



CRWP-690-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-690-2024

Date of decision: 05.09.2025

Rajbeer Kaur

...Petitioner

V/s

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. PPS Duggal, Advocate for the petitioner.
Mr. Baljinder Singh Sra, Addl. A.G. Punjab.
Mr. A.S. Manaise, Advocate for respondent No.2.
None for respondent No.3.

SUMEET GOEL, J.

1. The *petition in hand* filed, under Articles 226/227 of the Constitution of India, is for issuance of an appropriate writ, order or direction to the respondents to produce the minor sons (hereinafter referred to as '*children in question*') before this Court and to grant their custody to the petitioner, who is their mother, as they are of tender age and require mother's care, affection and protection.

2. Shorn of non-essential details, the relevant factual matrix of the *lis* in hand is adumbrated, thus:

(i) The marriage of the petitioner was solemnized with respondent No.2 namely Lakhwinder Singh about three years ago as per Sikh rites. Out of the wedlock, two sons were born i.e. Karandeep Singh (DOB: 22.01.2022) and Sartaj Singh (DOB 01.03.2023).

(ii) After the birth of the second child, the petitioner has stated that she was subjected to persistent cruelty, harassment and dowry demands by

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her husband (respondent No.2 - herein) and in-laws. Despite providing additional articles and furniture items amounting to Rs.2,50,000/- on 10.11.2023 to maintain peace, the maltreatment continued. The petitioner alleged that she was ousted from her matrimonial home but after compromise, she was allowed to stay at her matrimonial home.

(iii) It was alleged by the petitioner that she later discovered that respondent No.2, was maintaining an illicit relationship with respondent No.3. Thereafter, her harassment intensified at the hands of her husband i.e. respondent No.2 as also by her in-laws. On 22.11.2023, the petitioner was physically assaulted, wrongfully confined and prevented from seeking police assistance. On 23.11.2023, when the mother of the petitioner intervened, she too was beaten. Thereafter, written complaints were submitted to the police (copy whereof has been appended as Annexures P-1 to P-3), but to no effective avail.

(iv) The petitioner has further alleged that, despite and oral assurance that the custody of the minor children would be restored to the petitioner, she was forcibly ousted from her matrimonial home during the night of 22/23.11.2023 and her children were wrongfully retained by private respondents. Since then, the petitioner has been denied access to her minor sons. Thereafter, the petitioner made number of complaints before the police authorities and women Cell (Copies whereof have been annexed as Annexures P-4 & P-5 with the instant petition), no action have been taken. Owing to the deliberate inaction by the police authorities, who are acting under the influence of respondent No.2, the petitioner was left with no option but to approach this Court by way of the petition in hand.



(v) During the pendency of the present petition before this Court, the parties were referred to Mediation and Conciliation Centre of this Court, but the same did not fructify.

It is in the above backdrop that the instant petition has come up for hearing before this Court.

3. Learned counsel for the petitioner-mother has iterated that *children in question* are of tender age and, at this stage of growth, they are in utmost need of the love, care and affection of their mother. However, the *children in question* have been forcibly and unlawfully snatched away from the petitioner thereby depriving them of the motherly care. Furthermore the conduct of the private respondents amounts to a blatant violation of Section 6 of the Hindu Minority and Guardianship Act, 1956 which clearly gives preferential right to the mother for the custody of the minor children below the age of five years. Learned counsel has further iterated that the petitioner-mother has sufficient economic resources available at her end and she has never ever sought for any financial support from the respondent-husband. According to learned counsel, the forcible deprivation of custody of the *children in question* by the respondents is illegal, arbitrary and contrary to settled principles of law. To buttress his arguments, learned counsel has relied upon the judgments of the Hon'ble Supreme Court titled as Manju Tiwari vs. Dr. Rajendra Tiwari and another, 1990 AIR (Supreme Court) 1156; Yashita Sahu vs. State of Rajasthan & Ors. 2020(3) SCC 67; Vasudha Sethi & Ors. Vs. Kiran V. Bhaskar & Anr. 2022(2) RCR (Civil) 32; Rajeswari Chandrasekar Ganesh vs. State of Tamil Nadu & Ors. 2023(1) PLR 755; Mansi vs. The State of Punjab & Ors. passed in CRWP-7332-

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2022, decided on 07.11.2022 and *Neha vs. State of Haryana & Ors.*, 2020(4) RCR(Civil) 643. On the strength of these submissions, grant of petition in hand, is entreated for.

