



CRWP-7121-2025

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

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**CRWP-7121-2025
Date of decision: 09.09.2025**

JASPREET

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present:- Mr. Pawan Attri, Advocate for the petitioner.

Mr. Mohit Chaudhary, AAG, Haryana.

Mr. Amit Laller, Advocate and
Mr. Davneet Sangwan, Advocate for respondent Nos.4 to 6.

RUPINDERJIT CHAHAL, J. (ORAL)

1. By filing the instant petition under Articles 226/227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner has sought a writ in the nature of habeas corpus for release of her son, namely Varik Rathi, aged about four years (born on 02.08.2021), from the alleged illegal custody of respondents Nos.4 to 6.

2. The case of the petitioner, as set out in the petition, is that she was married with Abhishek son of respondent No.5 on 24.05.2020 and out of the said wedlock, Varik Rathi (detenue) was born on 02.08.2021. However, the marriage of the petitioner could not go well and it is alleged that she was shunned out of her matrimonial home. It is also alleged by the petitioner that her signatures were obtained on blank papers, which were



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later converted into divorce settlement for Rs.13,50,000/-, which she never received. Her son was also never given to her. The petitioner has also raised allegations against respondent No.7, a Child Protection Officer, that she did not bring her son back and only for picturisation purposes, the child was allowed to sit in the lap of the petitioner. Further, it is also stated in the petition that the petitioner moved an application for custody of the child before SDM, Shahbad, District Kurukshetra, from where also she did not get custody of her child (alleged detinue). With these allegations, release of Master Varik Rathi (alleged detinue) is sought from the custody of private respondents, who are grand-parents of the child and in-laws of the petitioner and the husband of the petitioner is stated to be residing abroad.

3. On the other hand, case of the private respondents, who are present in court with the alleged detinue, is that the child was left by the petitioner on her own she left her matrimonial home. Later, with the intervention of the respectables of the society, an amicable settlement was arrived at between the parties, whereby, mutual divorce was agreed and custody of the minor child was left with grand-parents (respondents No.4 and 5). However, it is not disputed that the husband of the petitioner is residing abroad.

4. Learned counsel for the State has submitted that with the similar allegations, an application was moved before Sub Divisional Magistrate, Shahbad, wherein, the minor child was produced. After hearing both the parties, it was recorded that the child was not in any type of illegal detention and the application was dismissed. He has also showed a copy of



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the proceedings before the Sub Divisional Magistrate, Shahbad, which is taken on record.

5. Arguments heard and papers perused with the assistance of learned counsel for the parties.

6. The issue of raising the question of custody of child in a habeas corpus is not *res integra*. This Court while exercise writ jurisdiction cannot go into the legal question of custody of a minor child, but the only consideration must be welfare of the minor. Of Course, interference by this Court can be made, but only when a child is being illegally detained or unlawfully kept by someone who is not entitled to their custody, and the child's best interests are compromised. The habeas corpus petition is an extraordinary remedy for situations where the child is not in the custody of a lawful guardian and the court's inherent equitable powers are needed to protect his interests, rather than to adjudicate upon a completely custody dispute, for which the statutory remedies can be availed before the appropriate forum.

7. After hearing learned counsel for the respective parties and carefully reviewing the record, this Court is *prima facie* satisfied that the present petition merits allowance. The custody of the minor child cannot remain with his grandparents or aunt during the lifetime of the mother especially when the father is stated to be residing abroad. Should the private respondents wish to seek custody from the mother, they are at liberty to pursue the appropriate legal remedy under the appropriate forum.

8. In view of the foregoing, the instant habeas corpus petition is hereby allowed. The respondent Nos. 2 and 3 are directed to hand over the



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custody of the minor children Varik Rathi to the petitioner within three (03) days from the date of this order. Respondent No.3/SHO concerned shall ensure that no harm befalls the petitioner or the minor child during the handover process.

9. Petition stands disposed of accordingly.

(RUPINDERJIT CHAHAL)
JUDGE

09.09.2025

Mohit Bishnoi

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No