

Harjeet Kaur

..Petitioner

Versus

State of Punjab and others

..Respondents

Sr. No.	Particular	
1.	The date when the judgment is reserved	03.09.2026
2.	The date when the judgment is pronounced	10.09.2026
3.	The date when the judgment is uploaded on the website	10.09.2026
4.	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment and reasons thereof	Not applicable.

CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL

Argued by: Mr. Pawandeep Singh, Advocate for the petitioner.

Mr. Hardeep Singh Wadhwa, DAG Punjab.

Mr. Briz Mohan, Advocate for respondents No. 4 to 8.

SHALINI SINGH NAGPAL, JUDGE

Mother of minor girl child aged 2 ½ years, has approached this Court for issuance of a writ in the nature of Habeas Corpus for release of minor child Gurnaaz Kaur from custody of respondents No. 4 to 8, her father and his family members.

2. Petitioner has averred that she was married with respondent No. 4 on 08.07.2022 as per Sikh Rites and Ceremonies. It was second marriage of both. Petitioner had no child from her first marriage, though respondent No.4 had a 15 years old boy. Petitioner, who was working as Senior

Assistant (Centre for Distance and Online Education), at Punjab University since 2013, maintained balance between her professional and personal life. Few months after the marriage, behaviour of respondent No.4 and his family members changed . They started ill treating and torturing the petitioner to compel her to bring more dowry, though sufficient dowry was given at the time of marriage. Respondent No.4 started demanding petitioner's salary every month and asked her to transfer money on regular basis in his account, which she did. Respondent No.4 also physically assaulted her on various occasions. During her pregnancy, respondent No.4 wilfully neglected his duties and obligations and caused mental and emotional harassment to the petitioner. He neglected and failed to provide essential care to the petitioner during her ailments. He never provided maintenance to her or the child and all requirements of the minor child were taken care of by the petitioner. Respondent No.4 had regular communication with his former wife and levelled false and defamatory allegations against the petitioner extending threats. Petitioner left matrimonial home on 12.09.2025 and started living in her parental home. Thereafter also, respondent created unnecessary scenes.

3. Petitioner further pleaded that on 20.04.2006, in her absence, respondent No.4 took away minor child Gurnaaz Kaur from her parental house on false promise of dropping her back by evening but did not do so. Despite repeated requests, he did not hand over custody of the child and was openly demanding Rs.15 lac to 20 lac to give her back. He was also extending threats to kill the petitioner. Respondents No.4 and his family members had criminal history and political background. Various complaints were moved to SHO and to senior police officers but no action was taken.

The minor child required care and custody of the petitioner. The environment in the house of the respondents was abusive. Two FIRs were already registered against respondents and conduct and behaviour of respondent No.4 was unsafe for the minor child, who was illegally detained. Respondent No.4 not only had criminal antecedents, he was habitual of taking intoxicants. He was black mailing the petitioner to give him large sum of money to take the minor child back. The minor child was not safe in custody of respondent No.4 and his family members.

4. Upon notice, respondents No. 4 to 8 put in appearance and filed reply claiming that the writ petition was false, abuse of the extraordinary jurisdiction of the Court. It was stated that respondent No.4 was the biological father of the child. His custody was not illegal or unlawful. Permanent custody of the child could not be granted in proceedings under Article 226 of the Constitution of India as disputed questions of facts were involved and appropriate remedy for the petitioner was to institute proceedings under Guardian and Wards Act, 1890. Petitioner voluntarily left the matrimonial home eight months before filing the petition, without any sufficient cause or lawful excuse and deserted respondent No.4. She failed to discharge her matrimonial obligations. Prior to marriage, she had been suffering from psychiatric ailments and was taking treatment for the same, which fact she concealed from respondent No.4. The child was living happily with her father and was getting proper love, care, affection and emotional support. She was regularly attending school. Her education, physical and emotional needs were being taken care of. Apart from her father, her grandparents and other family members were always available to look after the child. Petitioner, who was working as Senior Assistant in

Punjab University, remained occupied during working hours and could not devote personal time for upbringing of the child. No case was made for issuance of writ in the nature of Habeas Corpus. All other allegations regarding demands for dowry, cash, mental, physical and emotional harassment were etc., were denied. It was stated that vague, unsubstantiated allegations were levelled without independent evidence. Petitioner voluntarily left the matrimonial home and thereafter, refused to return despite efforts made by respondent No.4 for reconciliation. Respondent No.4 and his family members always extended due care and support to the petitioner. Allegations of consumption of alcohol and other habits were stated to be false. Prayer for dismissal of petition was made.

