CNR No: PHHC011005812026

2026:PHHC:200615

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRWP No.7005 of 2026 (O&M)
Reserved on:- 03.11.2026
Pronounced on:- 13.11.2026
Uploaded on:- 13.11.2026

Taina

…..Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

*****

Argued by: Ms. Manisha Nehra, Advocate
for the petitioner.

Mr. Ravinder Singh, DAG, Punjab.

Ms. Arshdeep Kaur, Advocate
for respondents No.5 to 7.

VIKRAM AGGARWAL, J.

The petitioner has instituted the present writ petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for the issuance of a writ in the nature of habeas corpus directing the respondents to hand over the custody of the minor child (Aradhana Sandhu) to the petitioner.

2. The case set up by the petitioner is that in October 2019, she had cleared the IELTS examination and had planned for higher studies and settling down in the United Kingdom. The sister of respondent No.5

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

(Rajender Sandhu) (now the husband of the petitioner) sent a marriage proposal, as a result of which, marriage of the petitioner was solemnized with respondent No.5 on 21.10.2020.

2.1. On 08.03.2021, the couple shifted to the United Kingdom on a student visa. The petitioner is presently stated to be residing in the United Kingdom on a skilled worker visa.

2.2. A female child Aradhana Sandhu was born from the wedlock on 05.04.2022 in the United Kingdom.

2.3. In the end of 2024, relations between the couple got strained and the conduct of respondent No.5 is alleged to have become abusive towards the petitioner and the minor child.

2.4. It is alleged that in June 2025, respondent No.5 took the minor child with him on the pretext of taking her to India for summer vacations but instead of bringing her back, she was left in the custody of respondents No.6 and 7 (parents of respondent No.5). Respondent No.5 is stated to have returned to the United Kingdom without the child.

2.5. As per the petitioner, despite repeated requests and efforts, the child was not brought back and on 11.11.2025, respondent No.5 completely separated from the petitioner and all communication between the couple ceased.

2.6. The petitioner instituted recovery of custody proceedings before the competent Court in the United Kingdom (Annexure P-5).

2.7. Vide order dated 25.03.2026 (Annexure P-6) passed by the High Court of Justice, Family Division, London, it was, on a provisional

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

basis, held that the child had been wrongfully removed to India by respondent No.5 and the petitioner had been prevented from exercising parental responsibility.

2.8. Enforcement measures are stated to have been initiated pursuant to the passing of the said order and order dated 01.04.2026 (Annexure P-7).

2.9. On 15.04.2026 (Annexure P-8), the High Court of Justice, Family Division, United Kingdom, reiterated that the minor child had habitually remained a resident in England and Wales and a direction was issued to respondent No.5 to return the child.

2.10. It is also the case of the petitioner that the minor child was granted admission in the Oriel Academy, West London, United Kingdom and confirmation in this regard had been received.

2.11. Vide order dated 05.05.2026 (Annexure P-10), passed by the High Court of Justice, Family Division, England and Wales, the minor child was directed to continue as a ward of the Court and respondent No.5 was directed to return the child to England and Wales by 20.05.2026. The enforcement authorities in India were also requested to extend appropriate action regarding assistance in locating, safeguarding and facilitating the return of the minor child.

2.12. Having left with no other option, the petitioner is stated to have filed the instant petition.

3. The petition has been opposed by respondent No.5.

3.1. In the reply filed, the factum of the marriage, the parties

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

having gone to the United Kingdom and the birth of the child have been admitted.

3.2. The stand taken is that the minor child is not confined by any stranger or a person claiming custody adversely to her father and that she was residing with respondent No.5 who is her biological father and natural guardian.

3.3. It is also the case of respondent No.5 that the minor child had been brought to India with the consent of the petitioner and in a legal manner.

3.4. It is also the case of respondent No.5 that after the birth of the minor child in April 2022, the petitioner had resumed employment within three to four months and had joined Tim Hortons, Gravends, whereas respondent No.5 was employed with Nehal Constructions Private Limited. Since both parents had employment commitments, the minor child was sometimes left in the care of friends or acquaintances during working hours. It is the case of respondent No.5 that it was he who had been looking after the child, preparing her meals, bathing and dressing her up, attending to her routine issues and had been taking her to parks and the Gurudwara. Certain allegations have been levelled against the petitioner of not having fulfilled her responsibility of her mother and of she being involved in an extra-marital affair.

3.5. It has been averred that it was the petitioner who had herself completed the visa application concerning the minor daughter and had arranged and booked the flight tickets for the answering respondent and the

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

minor child to travel to India in June 2025.

