

253

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

**CRWP-12316-2024
RESERVED ON- 29.04.2025
PRONOUNCED ON:07.05.2025**

SUNAINA

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Baani Chhibber Mahajan, Amicus Curiae with
Mr. Mayank Vashishth, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab

Mr. Pawandeep Singh, Advocate
for respondents no. 4 & 5

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this court has been invoked under Article 226 of the Constitution of India read with section 528 BNSS,2023 for issuance of writ in the nature of Habeas Corpus to release the detenu from the illegal custody of the Respondent no.4 & 5 and Respondent no. 4 & 5 be directed to immediately handover the custody of minor to the petitioner.

2. Factual matrix of the case unfolds that the marriage of the petitioner was solemnized with Kalu Ram, s/o Om Parkash, resident of tehsil and District Shri Ganganagar in the year 2023 but after some time differences arose between the two which compelled her to come back at

her parents house and thereafter with the intervention of respectable members of the society, Petitioner and her husband namely Kalu Ram took Panchayati divorce.

3. Further, during the time of Panchayati divorce, the petitioner was unaware of her pregnancy and on 17.08.2024, she gave birth to her son Bhavishya (alleged detinue) but after few days of his birth, her parents refused to take care of the child and suggested the petitioner to give her son in adoption and get herself remarried. After few months, Respondents no. 4 and 5 allegedly took away the child from the petitioner and after sometime she came to know that he family has given her son to respondents No.4 & 5 on which she made hue and cry. Hence this petition.

4. Vide order dated 18.02.2025, keeping in view the financial status of the petitioner, this Court appointed Ms. Banni Chhiber Mahajan Advocate as an Amicus Curiae on behalf of the petitioner to assist this Court.

5 Counsel for the petitioner contends that the son of the petitioner has been fraudulently given in adoption to Respondents no.4 and 5 by her family members without her knowledge since she was suffering from post-partum depression and her family members forcibly took her signatures on a blank paper.

6. It is further contended that on knowing the truth of adoption, her family members silenced her by threats and did not let her move out of the house due to which she was unable to register any complaint and on getting the opportunity, she rushed to the police officials making an oral complaint against the respondents no. 4 & 5 but no action was taken by the police officials.

7. It is vehemently argued by the learned Amicus that the adoption deed dated 24.10.2024 is not registered and further, no consent of the father of the child namely Kalu Ram, s/o Om Parkash has been obtained thus this deed holds no value in the eyes of law which stands supported by this court in case titled as ***“Narinder Singh Vs Pritam Singh, 2014 SCC Online P&H 17713”*** wherein it has been held that:-

“9. It was admitted by PW-2 Pawan Kumar Garg, Deed-writer in the cross-examination that adoption deed was written at the instance of natural mother and at that time natural father of the plaintiff-appellant was not present. It was further observed that there was no evidence that natural father of the appellant-Narinder Singh, by any deed or authority authorized his divorced wife Malkiat Kaur to give child in adoption. As per sub-section (3) of Section 9 of the Act the mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has been declared to be of unsound mind. This was not at all the case of the plaintiff-appellant. Even PW-1 Ujagar Singh, maternal grand-father and next friend of the appellant admitted in the cross-examination that appellant was residing with him since the time of adoption thereby suggesting that the appellant never resided with the respondents the time of adoption document.”

8. Per contra, counsel for Respondents no.4 & 5 at the very outset contends that the instant petition is not maintainable as the alleged detinue namely Bhavishya is not in illegal custody of aforesaid respondents as it can be culled out from the adoption deed dated 24.10.2024(Annexure R-4/1) , that the petitioner at her own will had given her child in adoption in the presence of witnesses, including her mother.

9. The photograph annexed to the adoption deed conclusively demonstrates a voluntary transfer of custody, as it explicitly depicts the petitioner and her mother actively handing over the child to respondents no. 4 and 5. This visual evidence negates the petitioner's allegation of the child being taken fraudulently, as no signs of coercion or deception are evident in the documented interaction. Given the clarity of the image and the parties' visible participation, the claim of unlawful removal lacks substantive merit and appears to be a fabricated assertion unsupported by factual or documentary evidence .

10. In support of his contention, learned counsel for the Respondents no.4 & 5 places reliance upon dictum of the coordinate bench in case titled ***“Dr. Honey Chahal and another Vs State of Punjab and others 2024(1) RCR(Civil) 564”*** wherein it has been held that:-

17. Question is whether in writ jurisdiction this court would give a declaration qua trustworthiness/veracity of documents presented. I am of the view that, the credibility of documents submitted by both parties to support their claims and counterclaims regarding the adoption are a matter of trial. Issues raised include the legality, context and admissibility of execution of affidavits and discrepancy thereof with the adoption deed and validity thereof, in the absence of signatures of adoptive father.

18. This Court has got its own Jurisdictional constraints to give any findings qua these issues. The writ jurisdiction is summary in nature and very limited on disputed factual aspects. Issues of child custody and adoption would typically fall under the purview of specific family laws viz. the Hindu Minority and Guardianship Act, 1956 and the Guardians and Wards Act, 1890. No doubt, child's welfare is of paramount importance. But it is nobody's case herein that child is currently suffering from lack of proper care and upbringing.

