



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRWP-1931-2026
Date of decision: 16.04.2026

NEELAM

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

CORAM:- HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present:- Mr. Viren Sibal, Advocate for the petitioner.

Mr. Armaan Dahiya, AAG, Haryana.

.....

RUPINDERJIT CHAHAL, 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 releasing the detenu namely Jasnoor aged 03 years and 10 months daughter of the petitioner from the illegal custody of respondent Nos.6 to 11.

2. Mr. Mohan Singla, Advocate has put in appearance on behalf of respondent Nos. 6 to 11 and has filed his vakalatnama in Court today, which is taken on record.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is mother of the alleged detenu. He submits that the petitioner married with respondent No.6 on 27.03.2019 and out of the wedlock, one child (detenu) was born on 27.03.2022. There was a matrimonial dispute between the petitioner and respondent No.6 and the petitioner left the matrimonial home and started living separately. Since then, respondent



Nos.6 to 11 have not allowed the petitioner to meet the detinue and have confined her in their illegal custody.

4. Learned counsel for respondent Nos.6 to 11 contends that the minor child 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 minor child. He further prays that any direction in this writ petition is not warranted in the facts of the present case.

5. Vide order dated 11.03.2026 passed by this Court, the parties were directed to appear before this Court along with the alleged detinue.

6. In compliance thereto, the alleged detinue along with respondent Nos.6 to 11 is present in Court.

7. Having heard learned counsel for the parties, it is forthcoming that the relationship between the parties became sour after marriage and due to this reason they are living separately. As per allegations of the petitioner, respondent No.6 has illegally detained the minor child. The question that arises before this Court is whether custody of minor child with his father can be stated to be illegal, requiring writ in the nature of habeas corpus?

8. 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)

9. It is trite law that welfare of the minor would reign supreme, while deciding the matter of his custody. The Hon'ble Supreme Court in *Rosy Jacob Vs. Jacob A. Chakramakkal, (1973) 1 SCC 840* and *Mausami Moitra Ganguli Vs. Jayant Ganguli, 2008(4) RCR (Civil) 551* and this Court in *Saurabh Sharma Vs. Nishi, 2023(4) RCR (Civil) 586* has consistently held that the welfare and interest of the child are of



paramount consideration with respect to custody of a child. Section 6 of Hindu Maintenance and Guardianship Act, 1956 (for short 'HMG Act') categorically states that the custody of minor child upto the age of 05 years shall ordinarily be with the mother. In doing so, the legislature has recognized the indispensable and inimitable role of a mother in upbringing of a young child. A mother's love for her children is selfless and the lap of the mother is God's own cradle for them. Therefore, children of tender age ought not to be deprived of said love and affection. A two Judge Bench of the Hon'ble Supreme Court in *Rajeshwari Chandrasekar Ganesh Vs. State of Tamil Nadu and others*, 2022 SCC OnLine SC 885, speaking through Justice J.B. Pardiwala, observed as under:

“91. Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of 4 of 6 the jurisdiction of a court of equity. The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parens patriae, has in promoting the best interests of the child.



92. *The general principle governing the award of custody of a minor is succinctly stated in the following words in Halsbury's Laws of England, Fourth Edition, Vol. 24, Article 511 at page 217:*

*"... Where in any proceedings before any court the custody or upbringing of a minor is in question, then, in deciding that question, the court must regard the minor's welfare as the first and paramount consideration, and may not take into consideration whether from any other point of view the father's claim in respect of that custody or upbringing is superior to that of the mother, or the mother's claim is superior to that of the father."
(emphasis added)*

10. In the present case, the detinue is 03 years and 10 months of age, whose custody is sought by the petitioner by availing the extraordinary jurisdiction of this Court. So far as the custody of the child is concerned, the custody of minor child with either of the natural guardians cannot be said to be illegal.

11. 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 with his natural guardian-father. Needless to add, the parties would be at liberty to settle the custody of the detinue by pursuing appropriate remedy as per law.

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

16.04.2026
Mohit Bishnoi

(RUPINDERJIT CHAHAL)
JUDGE

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