3.6. It is the case of the answering respondent that before returning to the United Kingdom on 16.07.2025, he had made educational arrangements of the minor child in India and she was admitted in Oxford International School in July 2025. It has been averred that after respondent no.5 returned to the United Kingdom, the minor child remained with her paternal grandparents (respondents no.6 and 7). Certain other averments have also been made.

4. As has been noticed in such cases, there are allegations and counter-allegations, which, in the considered opinion of this Court, are not relevant for the purpose of adjudication of the present petition.

5. Learned counsel for the parties were heard.

6. It was strenuously urged by learned counsel for the petitioner that the mother being a natural guardian and the girl child being less than five years of age, her custody is required to be handed over to the petitioner. Reference was made to the orders passed by the Courts in the United Kingdom. It was also submitted that keeping in view the welfare of the minor child, her custody deserves to be given to the petitioner. In support of her contentions, learned counsel places reliance upon the judgment of the Apex Court in ***Yashita Sahu Versus State of Rajasthan and others, 2020 AIR Supreme Court 577*** and the judgments of Coordinate Benches in the cases of ***Mandeep Kaur Versus State of Punjab and others, 2021(3) RCR (Civil) 451*** and ***Harjeet Kaur Versus State of Punjab and others (CRWP No.7195 of 2026, decided on 10.09.2026)***.

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

7. *Per contra*, learned counsel for respondents No.5 to 7 opposed the prayer stating that the child is very well settled with respondents No.5 to 7 and that keeping in view the taxing schedule of the petitioner and her illicit relation with another person, it would not be in the interest of the child that her custody is handed over to the petitioner.

7.1. It was also stated that a writ of habeas corpus is not the right remedy for seeking custody of a minor child and that the petitioner should have instituted a petition under the relevant statute before a competent Court of law. In support of his contentions, reliance was placed upon the judgment of the Apex Court in the case of ***Nithya Anand Raghavan Versus State of NCT of Delhi and another (Criminal Appeal No.972 of 2017, decided on 03.07.2017),*** the judgments of Coordinate Benches in the cases of ***Poonam Kalsi Versus State of Punjab and others (CRWP No.7913 of 2020, decided on 20.04.2022)***; ***Jyotsna Goel Versus State of Haryana and others (CRWP No.55 of 2026, decided on 24.03.2026)*** and ***Rimpy Versus State of Punjab and others (CRWP No.1439 of 2025, decided on 13.02.2025*** and the judgment of a Division Bench in the case of ***Reetu Verma Versus State of Haryana and others (LPA No.3716 of 2018, decided on 23.05.2019)***.

8. I have considered the submissions made by learned counsel for the parties.

9. It is no longer *res integra* that a writ of habeas corpus is maintainable even if the child is in the custody of another parent. In the case of ***Yashita Sahu Versus State of Rajasthan and others*** (supra), the

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

Apex Court held 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 v. Arvand M. Dinshaw & Ors., (1987) 1 SCC 42, Nithya Anand Raghavan v. State (NCT of Delhi) & Anr., (2017) 8 SCC 454 and Lahari Sakhamuri v. 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. A similar view had been taken by the Apex Court in the case of ***Tejaswini Gaud and others Versus Shekhar Jagdish Prasad Tewari and others, 2019 AIR Supreme Court 2318***. In the said case, the Apex Court held 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*

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

> *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.*"

11. An identical view has been taken by the Apex Court in a very recent judgment in the case of ***Suryakanth M. Raikar Versus The State of Karnataka and others [arising out of S.L.P. (Crl.) No.8172 of 2026, decided on 19.08.2026]***.

12. The position of law which, therefore, emerges is that though ordinarily, the basis for the issuance of a writ of habeas corpus is illegal detention. However, it is equally well settled that the welfare of a child is the most relevant issue in the case of custody of a child. The mere availability of an alternative remedy of filing a petition under the provisions of the Hindu Minority and Guardianship Act, 1956 or any other relevant statute would not be treated as a hindrance in the issuance of a writ of habeas corpus, especially where such remedy, in the particular facts of a case is not an efficacious remedy.

13. Section 6 of the Hindu Minority and Guardianship Act, 1956, clearly lays down that the natural guardian of a minor child is the father and in his absence, the mother. However, it also lays down that the custody of a child below the age of five years would normally be with the mother.

