



S. No.108

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

**CRM-M-10012 of 2025
Date of Decision:15.09.2025**

Jaswinder Kaur

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. Sutikshan Sharma, Advocate for the petitioner.

Yashvir Singh Rathor, J. (Oral)

1. Present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus for release of minor children, namely, Prateek and Nihal (detenues) who are the sons of petitioner from the illegal custody of respondents No.4 to 8 or for issuance of a writ, order or direction, directing respondents No.2 and 3 to get the detenues released immediately with instant effect from illegal confinement of respondents No.4 to 8.

2. It is submitted that the petitioner was married with Ajay Kumar on 06.07.2014 at Village Lawana, Tehsil Saraswati Nagar, District Yamuna Nagar according to Hindu rites and ceremonies and out of their wedlock, one son namely Prateek was born on 07.11.2015 and another son namely Nihal was born on 20.01.2020. However, petitioner and her husband have filed one divorce petition bearing HMA/550/2025 titled Jaswinder Kaur Vs. Ajay Kumar for dissolution of their marriage and order of first motion has been passed on 19.07.2025 by Principal Judge, Family Court, Yamuna Nagar at Jagadhri and matter is now fixed for second motion. It is further submitted that petitioner is now living in live-in



relationship with one Ravinder son of Ilamchand, resident of Village Bikampur Bhikapur, Manka Manki, Ambala, Haryana and after getting divorce from her husband, she will marry him. It is further submitted that respondents No.4 to 8 who are parental relatives of petitioner, have kept her children in their custody forcibly and illegally and they are neither releasing them nor letting the petitioner meet her children due to which she had moved an application before the Police at Mulana but of no help. When she went to meet her children at the house of private respondents on 04.09.2025, she was assaulted by respondents No.4 to 8 and they did not allow her to meet her children. Petitioner being mother of detenues wants them to be released from the illegal custody of respondents No.4 to 8 and as such, both the children be produced before the Court and their custody be handed over to her.

3. I have heard learned counsel for the petitioner and have gone through the material placed on file.

4. Learned counsel for the petitioner has argued that one of her sons, namely Prateek was born on 07.11.2015 and the second son, namely Nihal was born on 20.01.2020 and in view of their tender age, the custody of the children should be handed over to the petitioner being their mother and natural guardian. Learned counsel has next contended that welfare of the child is of paramount consideration and mother alone can upbringing and look after the children better than anyone else. Respondent No.4 is mother of petitioner i.e. maternal grandmother of children and respondents No.5 to 8 are brothers of petitioner and they are not entitled to keep the children in their custody and they also cannot take care of the minor children and as such, respondents No.1 and 2 be directed to produce the children and their custody be handed over to the petitioner.



5. The short question to be decided in the present petition is as to whether the custody of the minor children of the petitioner can be handed over to the petitioner by this Court in exercise of the jurisdiction in a Habeas Corpus Writ Petition or not, particularly when the children have not been forcibly taken away from her custody and rather petitioner has admitted that the children are residing with maternal grandmother since long.

6. The answer is certainly in the negative. 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. As per own averments in the present petition, the petitioner has already filed a divorce petition under Section 13-B of the Hindu Marriage Act for dissolution of her marriage with her husband and she is living in a live-in relationship with some other person, whom she intends to marry after the marriage with her husband is dissolved. There is no averment in the petition that respondents No.4 to 8 have taken away children from her custody forcibly and rather, learned counsel for the petitioner has admitted that the children are living with the maternal grandmother since long after petitioner handed over their custody to the maternal grandmother. It well settled that Writ of Habeas Corpus is essentially a procedural writ dealing with machinery of justice. The object underlying the Writ is to secure the release of a person, who has been illegally



deprived of his liberty and it is a command addressed to the person, who is alleged to have another in unlawful custody, requiring him to produce the body of such person before the Court and the High Court in such proceedings conducts an inquiry for immediate determination of the right of a person's freedom and his release when the detention is found to be unlawful. In holding so, I have relied upon 1974(4) SCC 141 - **Kanu Sanyal Vs. District Magistrate, Darjeeling & Ors.**

7. As already discussed above, the custody of minor children with respondents No.4 to 8 especially respondent No.4, who is maternal grandmother is not unlawful as children are residing with her since long and they have not been snatched from the petitioner. In these circumstances, no writ of habeas corpus can be issued for producing the minor children in the Court and to hand over their custody to the petitioner as petitioner has got the efficacious remedy to approach the Family Court under Hindu Minority and Guardianship Act, which is a complete code in itself and seek the custody of the children and petition in hand is ordered to be dismissed. However, it is ordered that in case, petitioner approaches the Family Court for seeking custody of the children, the proceedings especially relating to interim custody shall be disposed of expeditiously as welfare of the children is of paramount importance/ consideration.

8. The present petition stands disposed off accordingly.

9. Pending applications(s), if any, shall also stand disposed of.

(Yashvir Singh Rathor)
Judge

September 15, 2025
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No