The welfare of the child has to be determined in the facts and circumstances of each case. Court cannot and ought not to take a pedantic approach. In the present case, the adoptive mother has neither abandoned the child nor has deprived the child of a right to her motherly love and affection for him. It is not even the case of the petitioners that the adoptive mother is physically, financially or mentally unfit to take care of the child.

19. The parents assert that they have not relinquished their rights over their minor son and it was merely due to their preoccupation that the respondent No.3, by their consent, took care of the child for a certain period. Such temporary arrangement should not automatically translate into her permanent custody rights. However, their individual affidavits and other documents including deed signed by them is not suggestive of such assertions. Rival claims require careful consideration of evidence by a trial court which cannot possibly be done within the limited jurisdictional boundaries of this Court. Only once the accuracy of documents presented as evidence is established, that the same would play significant role. It is, therefore, all the more imperative to ensure a fair trial for both parties to arrive at a just resolution. Till the same is done, it is necessary to prioritize the welfare of the child in question. Courts prioritize the best interests of the child above all else, which entails not only his immediate circumstances, but also the child's long-term well-being, emotional development and stability, No doubt, biological parent's fitness to seek restoration of their minor to them is not under cloud in any manner. Their right of recovery and ability to care for the child is to be equally protected. Same is in line with the general principle that it has to be the biological parents, who should be provided the opportunity to raise their child, unless there are serious reasons to believe otherwise.

20. This Court's role in such a case is limited to examining the affidavits and determining whether a trial is required. If

answer is in affirmative, the parties have to then approach a civil court, as opposed to making a determination based solely on affidavits in writ jurisdiction. No doubt till adjudication and crystallization of the final inter se rights welfare of the child must be ensured.

21. In the premise, since the case involves determination of highly disputed questions of facts raised by the petitioners and respondent No. 3 against and for the validity of adoption of the minor child, for their determination, it is necessary that the parties get adequate opportunity of leading elaborate oral and documentary evidence and the same is tested on the anvil of cross-examination. In the writ court, rights are determined only on the basis of affidavits. I am of the opinion that in the peculiar facts and circumstances of the case, it would be appropriate to direct the petitioners to approach the Civil Court for adjudication of their claim to the custody of the child.

22. Accordingly, parties are relegated to seek their remedy by filing appropriate petition/proceedings in the competent Court to seek adjudication on the claim of respondent No. 3 about adoption of the minor child. Both or either of petitioners and/or even respondent No. 3 may, therefore, avail the remedy for adjudication of their respective rights to keep the custody of the minor child by filing appropriate petition/proceedings in the competent Court.

11. In addition, State counsel while relying upon the affidavit filed dated 17.03.2025, submits that petitioner Sunaina was married with Kalu Ram son of Om Parkash, resident of Sadhu Wali Ek Dee Choti in 2023. After her marriage, the relationship of petitioner became strained with her in-laws, so both husband and wife decided to live separately on 12.04.2024 with the intervention of the Panchayat and got panchayati divorce. After the said compromise, one male child (detenué in the present

case) was delivered by petitioner (Sunaina) on 07.08.2024, as petitioner was not competent to earn her livelihood and to bring up her newly born baby so she decided to give her newly born baby to aspiring couple who can bring him up in a better environment. So she contacted Parmajit Kaur, who was working as a Nurse in Nagpal Nursing Home, Jain Nagari, Abohar to find out needy couple who wants to adopt the child. And thereafter Paramjit Kaur told the petitioner regarding respondent no.4 and 5 who are willing to adopt her male child as they have no other male child. Accordingly, on 24.10.2024, petitioner handed over the custody of her newly born baby to respondent no.4 and 5 through adoption deed dated 24.10.2024 voluntarily in the presence of the witnesses. The said adoption deed was scribed on a stamp paper of the value of Rs.1,000/- in the presence of the witnesses. The photograph was also got clicked by the petitioner and respondent no.4 and 5 at the time of handing over the custody of the male child/adoption. The said adoption deed was got attested from the Notary Public.

12. It is further contended that presented circumstances unequivocally establish that respondents no. 4 and 5 are not unlawfully detaining the child, as the evidence (including photographic documentation) demonstrates a consensual transfer initiated by the petitioner and her mother. Jurisdiction to adjudicate petitioner's legal capacity to execute the adoption deed in her husband's absence-despite their separation-lies exclusively with the Civil Court.

13. Heard learned counsels for the respective parties at length.

14. In a petition seeking a writ of habeas corpus for the custody of minor children, the Court's primary consideration is to determine

whether the current custody of the children is unlawful or illegal. Additionally, the Court must assess whether the welfare and best interests of the children necessitate a change in custody, thereby placing them in the care of another individual. It is a well-established legal principle that, in matters relating to child custody, the welfare and well-being of the child are of paramount importance to the Court.