5. Learned counsel for petitioner argued that petitioner was ill-treated, harassed and exploited during her stay in the matrimonial home. The minor detinue Gurnaaz Kaur, aged 2.5 years, was illegally taken away by respondent No.4 on 20.04.2026 in petitioner's absence and he refused to return the child despite repeated requests instead was raising unreasonable demands of money from the petitioner. Considering the tender age of the minor and her welfare, her custody needed to be restored to the petitioner, who was best suited to look after the physical, emotional and other needs of the child. It was further argued that petitioner was employed as Senior Assistant in Punjab University, Chandigarh and was financially sound whereas respondent No.4 was only 10th pass, with no income. He had been extracting money from the petitioner and did not have the financial resources to look after the child. Moreover, he was in regular contact with his first wife and son and the atmosphere in his house was not conducive to the welfare of the child. Representation Annexure P-4 was made to the SSP

SAS Nagar Mohali, regarding the forceful removal and wrongful detention of minor detainee but no action was taken. In support of his arguments, learned counsel for petitioner refers to *Master Atharva (minor) and another Versus State of U.P. AIR online 2020 ALL 2142, Kinjal d/o Haresh Kumar Panchal Versus State of Gujarat R/SCR.A/471/2026, Mrs. Manju Tiwari Versus Dr. Rajendra Tiwari and others AIR 1990 SC 1156 and Mandeep Kaur versus State of Punjab and others CRWP-1423 of 2019, decided on 03.11.2020.*

6. Learned counsel for respondents argued that respondent No.4 was biological father of the minor child and other respondents were his family members. Custody of the minor child with respondent No.4, who was the natural guardian, could not be termed illegal. Thus, the writ of Habeas Corpus was not maintainable. Appropriate remedy available to the petitioner was to file a petition for custody under Guardians and Wards Act, 1890, before the competent Court. It was further argued that petitioner deserted respondent No. 4 and abandoned him. She failed to discharge her matrimonial obligations. She was suffering from psychiatric illness. Welfare of the child was with her father. The minor was receiving proper love, care, affection and emotional support from respondent No.4 and his family members. She was regularly attending school and all her needs were well taken care of. Petitioner, on the other hand, was a full time government employee and remained occupied during her working hours, unable to devote adequate time for upbringing of the child. The petition was abuse of process of law and deserves dismissal.

7. Petitioner and respondent No.4 are the biological parents of the detainee. Respondent No.4 is her natural guardian under Section 6 of the

Hindu Minority and Guardianship Act, 1956 (for short the HMG Act). The question of maintainability of a Writ of Habeas Corpus filed by one natural guardian against the other, in respect of custody of a minor, was considered by Hon'ble Supreme Court in *Tejaswini Gaud and others Versus Shekhar Jagdish Prasad Tewari and others 2019 AIR Supreme Court 2318*. The Court observed that a Writ of Habeas Corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.

8. The Court further observed 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. '

9. In ***Criminal Appeal No. 127 of 2020 SLP (crl.) No. 7390 of 2019 titled Yashita Sahu Vs. State of Rajasthan and others decided on 20.01.2020*** as well, Hon'ble Supreme Court observed as under:-

“9. It is too late in the day to urge that a writ of habeas corpus is not maintainable if the child is in the custody of another parent. The law in this regard has developed a lot over a period of time but now it is a settled position that the court can invoke its extraordinary writ jurisdiction for the best interest of the child. This has been done in Elizabeth Dinshaw vs. Arvand M. Dinshaw & Ors. (1987) 1 SCC 42, Nithya Anand Raghavan vs. State (NCT of Delhi) & Anr. (2017) 8 SCC 454 and Lahari Sakhamuri vs. Sobhan Kodali (2019) 7 SCC 311 among others. In all these cases the writ petitions were entertained. Therefore, we reject the contention of the appellant wife that the writ petition before the High Court of Rajasthan was not maintainable.”

10. Identical view has been expressed by Hon'ble Supreme Court in a recent pronouncement in ***Suryakanth M. Raikar Versus The State of Karnataka and otherss, arising out of S.L.P. (Crl.) No.8172 of 2026, decided on 19.08.2026.***

11. Thus, the position of law is that though ordinarily, basis for issuance of a Writ of Habeas Corpus is illegal detention, in the case of a writ in respect of detention of a child, the law is concerned not so much with the illegality of detention as with the welfare of the child. A writ of habeas corpus to recover the custody of the minor child would thus be maintainable. Mere availability of an alternative remedy of filing custody petition under the Hindu Minority and Guardianship Act, 1956 or the Guardians and Wards Act, 1890, does not bar issuance of a Writ of Habeas corpus.

12. The question which this Court is now confronted with is whether welfare of the minor detinue/girl child namely Gurnaaz Kaur, aged 2.5 years, requires that her custody be restored to the petitioner.

13. Both rival parties have levelled all kinds of allegations against each other. A Writ Court must refrain from recording findings on the allegations and counter allegations of the parties with regard to the matrimonial cruelty which petitioner has alleged and respondent No.4 has rebutted. As said hereinbefore, the prime consideration which should weigh in the mind of a Writ Court is the welfare of the child.

14. The minor namely Gurnaaz Kaur is a very young child aged 2.5 years. Considering the tender age, she cannot have any say about her choice for custody. The principle that welfare of a young child is best secured by the mother is embodied in Section 6-A of the Hindu Minority and Guardianship Act, 1956 which is extracted below;

“6. Natural guardians of a Hindu minor.--The natural guardian 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

(b) in 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). Explanation.--In this section, the expression "father" and "mother" do not include a step-father and a step-mother."