14. This Court also interacted with the parties and the minor child was also directed to be brought to Court. As the case always is, both sides had their own tales to tell. The child was found to be too small to interact

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

with. She hardly spoke. The child was well dressed and appeared comfortable. She was asked to go to her mother, upon which she looked towards her father seeking a nod from him. On she having been re-assured by the Court, she went to the lap of her mother and appeared to be quite comfortable with her. The father also seemed to be concerned about her welfare and stated that since the petitioner had a relationship with another person, the child was being neglected.

15. Now the question which arises for the consideration of this Court is as to whether the custody should remain with respondent No.5 or it should be directed to be handed over to the petitioner.

16. The Courts in England have also issued a direction to respondent No.5 to hand over the custody of the minor child to the petitioner. Speaking about the comity of Courts, the Apex Court held in the case of ***Yashita Sahu Versus State of Rajasthan and others*** (supra) that the doctrine of comity of Courts is a very healthy doctrine and that if Courts in different jurisdictions do not respect the orders passed by each others, it will lead to contradictory orders being passed in different jurisdictions. It was also held that no hard and fast guidelines can be laid down in this regard and each case has to be decided on its own facts. It was reiterated by the Apex Court that it is the welfare of the child which would always remain the paramount consideration. This Court is also conscious of the fact that in custody matters, the welfare of the child is of paramount consideration.

17. This Court has given its thoughtful consideration to the issue

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

in hand.

18. Concededly, the minor child was born in the United Kingdom and is, therefore, a British citizen by birth. The mother of the child is in the United Kingdom. The father is presently in India. Whether he goes back to the United Kingdom or not is not known. For a child aged under five years and more so, when it is a girl child, the mother would be in a better position to look after the child. There can never ever be any doubt about the amount of care that a mother can give to her child. Not only this, the child would have more support and facilities in the United Kingdom especially since she is a British citizen and her mother is gainfully employed there. No doubt, the grandparents would also have a great amount of love and affection for the daughter of their son but if the scales are weighed, they definitely tilt towards the mother.

19. This Court made an attempt of reconciliation between the parties as well but both seemed to be adamant, at least at this stage. The Court, therefore, did not venture much into the issue since it was seized only of the issue of custody of the minor child for the time being and, therefore, it was her welfare alone which was weighing with the Court.

20. The allegations and counter-allegations are not required to be dealt with for, it is too well known that in matrimonial litigations, there is a tendency of parties to level allegations and counter-allegations. The factum of the petitioner being in a relationship with some other person, even if taken to be true, would not lead this Court to a conclusion that she would not look after the child.

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

21. I have gone through the precedents relied upon by learned counsel for respondents No.5 to 7. There is no quarrel with the view taken in the respective decisions. However, it has to be borne in mind that as held by the Apex Court in ***Yashita Sahu Versus State of Rajasthan and others*** (supra), no such parameters can be laid down and it is the welfare of the minor child which is of paramount consideration which would have to be decided on a case to case basis.

22. Having considered the totality of the facts and circumstances, as discussed in the preceding paragraphs, this Court is of the considered opinion that it would be in the welfare of the child that for the time being, she remains in the custody of her mother i.e. the petitioner. Parties may eventually get the issue of custody decided in a competent Court of law, if so required, but for the time being, it is reiterated that it is in the welfare of the child that the custody is handed over to the mother.

23. That being so, the present petition is allowed with the following directions:-

(i) *Respondent No.5 shall hand over the custody of the minor child Aradhana Sandhu to the petitioner on 18.11.2026 at 11.00 A.M. at the parental house of the petitioner.*

(ii) *In case of failure to do so, the Senior Superintendent of Police, Nawanshahr and the SHO of the concerned area where respondents No.5 to 7 reside, shall ensure that the custody of the minor child is handed over to the petitioner.*

(iii) *As stated, parties shall be at liberty to get the issue of*

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.

custody finally settled under the relevant statute by the competent Court.

In case of such a petition being filed, the same shall be decided strictly on merits and being uninfluenced by any observation made in the present order.

(iv) In case respondent No.5 goes to the United Kingdom, he shall be permitted to meet his minor daughter on every Sunday for two hours between 10.00 A.M. and 05.00 P.M. or on video call for about 15-30 minutes subject to any orders passed by the Courts in the United Kingdom. If he stays in India, he would be permitted to interact with his daughter on video call as stated above.

The Senior Superintendent of Police, Nawanshahr and the SHO of the concerned area where respondents No.5 to 7 reside, shall ensure that no untoward incident takes place during the handing over of the custody of the minor child to the petitioner and the transition is smooth so as to not cause any kind of mental trauma to the minor child.

24. Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

November 13, 2026
Yag Dutt

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

YAG DUTT
2026.11.13 18:04
I attest to the accuracy and
authenticity of this
order/judgment.