

Before Ashok Kumar Verma, J.
AMANPREET KAUR BALE—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondent

CRWP No.10366 of 2021

November 03, 2021

Constitution of India, 1950—Art. 226—Guardian and Wards Act, 1890—S.12 of Chapter 2—Writ of Habeas Corpus—Release of minor son aged about 14 years - Held, writ of Habeas Corpus shall only be maintainable where custody of minor child is illegal or improperly detained—There is absolutely no such circumstance—Direct interaction with child who is 14 years of age through Video Conferencing shows that child living happily with his grandfather since his birth—Child does not want to accompany his mother to U.K.—Therefore, custody of child with his grand father and uncle cannot be stated to be illegal and no material on record to conclude that child is being improperly detained by them and for welfare of child, his custody does not require any change—Moreover, writ petitioner equally efficacious alternative remedy of filing application under Section 12 of Chapter 2 of Guardian and Wards Act, 1890.

Held, that in view of the ratio of law laid down in the aforesaid cases, the writ in the nature of Habeas Corpus shall only be maintainable where the custody of the minor child is illegal or he has been improperly detained. In the present case there is absolutely no such circumstance. After having direct interaction with the child through Video Conferencing who is 14 years of age, I have no hesitation in holding that the child is living happily with his grandfather since his birth. The child does not want to accompany his mother to U.K. Moreover, the mother has another son aged 12 years with her in the UK. This fact is also not disputed that the child is getting proper education in DAV Public School and presently is studying therein in Class VII.

(Para 8)

Further held, that in these circumstances, the custody of the child with his grandfather and respondent no.4-uncle cannot be stated to be illegal and there is also no material on record to conclude that the child is being improperly detained by them and for the welfare of the

child, his custody does not require any change. The welfare of the child is of paramount consideration for this Court. Therefore, the present writ petition is not maintainable.

(Para 9)

Further held, that moreover, the writ petitioner has equally efficacious alternative remedy of filing an application under Chapter 2 of the Guardian and Wards Act, 1890. Section 12 thereof enables the Court to pass interlocutory orders for temporary custody of the child.

(Para 10)

Navjeet Singh, Advocate, *for the petitioner*

C.L. Pawar, Sr.DAG, Punjab

Mandeep Singh Sachdev, Advocate for respondent no.4

ASHOK KUMAR VERMA, J. (ORAL)

(1) This petition has been filed under Article 226 of the Constitution of India seeking a roving writ in the nature of *Habeas Corpus* to the official respondents for effecting the release of detenu- Harry Bale aged about 14 years who is minor son of petitioner-mother.

(2) Learned counsel for the petitioner submits that the petitioner is mother and Des Raj is father of detenu- Harry Bale. The marriage between the petitioner and Des Raj ran into rough and both of them are living separately in U.K. Further, petitioner's son- Harry Bale, although kept on residing with his grand-mother and grand-father, but grandmother of detenu expired in July, 2021 and his grand- father is of 77 years of age and is not keeping good health and is suffering from various old aged ailments. Learned counsel further submits that respondent no.4, namely, Prem Kumar is uncle (Taya) of the detenu who has kept him in illegal custody as the grand- father of the detenu is admitted in hospital.

(3) Per contra, learned counsel for respondent no.4 submits that this petition is not maintainable as it involves disputed questions of fact. The child is very safe and living happily with his grand father- Lachhman Dass since his birth and the petitioner in a clever manner has not impleaded the said Lachman Dass and even she has not impleaded Des Raj who is father of Master Harry Bale as respondents. Learned counsel also submits that this petition has been filed only to harass them with ulterior motive. The petitioner is also having custody of another son aged about 12 years. She is having live-in-relationship with

some one after separation from the father of the child. Learned counsel further submits that moreover the petitioner has efficacious remedy under the provisions of the Guardian and Wards Act, 1890.

(4) I have heard learned counsel for the parties and have gone through the paper-book. I am not impressed with the submissions of the learned counsel for the petitioner.