4. *Per contra*, learned counsel appearing for respondent No.2 has submitted that the present petition is misconceived and filed only to harass the respondent-father. The allegations levelled by the petitioner are false, exaggerated and afterthought which is aimed at maligning the reputation of the respondent No.2 and his family. According to learned counsel, the petitioner has voluntarily abandoned her matrimonial home on her own accord. Furthermore, the custody of the *children in question* is with the respondent No.2-father and his family where they are being properly cared for. Learned counsel has further iterated that in the custody matters, the welfare of the children is the paramount consideration which, in the present case, requires that the custody remains with the respondent-father. Learned counsel has further submitted that the respondent-father has filed a petition under Sections 7, 8 and 17 of the Guardian and Wards Act, 1890 read with Section 13 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as '*Family Court petition*') for appointment of respondent-father (herein) as guardian of the *children in question*. Learned counsel has argued that since the said petition is pending adjudication before the concerned Family Court, the present writ petition deserves to be dismissed on this score alone. In order to buttress his arguments, learned counsel for the respondent-father has relied upon the judgments of the Hon'ble Supreme Court titled as *Somprabha Rana & Ors. vs. The State of Madhya Pradesh & Ors.* 2024(9) SCC 382, *Nirmala vs. Kulwant Singh & Ors.*, 2024 AIR



Supreme Court, 2344, Tejaswini Gaud and Ors. vs. Shekhar Jagdish Prasad Tewari and others, 2019(3) RCR (Civil) 104 and Sumedha Nagpal vs. State of Delhi & Ors., 2000(9) SCC 745. On the basis of aforesaid submissions, the dismissal of the instant petition is prayed for.

4.1. State of Punjab is not actually a contesting party in the *lis* in hand and learned State counsel has raised submission(s) accordingly.

4.2. Respondent No.3 was served. However, neither she has come present in person nor any counsel has appeared on her behalf.

5. I have heard learned counsel for the rival parties and have perused the available record.

6. The seminal issue that arises for consideration in the present petition is as to whether a writ ought to be granted, vesting the custody of the *children in question*, in favour of the petitioner-mother.

7. Before delving into the merits of the *lis*, it would be apposite to refer herein to a judgment passed by this Court in ***Veerpal Kaur vs. State of Punjab and others = 2025:PHHC:113490***, wherein, after relying upon the judgments of the Hon'ble Supreme Court titled as *Dr. Mrs. Veena Kapoor vs. Varinder Kumar Kapoor, 1982 AIR Supreme Court 792; Syed Saleemuddin vs. Dr. Rukhsana, 2001(2) RCR(Criminal) 591; Nithya Anand Raghavan vs. State of NCT of Delhi & Anr., 2017(3) RCR (Civil) 798; Tejaswini Gaud and Ors. vs. Shekhar Jagdish Prasad Tewari and others, 2017 (3) RCR (Civil) 104; Jose Antonio Zalba Diez Del Corral alias Jose Antonio Zalba vs. The State of West Bengal & Ors., 2021 SCC Online SC 3434; Rajeshwari Chandrasekar Ganesh vs. State of Tamil Nadu & Ors., 2023 (12) SCC 472; Nirmala vs. Kulwant Singh & Ors. 2024 AIR Supreme*



Court 2344 and Gautam Kumar Das Vs. NCT of Delhi and others, 2024(4) RCR (Civil) 98 and Somprabha Rana & Ors. vs. The State of Madhya Pradesh & Ors. 2024 (9) SCC 382, has held as under:

“16. As a sequitur to the above ruminations, the following postulates emerge:

I. The High Court’s jurisdiction to issue a writ of Habeas Corpus in minor child custody matter is predicated on the basic jurisdictional fact, namely, the minor child’s custody is demonstrably illegal/unlawful. In appropriate cases, the High Court may relax this jurisdictional prerequisite, in the interest of welfare of minor child.

II. The writ of Habeas Corpus is not a substitute for the comprehensive and evidence based procedures available under applicable guardianship statutes (such as Hindu Minority and Guardianship Act, 1956; Guardians and Wards Act, 1890 etc.). As a matter of general judicial principle, the writ Court ought to ordinarily exercise restraint and defer dispute(s) to statutory forums unless accentuating circumstances necessitate such intervention by High Court

III. In all matters relating to the custody of minor child, the paramount consideration is the welfare of such child. In exercise of its parens patriae jurisdiction; the High Court may, in appropriate cases, upon a holistic examination of facts, take an inquisitorial role to ensure that the custodial arrangement serves the best interest of the child, superseding the adversarial claims of the parties.

