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

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CRWP-7809-2024**Date of decision: 28.08.2024**

██████████

...Petitioner

V/s

STATE OF PUNJAB AND ORS

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Malkit Kaur, Advocate for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab.

Mr. Manish Bansal, P.P., U.T., Chandigarh with
Mr. Shubham Mangla, Advocate
for the respondent-U.T., Chandigarh.

MANJARI NEHRU KAUL, J. (ORAL)

1. Petitioner has approached this Court under Article 226 of the Constitution of India, seeking a writ in the nature of Habeas Corpus, directing the official respondents to release the detinue, his daughter, namely ██████████, forthwith from the illegal custody of respondent No.6.

2. This Court while issuing notice of motion passed the following order :-

"Petitioner has approached this Court under Articles 226 of the Constitution of India, seeking a writ in the nature of Habeas Corpus, directing the official respondents to release the detinue (his daughter) namely ██████████ forthwith from the illegal custody of respondent No.6.

Notice of motion.

On the asking of the Court, Mr. Manish Bansal, Public Prosecutor, Chandigarh, accepts notice on behalf of the official respondents and seeks time to file reply.

Adjourned to 28.08.2024.



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Let requisite copies of the complete paper book be supplied to the learned counsel for U.T. Chandigarh during the course of the day. Respondent No.3–Senior Superintendent of Police, U.T. Chandigarh, is directed to ensure the presence of detinue, before the Court of learned Chief Judicial Magistrate, Chandigarh, on 14.08.2024, who would record her statement. The learned CJM, Chandigarh, is directed to record the statement of the detinue as per the Standard Operating Procedure (SOP) laid down by Hon’ble the Supreme Court in Devu G. Nair Versus The State of Kerala and others 2024 INSC 228.

In case detinue has been illegally detained by the private respondents and she expresses her willingness to go with the petitioner, she may be permitted to do so. Learned CJM, Chandigarh, shall ensure that the life and liberty of the detinue is not jeopardized at the hands of the private respondents.

Report of learned CJM, Chandigarh, be called for the date fixed. Copy of this order be sent to the quarter concerned for strict compliance.”

3. In compliance of the above order, the alleged detinue was produced before the learned JMIC, Chandigarh on 17.08.2024, and got her statement recorded. The report of the learned JMIC, Chandigarh along with the statement of the alleged detinue has been sent in a sealed cover to this Court and is annexed at Flag ‘X’.

The said report has been opened in the Court and perused.

The statement of the alleged detinue (Flag ‘X’) as well as the report of the learned JMIC, Chandigarh is reproduced hereinunder:-

“Present: Prosecutrix/victim in person along with LC Santosh No. 202 and 10 ASI Ramesh No. 3075.

An application has been produced before me being Duty Magistrate at about 12.10 AM today, for recording the statement of victim, in view of the order passed by Hon'ble Punjab and Haryana High Court dated 12.08.2024. It has been contended by the 10 that the statement of the



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prosecutrix/victim is necessary to be recorded at this time, upon her own request as there are chances of her non-availability later on.

Upon this, the prosecutrix/victim was made to sit alone for sufficient time in the Camp Office of the undersigned for reflection. The police officials were directed to leave the room. After assuring that she has become comfortable, the undersigned asked her certain questions to ascertain her voluntariness and to rule out any coercion or pressure upon her from any corner. She was also asked the reason for suffering her statement during the late hours of the night, upon which she expressed her non-availability during the Court hours on account of her nature of work.

Therefore, after ascertaining that she is free from any pressure or coercion, the undersigned proceeded to record her statement on oath, which was read over and explained to her and after admitting it to be correct, she signed upon the same. She was specifically asked about any threat to her security, upon which she stated that she is safe at the place where she is residing and did not intend to go to her father's house. After recording the statement, the IO and the Lady Constable have been recorded to escort her safely to her current place of residence as per her desire. She has also been directed to appear in the Court as and when desired for further proceedings, if necessary.

Necessary intimation to the Ld. CJM, Chandigarh as well as report along with statement of the victim/prosecutrix in a sealed envelope to Hon'ble High Court be also sent in this regard.

