



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

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CNR No: PHHC011277652026

2026:PHHC:126300



**CRWP-9286-2026 (O&M)
Date of decision : 09.09.2026**

Ramanpreet Kaur**... Petitioner****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. Vivek Sharma, Assistant Advocate General, Punjab.

Mr. Anil Kumar Garg, Advocate
for respondent No.4.

Mr. Nandan Jindal, Advocate
for respondents No. 5 to 7.

MANISHA BATRA, J.(Oral)

1. Through the present petition filed under Article 226 of the Constitution of India, the petitioner seeks issuance of a writ in the nature of habeas corpus for production and restoration of custody of her minor son namely Sahibjot Singh, aged about five years, who has been illegally retained by respondents No.5 to 8.

2. Brief facts of the case are that the petitioner is the mother of minor Sahibjot Singh. Her marriage with respondent No.4, Sukhdeep Singh,



was solemnized on 20.11.2019. Out of the wedlock, a male child namely Sahibjot Singh was born on 18.08.2020. The petitioner, respondent No.4 and the minor child thereafter shifted to New Zealand. The minor child was issued a student visa of New Zealand and was admitted in Whangarei Primary School, New Zealand. The case of the petitioner is that on 09.06.2026, respondent No.4 brought the petitioner and the minor child to India on the pretext of visiting their family members. While they were staying at a Sarai at Amritsar, respondent No.4 administered some intoxicating substance to the petitioner by mixing it in milk. When she regained consciousness on 10.06.2026, respondent No.4 had left along with the minor child. It is further the case of the petitioner that respondent No.4 thereafter returned to New Zealand, leaving the minor child in the custody of respondents No.5 to 8. On the complaint of the petitioner, FIR No.147 dated 12.06.2026 was registered under Sections 123 and 305 of the Bharatiya Nyaya Sanhita, 2023. The respondents No.4 to 7 had instituted a civil suit seeking permanent injunction restraining the petitioner from taking custody of the child, wherein it has been admitted that respondent No.4 is residing in New Zealand, whereas the minor child continues to remain in India. The petitioner claims that she is the biological mother and natural guardian of the child and that she has been deprived of meeting and being with her minor son. She has also stated that her New Zealand work visa is valid up to 13.11.2026 and that she intends to return to New Zealand along with her minor son.

3. After notice was issued, the police made efforts to trace the minor child. The houses of respondents No.4 to 6 were repeatedly found



locked. The police also contacted respondent No.4 through the Sarpanch of the village, whereupon respondent No.4 stated that the minor child was with relatives and that they would produce the child before this Court. Thereafter, repeated efforts were made by the police to trace the child.

4. On 17.08.2026, on receipt of secret information, the police came to know that the minor child had been admitted in Kirpal Sagar Academy Boarding School, Bairsal, District SBS Nagar. The police party visited the school. The school authorities admitted that the minor child was in their custody but refused to hand over the child. Subsequently, in compliance with the order dated 26.08.2026, passed by this Court, the child was brought before this Court on 01.09.2026 and the petitioner had a meeting with him. Thereafter, the child was lodged in the same school.

5. It is argued by learned counsel for the petitioner that she is the biological mother and natural guardian of the minor child and that the child has been kept away from her without any lawful authority. It is argued that respondent No.4 himself is residing in New Zealand and the minor child has now been traced to a boarding school in India. It is further argued that the school has refused to hand over the child even to the police and has refused access to the child without an order of this Court. Learned counsel argued that the present case is, therefore, not a case of an ordinary dispute between two parents regarding custody but a case where the minor child is physically in the custody of a boarding school and the petitioner, being the mother, has been deprived of his custody. It is, thus, argued that the custody of the child is



required to be handed over to the petitioner, being his natural mother. Learned counsel has relied upon the judgment of this Court in ***Rashneet Kaur v. State of Haryana, 2022(3) RCR (Civil) 192*** and the judgments of the Hon'ble Supreme Court in ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, 2019 (3) RCR (Civil) 104***, ***Gohar Begam v. Suggi alias Nazma Begam, (1960) 1 SCC 597***, ***Syed Saleemuddin v. Dr. Rukhsana, AIR 2001 SC 2172***, ***Yashita Sahu v. State of Rajasthan, (2020) 3 SCC 67*** and ***Roxann Sharma v. Arun Sharma, 2015 (2) RCR (Civil) 93*** and argued that the writ of habeas corpus can be issued for restoration of custody of a minor where the custody is unlawful and that the welfare of the child is of the paramount consideration.

6. Learned State counsel has not disputed the factum of the child being admitted in the aforesaid school and has prayed for passing the appropriate directions in the matter.

7. On the other hand, learned counsel for respondent No.4 argued that the present petition is not maintainable and is based on false facts. It is argued that respondent No.4 is the father and natural guardian of Sahibjot Singh and that the child is in his legal custody. It is further argued that respondent No.4 got the child admitted in a boarding school for his education, well-being and safety. It is further submitted that after the incident in India, he got his son admitted in a boarding school, booked an emergency ticket and returned to New Zealand. It is argued that the minor child is safe and happy and that respondent No.4, being his father and natural guardian, is entitled to retain his custody. Hence, it is urged that the petition is liable to be dismissed.



8. Learned counsel for respondents No.5 to 7 has argued that none of these respondents has custody of the minor child and they are not in contact with the child or respondent No. 4.

