



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

**CRWP-14114-2025
DECIDED ON: 20.01.2026**

PALLAVI ALIAS HEENA PARVEEN

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Virat Amarnath, Advocate
for the petitioner.

Mr. Vaibhav Sharma, AAG, Haryana.

Mr. Tushar Arora, Advocate
for respondent No.4.

MANDEEP PANNU, J (ORAL)

1. Present petition has been filed under Article 226/227 of the Constitution of India read with Section 528 of BNSS for issuance of a writ in the nature of Habeas Corpus directing respondents No.2 & 3 to produce the detainee namely Aliza @ Alisha (minor girl child of the petitioner aged about 7 years), illegally detained by respondent No.4 and further to hand over the custody of the detainee/child to the petitioner to safeguard the welfare of the girl child.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is mother of the alleged detainee. He submits that the petitioner married with respondent No.4 on 01.02.2012 as per Muslim Rites and Customs at Dharampur, Haryana and out of the wedlock, two children were

born i.e. Rehaan Ali (son) on 16.01.2016 and Aliza @ Alisha (daughter) on 31.12.2018. Due to temperamental differences, the petitioner and respondent No. 4 started living separately from 01.01.2019, i.e. immediately after the birth of the detainee Aliza @ Alisha. Subsequently, with the intervention of relatives and friends, the parties effected talaq on 29.10.2021, formalized through a Deed of Mubarat-nama dated 09.08.2023. As per the settlement, custody of Rehan Ali was to remain with respondent No. 4 (father), while permanent custody of Aliza @ Alisha was to remain with the petitioner (mother), with visitation rights to both. Pursuant thereto, a decree of mutual divorce was granted on 26.09.2023 by the learned Family Court, North West, Rohini, in terms of the Mubarat-nama dated 09.08.2023.

3. It has been further contended that on 09.10.2024, respondent No. 4 visited the petitioner's house to meet the minor daughter, Aliza @ Alisha, and took her out to the market with the petitioner's permission. However, he did not return for a long time. When the petitioner tried to contact him, he initially said he would return the child next day. Subsequently, he kept making excuses, delaying her return, and eventually refused to return the minor daughter, even threatening the petitioner for dire consequences.

4. In compliance to the order dated 02.01.2026, reply by way of an affidavit of Ashish Kumar, HPS, Assistant Commissioner of Police, Kalka has been filed on behalf of respondents No.1 to 3, which is taken on record.

5. Learned counsel for respondent No.4 contends that the detainee is in custody of her father and by no stretch of imagination it can be termed as illegal since the father is the natural guardian of the detainee. He further contends that the case regarding custody of the minor child is pending before

concerned Guardians and Wards Court. Accordingly, he prays that no direction is warranted in this writ petition in the facts and circumstances of the present case.

6. Heard learned counsel for the parties and perused the case file. According to the petitioner, respondent No. 4 forcibly took custody of the minor child despite being aware of the visitation rights granted by the Family Court. The question that arises for consideration is whether the custody of a minor child with her father can be regarded as illegal, thereby justifying issuance of a writ in the nature of habeas corpus.

7. This Court has noticed an increasing tendency amongst disgruntled parents and other family members to move a writ petition in the nature of habeas corpus, in order to settle custody of the children. A two Judge Bench of the Hon'ble Supreme Court in ***'Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari'***, 2019 AIR SC 2318, speaking through Justice R. Banumathi, has opined as follows:

"18. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court . Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

19. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction

of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is of summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.”(emphasis added)

8. In the present case, the detinue is 07 years of age, whose custody is sought by the petitioner by availing the extraordinary jurisdiction of this Court. However, at the same time custody of minor child with either of the natural guardians cannot be said to be illegal.

9. Considering, the position of law as discussed above, this Court is of the considered opinion that no further order/direction is required to be made in the writ of habeas corpus as the detinue is in the custody of one of her natural guardian-father. Needless to add, the parties would be at liberty to settle the custody of the detinue before the Guardians and Wards Court concerned.

10. In view thereof, finding no merit in the petition, the same is dismissed.

11. All pending miscellaneous application(s), if any, stands disposed of.

20.01.2026

Poonam Negi

**(MANDEEP PANNU)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*