



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

**CRWP-7678-2026 (O&M)**

**Reserved on :- 06.08.2026**

**Date of Pronouncement:-07.08.2026**

**Uploaded on:- 07.08.2026**

SUKHDEEP SINGH

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Argued by :-

Dr. Anmol Rattan Sidhu, Senior Advocate with  
Mr. Bhisham Kinger, Advocate  
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

Mr. R.K. Girdhar, Advocate and  
Mr. Amanveer Singh, Advocate  
for respondents No.8 to 11.

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**VIRINDER AGGARWAL, J.**

1. The present writ petition has been instituted under Article 226 of the Constitution of India seeking issuance of a writ in the nature of Habeas Corpus, or any other appropriate writ, order or direction, commanding the respondents to produce the minor child, Master Harjaap Singh Sra, aged about 4½ years, before this Court, to secure his release from the alleged illegal and unlawful custody of respondent Nos.8 to 10



and to restore his custody to the petitioner, being his natural father and lawful guardian, keeping in view the paramount consideration of the welfare and best interests of the minor child.

1.1. A further prayer has been made for the appointment of a Warrant Officer to search the premises of respondent Nos.8 to 11, or any other place as may be pointed out by the petitioner, for securing the production and release of the minor child from the alleged illegal custody of the private respondents.

2. Briefly stated, the case of the petitioner is that, pursuant to the settlement arrived at between the parties in proceedings seeking dissolution of marriage by mutual consent, respondent No.11 unequivocally acknowledged in her statement recorded at the stage of the first motion that the permanent custody of the minor child would remain with the petitioner and that she would not assert any claim thereto in future. It is alleged that although the respondents subsequently sought temporary custody of the child under the pretext of facilitating a meeting, respondent No.11 thereafter left for Canada after leaving the minor child in the custody of respondent Nos.8 to 10, who have since retained the child despite repeated requests for his restoration.

2.1. The petitioner further submits that respondent No.11 has also caused registration of FIR No.12 dated 02.04.2026, under Sections 115, 316(2), 351(2) and 85 of the Bharatiya Nyaya Sanhita, 2023, at Women Police Station, Dabwali, by levelling false and fabricated allegations against him. According to the petitioner, the continued custody of the minor child with respondent Nos.8 to 10 is wholly unauthorized and



contrary to the child's welfare. It is asserted that, being the natural father and lawful guardian, the petitioner is fully capable of providing a safe, stable and nurturing environment conducive to the child's physical, emotional and intellectual development.

2.2. It is further pleaded that the minor child has remained deprived of formal education during his formative years owing to his continued custody with the private respondents, thereby adversely affecting his educational, emotional, social and cognitive development. It is also averred that the petitioner has returned to India with the sole object of reuniting with and assuming the care and custody of his son and has not even booked any return ticket to Canada, thereby demonstrating his bona fide intention to remain in India for the upbringing of the child. On these premises, the petitioner prays that the custody of the minor child be restored to him by directing his release from the alleged illegal custody of respondent Nos.8 to 10 or, in the alternative, by appointing a Warrant Officer for securing the production of the child before this Court.

3. Notice of motion in the present petition was issued on 01.07.2026, pursuant whereunto separate replies have been filed on behalf of the State as well as respondent Nos.8 to 11.

4. Respondent Nos.8 to 11, while opposing the petition, have asserted that respondent No.11 arrived in India from Canada on 02.01.2026, whereupon she was allegedly subjected to harassment and coercion at the hands of the petitioner and his family members pursuant to a premeditated conspiracy. It is alleged that immediately upon her arrival she was taken to her matrimonial home, where her passport, permanent



resident card, mobile phone, Canadian currency and other belongings were forcibly taken away. It is further alleged that the petitioner's family was already in possession of the passport and OCI card of the minor child and that, after the petitioner himself arrived in India on 08.01.2026, respondent No.11 was allegedly compelled, under threat and coercion, to sign various documents, including papers pertaining to the divorce proceedings.

