

**CRWP-4952-2026**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRWP-4952-2026****Date of Decision: 13.07.2026****Uploaded on: 13.07.2026****GURWINDER KAUR****... Petitioner****Versus****STATE OF PUNJAB & OTHERS****...Respondents****CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Present:** Mr. Arun Abrol, Advocate
for the petitioner.

Mr. Athar Ahmed, DAG, Punjab.

Mr. Ritesh Pandey, Advocate
for respondent Nos.4, 5, 6 & 7.

JASJIT SINGH BEDI, J.

The prayer in the present Criminal Writ Petition under Article 226 of the Constitution of India is for the issuance of a writ in the nature of Habeas Corpus or any other writ, order or direction directing the respondent Nos.4 to 7 to handover custody of Yuvrajpreet Singh (son of the petitioner) to the petitioner in the interest of the well-being of the child.

2. The learned counsel for the petitioner contends that the petitioner entered into a love marriage with Jagjit Singh, son of late Balwinder Singh and Sukhwinder Kaur (respondent No.4) in August, 2021. A petition was filed before the District and Sessions Judge, Amritsar seeking protection of their life and liberty from their respective parents. One son namely, Yuvrajpreet Singh was born on 12.05.2023. Immediately after the marriage, the private

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respondents who are the close relatives of her husband Jagjit Singh started harassing her for dowry. Her husband was addicted to drugs and went abroad on 28.12.2025 for work. Thereafter, the situation got even worse and finally the petitioner was forced to leave the matrimonial home on 22.03.2026 along with her minor son. However, Jagjit Singh, her husband called her up from Dubai and threatened to get her father and brother killed. Because of these threats the petitioner along with her minor son went back to the matrimonial home on 24.03.2026. Once again, the respondent Nos.4 to 7 threatened her and coerced her to leave their house but kept the child with them forcibly. On returning back to her matrimonial home, the petitioner immediately informed the police on 25.03.2026. On 30.03.2026 she was informed that her complaint had been marked to the IC Women Cell City, Batala. On 03.04.2026, the petitioner dialled the Women Helpline No.181. Despite making all efforts no action has been taken to return her child to her. He was then of the age of approximately 03 years and it would be in his best interest, if his custody is handed over to the petitioner being his mother. Reliance is placed on the judgment of this Court in the case of **Sonia Vs. Union Territory of Chandigarh & others, CRWP-7903-2025, decided on 03.09.2025** to contend that not only is a petition for Habeas Corpus maintainable but it is for the Court to examine where best lies the welfare of the child and ensure that the custody of the child is handed over to that parent. He thus, prays that the present petition be allowed and a writ of Habeas Corpus be issued to the private respondents to handover the custody of the child to the petitioner.

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3. The learned counsel for the private respondents and Jagjit Singh (husband of the petitioner and father of the minor child), on the other hand, while referring to the reply dated 20.05.2026 contends that the petitioner left the matrimonial home after leaving her son there in January, 2026 when the husband of the petitioner went abroad. The private respondents have got the child admitted in a good school and are taking adequate care of him. The mother of the petitioner has expired and there is no female member in the family to look after the son particularly when the petitioner is pregnant and would be unable to look after the son herself. A writ in the nature of the Habeas Corpus is not maintainable against the father and the remedy available to the petitioner would be of filing of a petition under the Hindu Minority and Guardianship Act, 1956 or the Guardianship and Wards Act, 1890. He therefore, prays that the present petition is liable to be dismissed.

4. I have heard the learned counsel for the parties.

5. Before proceeding further, it would be apposite to examine the provisions of the Hindu Minority and Guardianship Act, 1956 which are reproduced hereunder:-

6. Natural guardians of a Hindu minor.—*The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—*

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother:

provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

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*(b) in the case of an illegitimate boy or an illegitimate unmarried girl
—the mother, and after her, the father;*

(c) in the case of a married girl—the husband:

*Provided that no person shall be entitled to act as the natural
guardian of a minor under the provisions of this section—*

(a) if he has ceased to be a Hindu, or

*(b) if he has completely and finally renounced the world by becoming
a hermit (vanaprastha) or an ascetic (yati or sanyasi).*

6. This Court in the case of **Sonia Vs. Union Territory of Chandigarh & others, CRWP-7903-2025, decided on 03.09.2025** while referring to the various judgments of the Hon'ble Supreme Court has categorically held that not only is a writ of Habeas Corpus maintainable for seeking custody of the child but ordinarily the welfare of the child is best taken care of in the custody of the mother unless the mother is whether unsuitable to be granted the custody for certain reasons. The relevant extract of the said judgment is as under:-

“14.An examination of the aforementioned judgments would establish beyond doubt that a Habeas Corpus petition seeking custody of a child is maintainable at the instance of either parent. The welfare of the child is of paramount importance and therefore, custody should be granted to that parent in who's custody the welfare of the child is better taken care of. Further, unless the mother is wholly unsuitable to be granted the custody of a child, ordinarily the custody of a child below the age of 05 years must be with the mother.”

7. Coming back to the facts of the present case admittedly mediation proceedings have failed. It is not in doubt that the child is of the age of approximately 03 years and 02 months. There is absolutely nothing to

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suggest in the reply filed by the private respondents that the petitioner is unsuitable in any way to take care of the child other than stating that as she is pregnant with another child and financially dependent she would be unable to take care of her son Yuvrajpreet Singh. In fact, it would be grave cruelty to the mother in case at this stage of her life when she is pregnant once again, her first born is taken away from her who himself is only of the age of about 03 years. The father, the grandmother, uncles and aunts of a child cannot take care of him the way the mother can, as is sought to be urged.

8. Keeping in view the aforementioned facts and circumstances, the present petition is accepted. The private respondents and Jagjit Singh (husband of the petitioner and father of the minor child) are directed to ensure that the custody of the minor child namely Yuvrajpreet Singh is handed over by them to the petitioner-Gurwinder Kaur (petitioner) forthwith and the Sr. Superintendent of Police, Batala (respondent No.2) shall ensure the same. Pursuant thereto, an affidavit regarding compliance of this order be furnished by the SSP concerned to this Court within a period of one week of the handing over of the custody of the child to the petitioner.

9. However, it is made clear that the petitioner/mother shall grant access to Jagjit Singh (father of the child Yuvrajpreet Singh) subject to the convenience of both the parties and keeping in view the welfare of the child.

(JASJIT SINGH BEDI)
JUDGE

13.07.2026

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No