IV. In furtherance of a minor child’s welfare, the writ Court may issue interim order(s) concerning custody and other incidental aspects as warranted by exigencies of the situation, ensuring that the minor child’s well being remains the ultimate determinant of justice and thereafter refer parties to remedy(s) before statutory forum(s) for final/further determination of the lis.

V. The High Court, in its writ jurisdiction has unbridled, unfettered and plenary powers. No inflexible and comprehensive guidelines can conceivably be enumerated governing the exercise of these intrinsic powers. There is no gainsaying that the nature, mode and extent of such exercise of this jurisdiction by the High Court shall depend upon the judicial discretion exercised by the High Court in the facts and circumstances of a given case.”



This Court does not deem it appropriate to burden the present judgment with any further case law.

8. Indubitably, in custody matters pertaining to minor child, the paramount consideration for Court is welfare of minor child. The legislature, in its wisdom has, under Section 6 of the Hindu Minority and Guardianship Act, 1956, explicitly recognized that the custody of a minor child who has not completed the age of five years, shall ordinarily rest with the mother. The statutory mandate is not an arbitrary classification, but a recognition of settled principles that children of such a tender age stand in need of maternal affection, nurture and care, which are indispensable for their holistic development. It is not in dispute that the minor sons, born out of the wedlock of the petitioner-mother and respondent No.2-father, were born on 22.01.2022 and 01.03.2023 respectively. The *petition in hand* was filed in January, 2024. Hence, at the time of filing of the *petition in hand*, the *children in question* were aged about 01 year, 11 months & 10 months respectively. At the time of disposal of the petition in hand, they are aged about 03 years, 07 months & 02 years, 06 months. As per the statutory mandate enunciated in Section 6 of the Hindu Minority and Guardianship Act, 1956, the custody of a minor, who has not completed the age of 05 years, ordinarily ought to be with the mother. From the material brought forth, the petitioner-mother does not appear to be suffering from any economic deprivation. The respondent-father is shown to be a trucker by profession. Further, another plank of the ground undertaken by the respondent-father for declining of the instant petition is the factum of his having filed the *Family Court petition* which was filed in May, 2025 i.e.



much after the filing of the *petition in hand* which was instituted in January, 2024. The respondent-father, thus, cannot be permitted to have any benefit of the said petition being pending adjudication. Indubitably, the welfare of the *children in question* is the paramount consideration for delving into the issue of their custody which in present case is in favour of petitioner-mother. From the totality of the factual *milieu* of the case in hand; especially in view of the *children in question* being less than 05 years of age, the petitioner-mother not being suffering from any economic deprivation, nothing having brought forth at the end of the respondent-father that the petitioner-mother will not be able to take good care of the *children in question* as also the *Family Court petition* having been filed in May, 2025 vis-à-vis the *petition in hand* having been instituted in January, 2024; this Court deems it appropriate that custody of *children in question* ought to be with the mother, for the *nonce*.

9. In view of the prevenient ratiocination, the *petition in hand* is disposed off in the following terms:

(i) The petitioner-mother is held entitled to custody of the *children in question* subject to adjudication of the issue of interim/final custody by the concerned Family Court at Pathankot in the *Family Court petition* pending adjudication before it.

(ii) The petitioner-mother and the respondent-father shall appear before the concerned Family Court at Pathankot on 15.09.2025 wherein the respondent-father shall hand-over the custody of the minor children to the petitioner-mother. In case the respondent-father does not do so, the concerned Family Court, Pathankot is directed to take steps for handing-

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over the custody of the children in question to the petitioner-mother. Senior Superintendent of Police, Pathankot is directed to render all assistance to the said Family Court in this regard.

(iii) The above arrangement shall be interim in nature & would continue till a decision is taken by the concerned Family Court regarding interim custody of the children in question. Parties are at liberty to raise their respective plea(s) before the said Family Court in this regard. Needless to say that the said Family Court shall take a decision thereupon without being influenced by any observation made by this Court in the instant judgment.

(iv) Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

September 05, 2025

Ajay/mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No