4.1. It is their further case that respondent No.11 ultimately managed to leave the matrimonial home on 17.01.2026 along with the minor child, whereafter she immediately approached the police authorities and also initiated appropriate proceedings for recalling her earlier statement recorded in the divorce petition. According to the respondents, owing to the imminent risk of losing her employment in Canada and after obtaining replacement travel documents from the Canadian authorities, respondent No.11 was constrained to return to Canada, leaving the minor child temporarily in the care and custody of respondent Nos.8 to 10. It is asserted that earnest efforts are presently being made to secure the passport and travel documents of the minor child so that he may also be taken to Canada.

4.2. It is further contended that the present writ petition seeking a writ of Habeas Corpus is not maintainable in the facts and circumstances of the case, inasmuch as the dispute essentially pertains to guardianship and custody of a minor child, for which the appropriate remedy lies under the provisions of the Guardians and Wards Act, 1890, before the competent jurisdictional Court.



5. The aforesaid issue regarding the maintainability of a writ petition seeking a writ of Habeas Corpus in matters involving custody of a minor child has been authoritatively considered by the Hon'ble Supreme Court in ***Tejaswini Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Others, 2019(3) RCR (Civil) 104***. In paragraph 18 of the said judgment, after an exhaustive survey of the governing legal principles, the Hon'ble Supreme Court delineated the scope and parameters governing the exercise of writ jurisdiction in child custody matters and held as under:-

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.

6. Learned counsel appearing on behalf of the petitioner contended that the petitioner, being the biological father of the minor child, is his natural and lawful guardian. It is submitted that in the proceedings instituted under the Hindu Marriage Act, 1955 seeking dissolution of



marriage by mutual consent, respondent No.11, in her statement recorded before the learned Family Court, unequivocally agreed that the permanent custody of the minor child, Master Harjaap Singh, would remain with the petitioner and further undertook that she would not assert any claim for his custody in future. It is, thus, argued that the petitioner was lawfully entrusted with the custody of the minor child pursuant to a judicially recorded settlement and, therefore, the subsequent retention of the child by respondent Nos.8 to 10 is wholly unauthorized and contrary to law. Accordingly, it is prayed that the custody of the minor child be restored to the petitioner.

7. Per contra, learned counsel appearing on behalf of respondent Nos.8 to 11 opposed the petition and submitted that the statement made by respondent No.11 before the learned Family Court was not voluntary but had allegedly been procured under coercion, intimidation and undue influence exercised by the petitioner and his family members. It is contended that respondent No.11 was compelled to sign several documents, including the divorce petition, under threat and, therefore, the statement recorded in the matrimonial proceedings cannot be treated as a voluntary relinquishment of the custody of the minor child.

7.1. It is further submitted that in matters concerning custody of a minor, the determinative consideration is not the legal entitlement of either parent but the paramount welfare, safety and best interests of the child, which must prevail over all other considerations. In support of the aforesaid submissions, learned counsel has placed reliance upon ***Somprabha Rana and Others vs. The State of Madhya Pradesh and***



*Others, 2024 INSC 664; Saurav Rattan vs. State of Himachal Pradesh and Others, 2025 NCHHC 13309; Silky Sharma vs. State of Punjab and Others, 2025(3) RCR (Civil) 543; Kuppammal and Others vs. The District Collector and District Magistrate, Thiruvallur District, Thiruvallur and Others, 2001(2) MadWN (Criminal) 198;* and the judgment rendered by a Coordinate Bench of this Court in *Veerpal Kaur vs. State of Punjab and Others, 2025:PHHC:113490*, and prayed that the present petition deserves to be dismissed.

8. I have heard learned counsel for the respective parties at considerable length and have carefully perused the pleadings, documents placed on record and the judicial precedents cited at the Bar with their able assistance.

9. Having bestowed thoughtful consideration to the rival submissions and the material available on record, this Court is of the considered opinion that the present petition deserves to be allowed.

9.1. The preliminary objection regarding the maintainability of the present petition is liable to be rejected in view of the authoritative pronouncement of the Hon'ble Supreme Court in *Tejaswini Gaud's* case (supra), wherein it has been unequivocally held that a petition seeking a writ of Habeas Corpus is maintainable where the custody of a minor child is alleged to be unlawful and the Court is required to examine whether such custody subserves the welfare of the child.

9.2. As regards judgments relied upon by the respondents No.8 to 11 are concerned, crux of the same is that no straight jacket formula in custody cases can be devised. It depends upon facts and circumstances of



each case. Welfare of the minor child is of paramount consideration. Position of Court is that of *parans patriae*. Keeping all this in mind now controversy in hand is to be seen.

