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

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Date of decision: 10.04.2026

CHARANJEET KAUR

... PETITIONER

Versus

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE H.S. GREWAL

Present:- Mr. J.S Moudgill, Advocate for the petitioner.

Mr. Surinderjit Singh Nahar, AAG, Punjab.

H.S. Grewal, J.

1. The present writ petition under Article 226 of the Constitution of India has been filed for issuance of a writ in the nature of *habeas corpus* for the release of the detainee, namely, Ibadat Kaur aged 4 years, from the alleged illegal custody of private respondents No.4 to 8. A further prayer has been made for issuance of direction to respondents No. 1 to 3 to secure the release of the detainee forthwith from the clutches of private respondents No. 4 to 8, and to hand over her custody to the petitioner, or in the alternative, to appoint a Warrant Officer for the said purpose.

2. Learned counsel for the petitioner submits that the alleged detainee has been unlawfully removed from the petitioner's custody, she being the natural mother of the child. It is submitted that respondent No. 4 (husband) has

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gone abroad and thereafter, respondent No. 2 (father-in-law) began harassing the petitioner and failed to provide for her basic needs. It is further submitted that although a complaint was lodged, but later on a compromise had been effected on 08.01.2026, whereby it was agreed that the issue between the petitioner and respondent No. 4 would be decided upon his return, and in the meantime, the petitioner would permit respondent Nos.5 to 8 to meet the child. It is further submitted that on 18.03.2026, when the petitioner visited her matrimonial home to facilitate such meeting, respondents No.5 to 8 misbehaved with her and the minor child was wrongfully detained by the respondents. Accordingly, it is submitted that the child is in the illegal custody of respondent No.5 (father-in-law), who is not the natural guardian.

3. In compliance of the order passed by this Court on 02.04.2026, the alleged detainee has been produced in Court.

4. Since the child is only four years old, it seems necessary to consult a Child Counsellor to interact with the child. Accordingly, a child Counsellor was called to interact with the child. After interaction with the child, the Child Counsellor, namely, Mr.Aman Malik submitted with his report and the same is taken on record. As per the report of the Child Counsellor, the child has been well cared by her grandparents.

5. I have considered the submissions made by learned counsel for the parties and have gone through the case file.

6. This Court has noticed an increasing tendency amongst disgruntled parents and other family members to move a writ petition in the nature of habeas corpus, in order to settle custody of the children. A two Judge



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Bench of the Hon'ble Apex Court in ***Tejaswini Gaud and others vs. Shekhar***

Jagdish Prasad Tewari', 2019 AIR SC 2318, has observed as follows:-

“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.

19. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and 14 Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is of summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.”

7. The issue before the Court is whether *habeas corpus* can be used as an alternative to a guardianship order when it comes to deciding custody of a child. Habeas corpus is usually applied to secure the release of a person unlawfully detained, but it can also be used to ensure a child's safety and

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protection. However *habeas corpus* does not involve the detailed inquiry into welfare and best interest that is central to guardianship proceedings. Therefore, while *habeas corpus* can serve as a means of temporary custody, it does not replace the comprehensive process of guardianship under the relevant statute.

8. Considering the facts on record and the settled legal principles, this Court is of the opinion that though the availability of an alternative remedy is not an absolute bar to the issuance of a writ of Habeas Corpus, disputes between natural guardians are best examined by the Court of Guardians and Wards, which is vested with the jurisdiction and expertise to determine the welfare of the child and to provide both parties a full opportunity to present their claims and lead evidence.

9. Moreover, where such remedies exist, the Writ Court must exercise restraint, as contested factual issues are more appropriately resolved through detailed proceedings before the competent forum. In the present case, no circumstance has been established that would warrant intervention by this Court through a writ of Habeas Corpus. Accordingly, the same being devoid of merit, is hereby dismissed with liberty to the petitioner to avail alternative remedy, in accordance with law.

(H.S. GREWAL)
JUDGE

April 10, 2026
A.Kaundal

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