

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

116

CRWP-4561-2022
Date of Decision: 25.05.2022

KAMLESH RANI

.....PETITIONER

Versus

STATE OF PUNJAB AND ORS.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. Gaurav Datta, Advocate and
Ms. Yashhika Bhatia, Advocate
for the petitioner.

Mr. Harpreet Singh Multani, Asstt. Advocate Genl., Punjab
for respondents No. 1 to 3/State.

Mr. Sandeep Arora, Advocate
for respondents No. 4 and 5

SURESHWAR THAKUR, J. (ORAL)

1. Through, the instant petition cast under Articles 226/227 of the Constitution of India, the petitioner, the undisputed biological mother of an infant, aged four months, seeks restoration of his custody to her, through a writ of habeas corpus being made, upon co respondents No. 4 and 5, in whose purported illegal detention, the afore infant boy, is, at the instant stage.

2. The biological mother of the infant boy aged about four months, solemnized marriage on 22.11.2017, with co respondent No. 4. On 04.01.2022, she give birth to the infant boy in a hospital, and, after a period of 20 days, she left alongwith the infant boy to her parental home, and, subsequently returned to her matrimonial home on 06.05.2022. She was at her matrimonial home, when co respondent No. 4, after snatching the infant

boy from her, made her leave his house, on the pretext, that he had solemnized marriage with co respondent No. 5. Consequently, the petitioner is not residing alongwith co respondent No. 4, at the latter's house but is instantly residing at her parental home.

3. Though, uptill the age of seven years, ordinarily the custody of a minor boy or a minor girl, can be validly assumed by his or her natural mother, but yet the attempts qua assumption of custody by the aggrieved parent, through, a writ of habeas corpus being made, upon the parent concerned, in whose custody the minor boy or minor girl, aged about seven years rather is, imperatively enjoins upon, the habeas corpus Court, yet to become seized of cogent, and, tangible evidence supportive of the factum, that the parent concerned, in whose custody the minor child rather is, evidently not taking the optimum care of all his requirements relating to his nourishments, and, the best care givings to him by the parent concerned.

4. In the event of the above tangible evidence existing on the records of the habeas corpus court, thereupon, it would through discharging its solemn obligations, as a *parens patriae* or as a *locus parentis* qua the minor child, necessarily proceed to order for the restoration of custody of the minor child to the aggrieved parent, from the custody of the errant parent concerned.

5. Though, the above evidence is not existing on record, but yet through this court, discharging its solemn judicial function(s) as *parens patriae*, and, also as *locus parentis*, towards the minor infant aged about four months, deems it fit, to take the age of the minor boy inasmuch as, his being extantly aged four months, rather to become the paramount reckonable factor, for its ordering for the restoration of interim custody of

the above minor infant from co respondent No. 4, to his biological mother, the petitioner herein.

6. The foundation of making the above interim order of custody, becomes rested upon Article 25(2) of the Universal Declaration of Human Rights which provides as under :-

“ Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

Further, Article 24(1) of the International Covenant on Civil and Political Rights (ICCPR, 1966) recognizes right of the child to the measures of protection as are required by its status as a minor and the correlative duty resting on the shoulders of its family, society and the State. In October 1979 a Joint WHO/UNICEF Meeting on Infant & Young Child Feeding adopted the following statement:

“Breastfeeding is an integral part of the reproductive process, the natural and ideal way of feeding the infant and unique biological and emotional basis for child development... It is therefore a responsibility of society to promote breastfeeding and to protect pregnant and lactating mothers to many influences that would disrupt it.”

7. The above Article has been referred, to in a judgment of the High Court of Karnataka in Bengaluru in case titled as '**Husna Banu versus State of Karnataka**', and, to which writ petition No. 16729 of 2021 is assigned, and, has also been revered by it. The above extracted mandate carried in the Universal Declaration of Human Rights, does at this stage, rather completely foist in the biological mother of the infant aged about four months, an indefeasible right, to ask for an interim relief, for the interim restoration of custody of the minor boy to her, from co respondent No. 4, as thereupon, the milk suckling infant would become breast fed by his biological mother, and, thereupon, would become provided the most befitting nourishment rather for his physiological, emotional, and, psychological growth.

8. If the afore growth is impeded through the declining of relief to the petitioner, thereupon this Court would not be aptly discharging its solemn duties, either as *locus parentis* to the minor, or as *parens patriae*, towards him.

9. In consequence, the co respondent No. 3 is directed to forthwith ensure that, the custody of minor infant aged about four months, is restored from respondent No. 4 to the petitioner. The above custody shall not be permanent but shall be only interim, and, shall last only uptill the survivals qua the requirements of breast feeding of the infant boy, by his natural mother. The requirement above, shall be pronounced by a proficient pediatrician. In case, the above pronouncement occurs, thereupon, if there is no compromise amongst the parents of the minor child, in respect of his custody, thereupon, each of them may recourse appropriate civil remedies for therethroughs, the custody either interim or permanent of the infant boy, being either with the biological mother of the minor infant, or, being with his putative father, arrayed as co respondent No. 4 in the petition.

10. It is clarified that immediately after the competent pediatrician pronounces with respect to, there being no longer any requirement of the minor infant becoming breast feed, thereupon each of the combatants qua the custody of the infant boy, shall proceed to either draw a settlement, or, a compromise in respect of his custody, or shall with utmost promptitude recourse civil remedies, so that the civil court concerned, upon apposite evidence becoming adduced before it, makes the promptest order either, with respect to the interim custody of the minor boy or, with respect to his permanent custody, being either with his biological mother or, with his putative father.

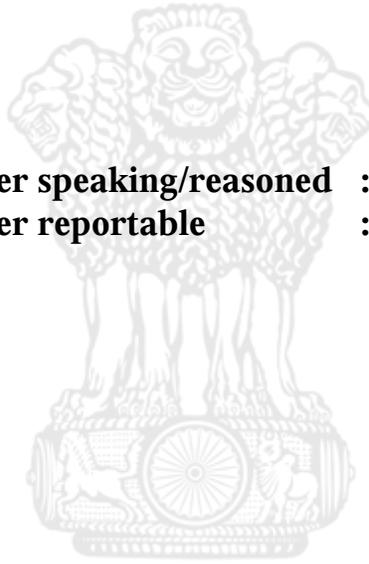
11. Disposed of accordingly.

12. Moreover, it is also clarified that the grandmother of the minor child one Arvinder Kaur may visit the parental home of the petitioner, as even the petitioner, has not opposed qua the grandmother of the minor infant, rather making visitations to the grand maternal home of the minor infant.

(SURESHWAR THAKUR)
JUDGE

25.05.2022
kavneet singh

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



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