9.3. Coming to the merits of the controversy, it is not disputed that in HMA Petition No.52 of 2026 pending before the learned Additional Principal Judge, Family Court, Sirsa, Camp at Dabwali, respondent No.11, while making her statement on 12.01.2026, expressly consented that the custody of the minor child, Master Harjaap Singh, shall permanently remain with the petitioner and further categorically undertook not to claim his custody in future. The said statement forms part of judicial proceedings and was recorded by a competent Court in the discharge of its judicial functions.

9.4. The principal defence raised by respondent Nos.8 to 11 is that respondent No.11 had signed certain documents, including the divorce petition, under coercion and intimidation. However, significantly, the written statement filed by the private respondents is conspicuously silent as regards the circumstances under which respondent No.11 made her independent statement before the learned Family Court. There is no specific averment that the Court statement itself was recorded under coercion, threat or undue influence, nor has any material been placed on record to demonstrate that any objection or complaint was ever raised before the Family Court immediately thereafter seeking recall or expunction of the said statement on the ground of coercion.

9.5. A statement recorded before a Court of competent jurisdiction carries with it a strong presumption of regularity attached to judicial



proceedings. By virtue of Section 114 of the Indian Evidence Act, 1872, a presumption arises that official and judicial acts have been regularly performed unless the contrary is established by cogent and convincing material. Mere bald assertions contained in the written reply, unsupported by any contemporaneous material, are wholly insufficient to dislodge such statutory presumption. Even in the written reply there is no reference as to in what circumstances respondent No.11 made that statement. There is no more secure place than a Court. If respondent No.11 was facing any threat or coercion, it could have been brought to notice of the Court. Court is competent to provide security to such person but no such facts was brought to the notice of Court at the time of recording statement by respondent No.11.

9.6. Consequently, this Court has no hesitation in holding, at least for the purposes of the present proceedings, that the petitioner had lawfully obtained custody of the minor child pursuant to the settlement arrived at between the parties. It is equally undisputed that the minor child initially remained in the petitioner's custody and that respondent No.11 subsequently left India after leaving the child in the custody of respondent Nos.8 to 10.

9.7. At present, admittedly, the minor child is residing with his maternal grandparents and maternal uncle, whereas respondent No.11 herself is residing in Canada. The petitioner is also a resident and citizen of Canada and, being the biological father, continues to be the natural guardian of the minor child. In the peculiar facts and circumstances of the present case, this Court is satisfied that restoration of the custody of the



minor child to his father would better serve his welfare, stability and overall development than permitting his continued stay with collateral relatives in the absence of either parent.

9.8. It is clarified that the present adjudication is confined to the issue of the existing custody of the minor child and shall not preclude either of the parents from seeking appropriate relief regarding permanent custody, visitation or guardianship before the competent Court under the relevant statutory provisions. Any such proceedings shall be decided independently on their own merits, uninfluenced by the observations recorded herein.

10. Accordingly, the present writ petition is **allowed**. The custody of the minor child, Master Harjaap Singh, is directed to be restored to the petitioner.

11. Respondent Nos.8 to 10 are directed to hand over the custody of the minor child to the petitioner within a period of ten days from the date of receipt of a certified copy of this order. In the event of failure to comply with the aforesaid direction, the Superintendent of Police concerned shall forthwith render all necessary assistance for securing implementation of this order and shall ensure that the custody of the minor child is restored to the petitioner strictly in accordance with law, while ensuring that the transition is carried out with due sensitivity and without causing any avoidable trauma to the child.

12. In view of the final adjudication of the principal writ petition, all pending miscellaneous applications, if any, arising out of or ancillary thereto, shall also stand disposed of. Since the substantive controversy



between the parties has been conclusively determined, all such interlocutory proceedings have been rendered infructuous, and consequently, no separate or further orders are required to be passed in respect thereof.

**07.08.2026**  
Gaurav Sorot

**( VIRINDER AGGARWAL )**  
**JUDGE**

|                              |          |
|------------------------------|----------|
| Whether reasoned / speaking? | Yes / No |
| Whether reportable?          | Yes / No |