9. This Court has heard the rival submissions of learned counsel for the parties.

10. Before delving into the dispute, this Court considers it appropriate to discuss the principles of law regarding maintainability of a habeas corpus petition and its scope in child custody matter. Reference can be made to ***Tejaswini Gaud's case (supra)***, wherein the Hon'ble Supreme Court has held that a writ of habeas corpus is maintainable for restoration of custody of a minor where the detention of the minor is illegal and without authority of law. The Hon'ble Supreme Court has also held that the availability of an alternative remedy under the Guardians and Wards Act or the Hindu Minority and Guardianship Act does not operate as an absolute bar to the exercise of writ jurisdiction in an appropriate case. The same principle can be traced to the judgment in ***Gohar Begam's case (supra)***, wherein the Hon'ble Supreme Court recognised the jurisdiction of the High Court to issue a writ of habeas corpus for restoration of custody of a minor where the detention is without lawful authority. Reference can also be made to ***Syed Saleemuddin's case (supra)***, wherein the Hon'ble Supreme Court has held that in a habeas corpus petition concerning custody of a minor, the principal question is whether the custody of the minor is unlawful or illegal and, if so, whether the welfare of the child requires that the custody be changed.



11. Reference can also be made to *Yashita Sahu's case (supra)*, wherein Hon'ble Supreme Court has reiterated that a habeas corpus petition concerning custody of a minor is maintainable even where the child is in the custody of one of the parents. It was emphasised that the welfare of the minor is of paramount consideration and that the rights and interests of the child have to be kept in view. The judgment in *Roxann Sharma's case (supra)* also lays down the principle that, in the case of a tender-aged child, custody ordinarily remains with the mother unless the father is able to disclose cogent reasons showing that the welfare of the child would be jeopardised if the custody remains with the mother. This Court in *Rashneet Kaur's case (supra)*, after considering the aforesaid judgments, also examined the question of custody of a tender-aged child. The principles laid down by the Hon'ble Supreme Court in relation to the welfare of the minor and custody of a young child were applied and the custody of the child was directed to be restored to the mother.

12. The above principles have to be applied to the facts of the present case. Respondent No.4 admittedly claims custody of the minor child on the basis of his status as the father and natural guardian. His reply, however, itself shows that he got the minor child admitted in a boarding school and thereafter returned to New Zealand. The present physical custody of the child has accordingly not been shown to be with respondent No.4. The status report filed by the State clearly records that the minor child was traced at Kirpal Sagar Academy Boarding School, Bairsal, District SBS Nagar. The school authorities admitted that the child was in their custody. They, however,



refused to hand over the child and even refused to permit the police party to see and meet the child without an order of the Court. It is also significant that respondents No.5 to 7 have themselves denied having custody of the minor child. Respondent No.5 has stated that he does not have custody and that he merely believes that the child may have been admitted by respondent No.4 in some boarding school. Respondents No.6 and 7 have taken substantially the same stand. Thus, on the material presently before this Court, the minor child is physically in the custody of the boarding school and not in the physical custody of respondent No.4. The school has not placed before the police any order of a competent Court under which it is authorised to retain the minor child or under which the child cannot be handed over to his mother. Rather, the school has refused even access to the police without an order of this Court. The present case, therefore, cannot be treated merely as a dispute between the petitioner and respondent No.4 regarding their respective claims to permanent custody. The immediate issue is the physical custody of the minor child, who is about five years of age, and the circumstances in which he is presently being retained in the boarding school.

13. The principle laid down in *Tejaswini Gaud's case (supra)* regarding restoration of custody where the detention of a minor is without lawful authority is attracted to the present facts. Likewise, the principles laid down in *Gohar Begam's case (supra)* and *Syed Saleemuddin's case (supra)* require the Court to examine the legality of the present custody as well as the welfare of the minor. The mere fact that respondent No.4 is the father and natural guardian cannot, in the facts of the present case, by itself justify the



continued physical retention of the child in the boarding school when respondent No.4 himself is residing in New Zealand and the child is admittedly in the physical custody of the school in India. The age of the minor child is also relevant. He was born on 18.08.2020 and is presently about six years old. The principles noticed in *Roxann Sharma's case (supra)* and followed by this Court in *Rashneet Kaur's case (supra)* regarding custody of a tender-aged child also require consideration of the mother's custody, subject to the welfare of the child.

14. This Court is conscious that proceedings relating to permanent custody and guardianship are required to be decided by the competent forum after considering the rights of both parents and the welfare of the child. The present proceedings are concerned only with the legality of the existing physical custody and the immediate restoration of custody of the minor child. In view of the above facts and the principles laid down in the aforecited judgments, this Court is of the view that the minor child is required to be handed over to the petitioner. Accordingly, the present petition is allowed. The Principal and office bearers of Kirpal Sagar Academy Boarding School, Bairsal, District SBS Nagar, are directed to hand over the custody of minor Sahibjot Singh to the petitioner forthwith. Respondents No.1 to 3 shall ensure compliance of this order and extend all necessary assistance for securing the release and handing over of the minor child to the petitioner.

15. It is made clear that the present order shall not amount to a final adjudication of the permanent custody or guardianship rights of the petitioner



or respondent No.4. Respondent No.4 shall be at liberty to avail appropriate remedy, in accordance with law, before the appropriate forum for seeking permanent custody of the minor child. The competent forum shall consider such proceedings on their own merits and in accordance with law.

16. No observation made in the present order shall be treated as an expression of opinion on the merits of the rival claims of the parties regarding permanent custody or guardianship of the minor child.

09.09.2026

Waseem R. Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No