



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CR. W.P. No.13437 of 2025

DATE OF DECISION : 26th DECEMBER, 2025

Lovepreet Kaur

.... Petitioner

Versus

State of Punjab & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE ROHIT KAPOOR

* * * *

Present : Mr. Opinderpal Singh, Advocate and
Mr. R.P.S. Bara, Advocate for the petitioner.

Ms. Samdisha Kaur, AAG, Punjab.

Mr. Gurjant Singh Bhullar, Advocate for respondent No.2.

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ROHIT KAPOOR, J. (Oral)

1. The present petition has been filed by the petitioner-mother under Article 226 of the Constitution of India, for issuance of a writ in the nature of *habeas corpus*, directing the respondents to produce her minor son, aged about 11 months and to hand over his custody to her, who is alleged to be in the illegal custody of respondents No.2 to 4, who are the father and paternal grand-parents, respectively.

2. While issuing notice of motion on 12.12.2025, the following order was passed:

“The present petition has been filed under Article 226 of the Constitution of India praying for issuance of writ in the nature of Habeas Corpus to produce minor son of the petitioner, namely Mankirat Singh who is aged about 11 months and to



give the custody of the minor child to the petitioner, being his biological mother.

Learned counsel for the petitioner contended that respondent No.2 who happens to be husband of the petitioner, has forcibly taken away her minor son of 11 months of age. It is further contended that a representation dated 06.11.2025, in this regard has been moved by the present petitioner but no action in this regard has been taken. It is also contended that there are no proceedings pending before any competent Court regarding custody of the said minor child.

Notice of motion be issued to respondent No.2 only through dasti.

On advance notice, Mr. Anup Singh, AAG, Punjab accepts notice on behalf of the respondent-State and seeks time to file reply in the present matter.

Adjourned to 17.12.2025. To be shown in urgent list.”

3. In deference to the order dated 24.12.2025, status report by way of affidavit of Mr. Atul Soni, DSP, Sub-Division Khadur Sahib, Camp at Goindwal Sahib, District Tarn Taran, has been filed on behalf of respondent No.1, and the same is taken on record. The Registry is directed to tag the same at the appropriate place.

4. Shorn of the unnecessary details, the essential facts required for adjudicating the present petition are noticed hereinbelow:

(i) The marriage of the petitioner was solemnized with respondent No.2, as per Sikh rites on 21.09.2022. Out of the wedlock



one male child was born on 05.01.2025. It is alleged that sufficient dowry was given by the family of the petitioner at the time of marriage.

(ii) It is alleged that after birth of the child, the petitioner was maltreated and on account of bringing less dowry she was thrown out of the matrimonial house on several occasions, however, each time on the intervention of respectables, she was rehabilitated.

(iii) It is further alleged that on 06.11.2025, the petitioner was beaten up and she somehow managed to give a call to her father, whereafter her phone was snatched. When father of the petitioner reached her matrimonial home he witnessed her being beaten and tortured by her husband, i.e. respondent No.2. In order to save the petitioner, he sought to take her away, however, in the process he was also abused and the infant was forcibly snatched from the petitioner and she was not allowed to take the child with her. Further allegations have been made regarding the respondents having high political links and regarding the inaction of the police officials in not proceeding upon the complaint of the petitioner and being denied access to her minor son.

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

6. Learned counsel for the petitioner-mother has *inter alia* argued that since the infant child is only of the age of 11 months, he requires the love, care and affection of the mother. However, he has been forcibly and unlawfully snatched away from the petitioner, thereby depriving him of the essential care of the mother. It is contended that the conduct of the private respondents amounts to blatant violation of Section



6 of the Hindu Minority and Guardianship Act, 1956, (in short, the 'Act of 1956') which clearly gives preferential right to the mother for custody of the minor children, below the age of five years. It is further submitted that forcible deprivation of the custody of the child in question by the respondents, is illegal, arbitrary and contrary to the settled principles of law. Reliance is placed upon the judgments in the case of *Yashita Sahu Vs. State of Rajasthan and others*, 2020 (3) SCC 67; *Vasudha Sethi & ors. Vs. Kiran Vs. 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 CR.W.P.-7332-2022, decided on 07.11.2022, in furtherance of the argument, that the custody of the minor child should be handed over to the petitioner-mother.

7. *Per contra*, learned counsel appearing for respondent No.2 has submitted that the present petition is misconceived and has been filed only to harass respondent No.2-father. It is submitted that the allegations levelled by the petitioner are false, exaggerated and are aimed at maligning the reputation of respondent No.2 and his family. According to the learned counsel, the petitioner has voluntarily abandoned her matrimonial home of her own accord, with a view to take a private job. By making reference to the statement made before the police authorities, as appended with the status report, it is contended that respondent No.2 is still ready to live with his wife and wants her to return to the matrimonial home and take care of the child. Attention of the Court is drawn to the statement Annexure R-1/T wherein, it is stated that respondent No.2 is



willing and ready to handover the custody of the child to the petitioner-wife.

8. The State of Punjab is not a contesting party in the *Iis* and has filed the status report dated 19.12.2025, on the directions of this Court.

9. I have heard learned counsel for the rival parties and have perused the material placed on record.

10. The seminal issue that arises for consideration in the present petition is as to whether writ ought to be granted vesting the custody of the minor child, in favour of the petitioner-mother.

11. Before delving into the merits of the *Iis*, it would be apposite to refer to a judgment passed by the Co-ordinate Bench of this court in the case of *Veerpal Kaur Vs. State of Punjab & others, 2025:PHHC:113490*, wherein after relying upon the various judgments of Hon'ble Supreme Court, it has been held as under:

"16. As a sequitur to the above rumination, 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."

12. It is settled law that in matters pertaining to the custody of minor child the paramount consideration for the Court is welfare of the child. The legislature, in its wisdom has, under Section 6 of the Act of 1956, explicitly recognized that the custody of a minor child, who has not completed the age of 5 years, shall ordinarily rest with the mother. The statutory mandate is not an arbitrary classification, but 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.

13. Undisputedly, the minor child, who was born on 05.01.2025, is aged about 11 months and, therefore, as per the statutory mandate of the Act of 1956, the custody of a minor, who has not completed the age of 5 years, ordinarily ought to be with the mother. There is no material that has been brought on record, to show that the petitioner-mother is suffering from any economic deprivation or any other disability to show that she will not be able to take good care of the minor child.

14. Considering the aforesaid circumstances and tender age of the child, the instant petition is disposed of in the following terms:

- (i) The Senior Superintendent of Police, Tarn Taran is directed to ensure that the custody of the infant child, be handed over to the petitioner-mother within the next 48 hours, and all assistance be provided in this regard.
- (ii) The above arrangement shall be subject to any interim/final decision, that may be passed by the family/competent court, regarding the custody of the minor child, in accordance with law.

15. Needless to say that this court has not expressed any opinion upon the allegations made in the petition and any observations made by this court shall not influence the decision of the family/competent court.

16. The present petition is disposed of with the aforesaid terms.

26th December, 2025
'raj'

(ROHIT KAPOOR)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No