15. The law governing the custody of a minor is well established. When faced with complex and sensitive questions relating to a child's custody, a court must consider the relevant statutory provisions and the rights arising therefrom. However, such matters cannot be resolved solely through rigid interpretation of legal texts. Custody issues are fundamentally human in nature and must be approached with compassion and sensitivity.

16. In such cases, the court is not strictly bound by statutory provisions, procedural laws, rules of evidence, or even judicial precedents. Instead, it must focus on identifying the most suitable guardian for the child, with the welfare and well-being of the child as the paramount consideration.

17. When exercising its *parens patriae* jurisdiction, the court is obligated to carefully assess various factors impacting the child's welfare. These include not only the child's comfort, happiness, health, education, and intellectual growth, but also the overall quality of the environment in which the child will be raised. Significantly, the court's evaluation must extend beyond the child's physical and material needs to encompass moral and ethical considerations, recognizing that these aspects are just as vital- if not more so- to the child's holistic development.

18. The present petition centers on the petitioner's claim that her child, Bhavishya, (alleged detinue) was fraudulently taken from her at the age of two months while she was experiencing post-partum depression.

19. However, a review of the available records, specifically the adoption deed dated 24.10.2024, clearly shows that the petitioner, in the presence of her mother is evidently handing over the child to respondent Nos.4 & 5 as a witness, voluntarily handed over the child to respondents 4 and 5. This evidence contradicts her assertion of fraudulent removal. Furthermore, the petitioner's counsel has forcefully argued that her signatures were obtained under duress on blank papers by family members.

20. As regards the petitioner's reliance on the judgment titled "*Narinder Singh vs Pritam Singh, 2014 SCC Online P&H 17713*," is concerned this court would opine that this judgment is not applicable to the present case. In *Narinder Singh* (supra) the petitioner approached the court against concurrent findings of the courts below, where the validity of the documents in question had already been examined by the trial court, which had the opportunity to assess their authenticity.

21. In contrast, the present matter involves a habeas corpus petition, which is a summary remedy. In such proceedings, this Court cannot enter into a detailed examination of the disputed facts including validity of the adoption deed, as this issue falls within the domain of the trial court and is the subject matter of separate adjudication. The summary nature of habeas corpus proceedings precludes a full-fledged inquiry into the genuineness or legality of the adoption deed, unlike in the cited judgment where the trial court had already considered these aspects.

22. In the reply submitted by the state counsel, the state has clearly stated that, following an inquiry, it was found that the petitioner, of her own free will and consent, handed over the alleged detinue to respondents no. 4 and 5.

23. Once the factual position is clarified before this Court, it is evident that the alleged detinue is not in the illegal custody of Respondents No. 4 and 5, as the petitioner herself evidently handed over the child to these respondents.

Now the question that remains to be adjudicated is that whether this court can direct the release of the alleged detinue from the custody of Respondents no. 4 & 5 ?

24. This court at this juncture would place reliance upon a judicial enunciation rendered by the Division Bench of this court in **“LPA No. 64 2022, Decided on 14.03.2022”** wherein the court has dealt with the scope of Habeas Corpus and held as under:-

9. In a case bearing CRWP No. 1423 of 2019 titled as 'Mandeep Kaur vs. State of Punjab', decided on 03.11.2020, this Court while exercising the powers in extra-ordinary writ jurisdiction, to issue a writ in the nature of habeas corpus, in cases related to custody of children has held that it is not solely dependent on and does not necessarily follow merely determination of illegality of detention and has to be based on the paramount consideration of welfare of the minor child irrespective of the legal rights of the parents. Para No.15 of the above judgment needs reference, which is reproduced herein below:-

15. In Howarth Vs. Northcott: 152 Conn 460: 208 A 2nd 540: 17 ALR 3rd 758 it was observed that in habeas corpus proceedings to determine child custody, the jurisdiction

exercised by the Court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its infant ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. It was further observed that the employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common law writ, or by statute, but the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate. It was also indicated that ordinarily, the basis for issuance of a writ of habeas corpus is an illegal detention; but in the case of such a writ sued out for the detention of a child, the law is concerned not so much with the illegality of the detention as with the welfare of the child.

25. After considering the arguments presented by both parties and the relevant legal framework, this court holds that the determination of the disputed facts and the validity of the adoption is a matter for the competent guardian or civil court to decide. This writ court, operating under limited jurisdiction in *habeas corpus* petition, cannot adjudicate upon such complex and contested issues, which require a detailed examination of evidence and an extensive trial.

26. The scope of writ jurisdiction is confined to assessing whether the present custody of the child with Respondents No. 4 and 5 is *prima facie* illegal, which, in this case do not seem so. Any further dispute regarding the factum or validity of the adoption must be resolved by the

appropriate civil court, as writ proceedings are not the proper forum for such determinations.

27. However, the petitioner is at liberty to challenge the validity and genuinity of the adoption deed, which she is claiming to have been forged on blank paper got signed from her fraudulently from her own family members.

28. Therefore, the instant petition stands dismissed being not maintainable.

(SANDEEP MOUDGIL)
JUDGE

07.05.2025

Meenu

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*