 is not only illegal but also amounts to cruelty to the petitioner as well as the child as he was of tender age and needed the care and company of his mother for his upbringing. Since his birth, the child has been in custody of the petitioner and she has been the sole caregiver of the child. Respondent No. 5 has



violated the terms of decree of divorce, settled before the Family Court, as mentioned above. The petitioner had got the child admitted in a reputed school and he was pursuing his studies. However, by removing him from the lawful custody of the petitioner, respondent No. 5 has seriously posed danger to his overall development. While submitting that respondent No. 5 is mistreating the minor child and not maintaining him properly, it is urged that a writ of habeas corpus be issued for release of the alleged detenu. To fortify his argument, learned counsel for the petitioner has relied upon the authorities cited as *Shazia Aman Khan vs. the State of Orrisa and others, 2024 (7) SCC 564, Yashita Sahu vs. State of Rajasthan, 2020 (3) SCC 67, Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others, 2019 (7) SCC 42, Parminder Singh Sandhu vs. State of Punjab and others, 2025 NCPHHC 73475, Joginder Singh Sekhon and another vs. State of Punjab and others, 2025 NCPHHC 73684, Camila Carolina de Matos Vilas Boas vs. Union of India, 2025 NCPHHC 51547, Anju Sharma vs. State of Haryana, 2024 NCPHHC 106868 and Smt. Meenakshi vs. State of U. P. (Allahabad), 2020 SC Online All 1475.*

4. Learned Assistant Advocate General, Haryana has submitted that the directions issued by this Court shall be complied with.

5. Reply, on behalf of respondent No.5, has been filed, wherein while denying the allegations as levelled by the petitioner, it is submitted that since respondent No. 5 is natural father of the child, he cannot be stated to be in illegal custody of the child and the present petition is not maintainable. It is submitted that respondent No. 5 has never mistreated the child and rather, he is properly taking care of him, being his 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. In fact, the petitioner was beaten by her father on 05.06.2025 and it was her who called him to take custody of the child as she was not able to maintain him. The child was handed over to him in the presence of two witnesses, who have sworn affidavits in this regard. Learned counsel for respondent No. 5 has relied upon *Manisha Gupta vs. State of Punjab and others, 2023 (3) RCR (Civil) 46* and *Pinki Rani vs. State of Haryana and others, CRWP-4478-2025, decided on 02.05.2025* to contend that the custody of the child with father cannot be held illegal or unlawful and that 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.

6. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

7. Admittedly, the petitioner and respondent No. 5 have parted ways by way of getting decree of divorce under Section 13-B of the Hindu Marriage Act. The relevant part of the decree of divorce dated 08.02.2023 read as under:

“5. They have settled all their claims of dowry and future maintenance, etc. **They have also resolved that the custody of the child namely Master Vihaan, aged about three years shall remain with Petitioner number two, Monika Poonia, with whom, he is already living and Petitioner number one shall have no visitation right.** They have also resolved that in regard to the custody of the child or maintenance of child, no litigation shall be filed in future by the parties. They have also dissolved that now there is no claim left between them towards future maintenance, alimony, or any right in the property.

8. Respondent No. 5 has not disputed the aforesaid arrangement arrived at between them before the Family Court, Kharkhoda on 08.02.2023. Respondent No.



5 had even agreed to not to file any litigation seeking custody of the child. He had no visitation rights at all. However, it seems that on some humanitarian grounds, the petitioner had subsequently allowed him to meet the child and respondent No. 5, by taking advantage of the same, has removed the child from the custody of the petitioner.

9. 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 detinue has been confined and set him at liberty if there is no legal justification for such detention. When once the Court 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.

10. Reference can further be made to *Tejaswini Gaud's* case (supra), 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 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's case (supra), relied upon by respondent No. 5, 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, which is so in the present case.

11. Now, adverting to the present case. The alleged detinue is in the custody of respondent No. 5, who is admittedly his natural guardian, being father. However, he has not placed anything on record to show that the custody of the child with him is legal or lawful and not in breach of any authority of order of law. A decree of divorce obtained under Section 13-B of the Hindu Marriage Act is based on mutual consent of the parties and the terms and conditions agreed therein have



binding nature on both the parties. At a later stage, none of them can run away from the same. However, in the present case, it is amply clear that respondent No.5, after procuring decree of divorce with mutual consent, has changed his stand and in defiance of that order, he has taken custody of the child. This act of respondent No. 5 is hit by the principles of estoppel. Respondent No. 5 has not successfully shown anything to this Court so as to believe that the petitioner was not taking proper care of the child. The petitioner is a practicing doctor, having degree of MBBS. There is nothing on record to show that she is not able to maintain the child. 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 respondent No. 5 and considering the position of law as laid down in aforecited judgments, this Court is of the considered opinion that the petitioner deserves to have the custody of the child.

12. Accordingly, the present petition is allowed. A writ of habeas corpus directing the respondent No.5-Naveen Dahiya to hand over the custody of the child to the petitioner by going to her house within a period of 10 days from today. In case respondent No. 5 does not hand over the custody of the child to the petitioner within the stipulated time, respondent No. 2-Commissioner of Police, Gurugram shall ensure the compliance of this order within a period of 02 days thereafter.

05.08.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No