(5) When this matter came up for hearing on 29.10.2021, this Court issued notice of motion and directed respondent no.2-SSP, Jalandhar to produce detinue- Harry Bale before this Court on the next date of hearing i.e. 2.11.2021. However, when this matter came up for physical hearing on 02.11.2021, Mr.C.L. Pawar, learned counsel for the State requested for time and the matter was adjourned to enable respondent no.2-SSP to produce the detinue today. Pursuant to the aforesaid directions, the detinue has been produced by Mr. Som Nath, Sub Inspector of Police Station, Bilga, District Jalandhar through Video Conferencing today who states that he has been directed to produce the detinue by the SSP, Jalandhar.

(6) This Court has interacted with the child- Harry Bale through Video Conferencing who is present in the office of Mr. M.S. Sachdev, Advocate for respondent no.4 along with SI Som Nath. Master Harry Bale informed this Court that he is 14 years old and is living happily with his grandfather. He says that he is studying in Class 7 at DAV, Public School. He further says that he has been happily residing with his grand-father Lachman Dass and grandmother (since expired) since birth at Village Aujla and he does not want to accompany his mother to U.K. He says that he has no problem in meeting with his mother at the place which this court directs.

(7) Having considered the submission of counsel for both the parties, no case of illegal custody is made out in this case. The child himself says that he is living happily with his grandfather and is studying in class VII in DAV Public School. By no stretch of imagination, it can be said that the child is in illegal custody as this Court has directly interacted with the child today who has stated that he has been residing happily with his grandfather, since the very beginning and does not want to go with his mother, who is residing abroad.

(8) The Hon'ble Supreme Court in case *Gohar Begum*

*versus Suggi alias Nazma Begum and others*¹ has laid down that the remedy of the writ in the nature of *Habeas Corpus* is available where the minor child is illegally or improperly detained. Similarly, in case *Eugenia Archetti Abdullah versus State of Kerala*² the Division Bench of the Kerala High Court has laid down that wife can file *Habeas Corpus* petition to recover the child when there is illegal detention or wrongful custody.

In view of the ratio of law laid down in the aforesaid cases, the writ in the nature of *Habeas Corpus* shall only be maintainable where the custody of the minor child is illegal or he has been improperly detained. In the present case there is absolutely no such circumstance. After having direct interaction with the child through Video Conferencing who is 14 years of age, I have no hesitation in holding that the child is living happily with his grandfather since his birth. The child does not want to accompany his mother to U.K. Moreover, the mother has another son aged 12 years with her in the UK. This fact is also not disputed that the child is getting proper education in DAV Public School and presently is studying therein in Class VII.

(9) In these circumstances, the custody of the child with his grandfather and respondent no.4-uncle cannot be stated to be illegal and there is also no material on record to conclude that the child is being improperly detained by them and for the welfare of the child, his custody does not require any change. The welfare of the child is of paramount consideration for this Court. Therefore, the present writ petition is not maintainable.

(10) Moreover, the writ petitioner has equally efficacious alternative remedy of filing an application under Chapter 2 of the Guardian and Wards Act, 1890. Section 12 thereof enables the Court to pass interlocutory orders for temporary custody of the child.

(11) Since the petitioner, who is mother of the child, is going to UK on 5.11.2021 and in the interest of justice, I have directed the learned counsel for the State and SI Som Nath, Police Station Bilga, District Jalandhar who are present in Court to take the child Master Harry Bale in the waiting area of the office of SSP Jalandhar (Rural) today itself before 5.00 PM, where the petitioner can meet her child-Harry Bale, if she is so interested.

¹ 1960 AIR SC 93

² 2005 (1) RCR (Civil) 259

(12) Keeping in view my aforesaid discussions, this writ petition is hereby dismissed. However, the petitioner is always at liberty to avail alternative remedy available to her before the Guardian Court under the relevant provisions of law.

Ritambhara Rishi