15. From the bare provision reproduced above, it comes out that custody of a minor who is less than 5 years of age, shall ordinarily be with the mother. Thus, the right of the father to be the natural guardian of the property of a minor is preserved but not of his/her person, if the child is less than 5 years old.

16. The Allahabad High Court in ***Master Atharva (minor) and another Versus State of U.P. AIR online 2020 ALL 2142***, has observed that ‘the word "ordinary" signifies that as a matter of rule, children up to the age of five years are to be left with their mothers, but there could be exceptions as well. Those exceptions could be where the mother is demonstrably leading an immoral life or may have remarried, where in her new home, the child from her earlier alliance has no place, or where the mother is convicted of a heinous offence etc.’

17. The principle that is engrafted under Section 6- (a) of the Act, 1956 is the golden thread that runs across various statutes.

18. Section 13 of the Hindu Minority & Guardianship Act, 1956 declares in unequivocal terms that the welfare of the minor would be the paramount consideration when it comes to a Court appointing a guardian for a Hindu minor.

“13. Welfare of minor to be paramount consideration.--(1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor."

19. Section 2 of the Hindu Minority & Guardianship Act, 1956 also makes it clear that the provisions of the Guardian and Wards Act would be in addition and not in derogation of the Hindu Minority and Guardianship Act, 1956.

20. Section 17 of the Guardian and Wards Act also states that while appointing a guardian the Court shall be guided by the circumstances that is for the welfare of the minor.

“17. Matters to be considered by the Court in appointing guardian.

--(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

NEUTRAL CITATION R/SCR.A/471/2026 JUDGMENT DATED: 11/02/2026 undefined (2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

* * * * (omitted) (5) The Court shall not appoint or declare any person to be a guardian against his will."

21. Though the Court can consult the child to reach a conclusion what is best for his/her welfare, considering the age of the child, who is barely 2- 1/2 years old and does not possess sufficient judgment, it is not deemed fit to call the child for an interaction.

22. The term “welfare” has to be interpreted in its widest sense. The moral, religious welfare of the child, her physical well being and financial welfare are all relevant consideration. The child who is 2.5 years age, certainly, needs her mother more than father. The mother in our case is financially better off, more educated and well placed. All these factors, considering the tender age of the child, work in her favour.

23. Though a feeble argument has been raised that the mother is suffering from psychiatric illness, the claim must be repelled in the absence of any credible material on record. The mother is a working professional, serving as Senior Assistant in Punjab University. She is in regular employment with 13 years of service to her credit. She is thus financially secure. Respondent No. 4, the father, on the other hand has not come forward with his education, employment and income. Petitioner claims that he is 10th class pass and unemployed. On the last date of hearing, this Court, noticing that certain material facts regarding occupation, education and income of respondent No.4 were not forthcoming and clarification was required, posted the matter for rehearing. However, counsel for respondent No. 4, did not appear to give necessary clarification. Appropriate inference must accordingly be drawn.

24. A girl child, who is 2-1/2 years old can effectively be taken care of by her mother. Such a small child has a special bond with the mother, who no one else, not even the father can substitute. There can be nothing more

cruel than to deprive an infant of her mother's care, love and affection. This is a well recognised feature of basic human nature, borne out of experience and is also statutorily recognised. There are no glaring circumstances on record to justify a conclusion that there are exceptional circumstances to deprive the mother of the custody of the minor child. The petitioner is best equipped to groom the small infant child into an adult.

25. For the reasons above, the petition is allowed with the following direction:-

(i) respondent No.4 is directed to hand over the custody of minor daughter to the petitioner on 22.09.2026 between 10.00 AM and 11:00 AM at parental house of the petitioner;

(ii) in case respondent No.4 fails to do so, respondents No.2 and 3 shall ensure that custody of minor daughter is immediately handed over to the petitioner by taking over the same from respondents No.4;

(iii) respondent No.4 shall be at liberty to file petition under the HMG Act/the GW Act before the Guardian/Family Court for custody of the minor daughter;

(iv) the Guardian/Family Court shall decide the question of custody of the minor daughter uninfluenced by the observations made by this Court by taking into consideration the welfare and best of interest of the minor daughter.

(v) till decision of the custody petition, respondent No.4 shall be entitled to meet the minor daughter on every Sunday for two hours between 10.00 AM and 05.00 PM or make video calls to the minor daughter for 15/30 minutes between 05.00 PM and

06.00 PM as desired and to be conveyed in advance to the petitioner by respondent No.4;and

(vi) respondents No.2 and 3 shall provide requisite protection to the petitioner and the minor daughter against harm at the instance of respondents No.4 and 5 during the period custody of the minor daughter remains with the petitioner.

26. All the pending miscellaneous applications, if any, stand disposed of.

(SHALINI SINGH NAGPAL)
JUDGE

10.09.2026

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Whether speaking/reasoned : Yes
Whether reportable : Yes