

2023:PHHC:044779

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

CRWP No.2374 of 2023

Date of decision: 24th March, 2023

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Jasneet Kaur & Ms. Himani, Advocates
for the petitioner.

Ms. Kanica Sachdeva, Asst. Advocate General, Punjab
for respondents No.1 to 3/State.

Mr. Yoginder Nagpal, Advocate for respondent No.4.

MANJARI NEHRU KAUL, J.

The instant petition has been filed by the petitioner seeking issuance of a writ in the nature of habeas corpus for appointment of a Warrant Officer to search, locate and recover the alleged detainee i.e. her minor daughter namely _____ aged about 9 years, and get her released from the illegal confinement of respondent No.4 i.e. mother of the petitioner herself.

Vide order dated 13.03.2023, this Court while issuing notice of motion on the respondents, had also directed that a status report be filed on or before the next date of hearing i.e. today, with copy in advance to the learned counsel for the petitioner.

Learned State counsel submits that the alleged detainee is present in the Court along with respondent No.4, therefore, she does not wish to file status report.

Mr. Yoginder Nagpal, Advocate has entered appearance on behalf of respondent No.4 and filed his power of attorney today. Respondent No.4 along with the alleged detainee is also present in the Court along with her counsel. Reply has been filed on behalf of respondent No.4 in the Court today, which is taken on record subject to all just exceptions.

Learned counsel for the petitioner has vehemently contended and alleged that the minor daughter, aged 9 years, of the petitioner has been illegally confined by her maternal grandmother i.e. respondent No.4, qua which she made a complaint to the police, however, no action was taken. She has further submitted that respondent No.4 on 09.12.2022 after pressurising the petitioner, took away the alleged detainee i.e. the minor daughter of the petitioner, with her on the pretext of providing her good schooling and better care. Subsequently, on 28.12.2022 respondent No.4 told the petitioner over a video call that she had detained the alleged detainee and further refused to let the petitioner even meet the alleged detainee or talk to her. Learned counsel has contended that the petitioner being a natural guardian of the alleged detainee has a preferential right to the custody of the alleged detainee, who is her 9 year old daughter, however,

respondent No.4 has not only illegally detained the alleged detainee but has also poisoned and brainwashed her against the petitioner. Learned counsel has urged that the petitioner had brought up the alleged detainee in healthy surroundings and also shares a close bond with her, and therefore, was entitled to her custody. It has lastly been contended that there existed a grave threat to the life and liberty to the alleged detainee and thus, her custody be immediately given to the petitioner. In support, learned counsel has relied upon '**Rajeswari Chandrasekar Ganesh vs. State of Tamil Nadu and others**' 2022 SCC Online SC 885.

Per contra, learned counsel for respondent No.4 while controverting the submissions by the counsel opposite, has vehemently contended that the alleged detainee is not in the illegal custody of respondent No.4, rather the petitioner had herself given the custody of her minor daughter to the respondent No.4, owing to the petitioner's financial incapacity to pay for the alleged detainee's tuition fees and other expenses after her marriage with one _____ on 01.11.2018, who she had married after obtaining divorce from her first husband. Learned counsel has contended that when the alleged detainee started living with her maternal grandmother i.e. respondent No.4, she disclosed and confided in the latter that her step-father had sexually abused her on multiple occasions and even threatened her of dire consequences in case she revealed or complained against him to

anyone. It has been further submitted that when the alleged detainee told about the same to the petitioner i.e. her mother, the latter instead of taking any action against , admonished her minor daughter i.e. the alleged detainee. Even when respondent No.4 confronted the petitioner with the said facts, the petitioner behaved brazenly with her. Thereafter, respondent No.4 approached the police and the State Human Rights Commission for taking action against the alleged detainee's step-father . Subsequently, an FIR No.53 dated 20.03.2023 was registered against under Section 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012. The learned counsel submitted that respondent No.4 being a retired Government employee, is taking very good care of the alleged detainee and they share a healthy bond, so much so the alleged detainee was not even keen to go back to the petitioner.

I have heard learned counsel for the parties and perused the relevant material on record.

The alleged detainee, who was present in the Court today along with her maternal grandmother i.e. respondent No.4, was called inside the chamber by the undersigned and after making her comfortable, an informal interaction was carried out with her by the undersigned. The alleged detainee, though came across to be a mature and intelligent child but seemed to be totally shaken. During the course

of interaction, the relationship of the child with the petitioner as well as her maternal grandmother i.e. respondent No.4 was discussed and the child categorically and in no uncertain words stated that she did not wish to either meet much less stay with her mother i.e. the petitioner at all. The child seemed to be very traumatized on account of the alleged sexual abuse by her step father. She was very distressed and disturbed while talking about the continuous sexual abuse done on her by her step father. On a pointed query put to her as to why she did not want to meet or stay with her mother, she categorically stated that when she brought the alleged instances of sexual abuse to the notice of her mother i.e. the petitioner, the latter admonished her and asked her to keep quiet about it. She also seemed very happy and comfortable staying with her maternal grandmother i.e. respondent No.4. On being asked if she would wish to meet or talk with her mother i.e. the petitioner, she emphatically replied in the negative.

The aforesaid interaction with the child, without doubt, substantiates the submissions made by learned counsel for respondent No.4. It is also a matter of record that respondent No.4 has got registered an FIR against [REDACTED] a copy of which was produced in the Court today. Said [REDACTED] has since been arrested in the case FIR which has been registered against him under Section 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

Before proceeding further, it would be relevant to observe here that in matters pertaining to the custody of a minor child, the paramount consideration has to be the welfare of the child and child alone. The expression 'welfare of the child' has to be given the widest interpretation so as to ensure the overall well-being and development of the child. The custody of child can be granted only after a satisfaction has been arrived at, by the Court that the same would be in the welfare and in the interest of the minor child.

It would be pertinent to observe here that if the custody of either of the parents does not promote the welfare of the child, the custody can be refused and a third person, who is eligible and is taking good care of the child, would be entitled to retain his/her custody. In the present case, respondent No.4 is seemingly taking good care of the alleged detainee, i.e. the daughter of the petitioner and in the circumstances, particularly when an FIR not only stands registered against the petitioner's husband under Section 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, but as apprised by learned counsel for the respondent No.4, he has also been arrested.

No doubt, the petitioner, being a mother, is a natural guardian of the minor child, however, she cannot merely seek the custody of her daughter, the alleged detainee, on the strength of her legal right. In the present case, the petitioner, even after being apprised

of the alleged sexual abuse by her husband, failed to come to the rescue of her minor daughter, i.e. the alleged detainee.

Therefore, this Court does not deem it fit to give her the custody of the alleged detainee to the petitioner. It would not be conducive to the physical, psychological and emotional well being of the child to be forcibly taken away from the custody of her maternal grandmother i.e. respondent No.4 and be handed over to the petitioner, especially when the alleged detainee has expressed her total disinclination to even meet the petitioner much less accompany her.

Further, it may also be pertinent to point out here that the custody of the child was handed over to respondent No.4 by the petitioner herself out of her own free will so that the child could attend a good school and be brought up well.

Accordingly, the petition stands dismissed. However, it is made clear that the observations made hereinabove shall not affect the outcome of any other case/proceedings which may be pending or which may be instituted by the petitioner seeking the custody of minor child under the relevant provisions of law.

(MANJARI NEHRU KAUL)
JUDGE

March 24, 2023

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No