Date of Order: 17.08.2024

sd/-

*Rubina Josan, PCS Judicial
Magistrate Ist Class, (D)
Chandigarh/UID No.
PB0540"*

Statement of alleged detainue

मेरा पती शुरू से ही शराब पीकर मारता पीटता था जिससे मैं परेशान होकर
और एक भाभी मेरे पिता साथ ही रहते हैं। जब से मैं आई, मेरे पिता और भाई
मुझे अपने पती के पास जाने को मजबूर करने लग गए। पिता कहते थे पर
दोनों भाई मार पीट भी करते थे। पिछले 4-5 महीने से ज्यादा मारने पीटने लग



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गए थे। मैं परेशान होकर 4-5 दिन पहले घर छोड़कर चली गई। और जीरकपुर आकर लोगों के घर खाना बनाने का काम करने लग गई जो मेरी एक सहेली ने लगवाया था और एक कमरा भी किराए पर दिलवाया था। मैंने अपनी मर्जी से पिता और भाईयों से परेशान होकर घर छोड़ा। अब खुद अपनी रोजी रोटी कमा रही हूँ। राहुल से मेरा कोई लेना देना नहीं हूँ। ना ही किसी और से। मैं अकेली खुश हूँ। मुझे ना ही पिता पास जाना हटना ही पती पास।

• कुछ और कहना चाहते हो? नहीं।



Rubina JMPC, Chd. 17/08/014.”

4. The Standing Counsel for UT has also submitted that the alleged detinue, a 30 year old woman, has explicitly stated before the learned Judicial Magistrate, Chandigarh that she does not wish to return to her father, who is the petitioner in this case, due to continuous physical harassment by her brothers who have been pressuring her to return to her matrimonial home and live with her abusive husband, from whom she has separated. It has been also submitted by the learned Standing Counsel for the UT that the alleged detinue still further stated while getting her statement recorded that she is presently residing separately from both her father, the petitioner, and her husband, out of her own free will without any coercion or pressure. Furthermore, the Court before which the statement was made by the alleged detinue has also confirmed that there was no external influence on her decision.

5. On the other hand, learned counsel for the petitioner has vehemently argued that the custody of the alleged detinue must be entrusted to the petitioner, who is her father. Learned counsel has asserted that the alleged detinue has been unduly brainwashed and manipulated by respondent No.6 into



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living separately from her father. Furthermore, it has been highlighted that the two minor children of the alleged detinue are suffering due to her separation from her husband, making it imperative for her to return to the petitioner's home to care for them after bringing them back from her matrimonial home.

The learned counsel for the petitioner has further urged this Court to give due consideration to the legitimate concerns of a father who is worried about the safety and well being of his daughter, as well as the social reputation of both his family and his daughter. A prayer has been made that a compassionate view be thus taken by allowing the custody of the alleged detinue to be handed over to the petitioner. Lastly, the learned counsel for the petitioner has vehemently emphasized that the potential consequences of allowing the alleged detinue to remain with respondent No.6 must also be weighed, as it could result in severe and irreparable damage to her relationship with her family.

6. I have heard learned counsel for the parties and perused the relevant material placed on record.

7. The writ of Habeas Corpus is one of the most powerful tools designed to protect individual liberty against illegal detention. Its core object is to ensure that no person is deprived of their freedom without legitimate cause. When a petition for issuance of a Writ of Habeas Corpus is brought before the Court, it is tasked with examining whether the alleged detinue has been illegally detained. The ambit of this writ is confined strictly to assessing the legality of the detention, and thus, the Court must act within this defined scope.

8. In the present case, the alleged detinue, an adult woman aged 30 years, has unequivocally declared that she does not wish to return to the



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petitioner, her father. This Court has carefully considered her statement (Annexure-‘A’) and now must ascertain whether her continued absence from the petitioner and her family constitutes illegal detention. The essence of the Writ of Habeas Corpus is to uphold the freedom and autonomy of individuals, ensuring that no person is detained against their will without lawful cause.

Despite this, the learned counsel for the petitioner has persistently presented arguments rooted in social concerns and potential consequences of the alleged detainee’s decision to live independently. It has been argued by the learned counsel for the petitioner that the alleged detainee’s choice to live separate from her father, may result in social repercussions, which the Court should consider, and that denying custody to the petitioner would amount to injustice to him and other family members, including her minor children. However, such arguments, irrespective of their intent, fall outside the purview of this Court in the context of a Writ of Habeas Corpus.

9. It is imperative to emphasize that once the alleged detainee, who is a fully mature adult, capable of making her own decisions, has clearly expressed her desire to live independently, this Court cannot override her will. The Writ of Habeas Corpus is a constitutional mechanism to protect the personal liberty of an individual, and the Court is constitutionally bound to uphold this right. It cannot, and should not, compel an adult to return to the custody of another, even if that person is a well-meaning parent.

10. The role of the Court is not to enforce social norms or morality but to uphold the principles of constitutional morality. The argument of the learned counsel for the petitioner that a father would be a better custodian of an adult



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woman than she herself is, is not only antiquated but also runs contrary to the constitutional guarantee of personal liberty. It is crucial to reaffirm that an adult woman, like any other citizen, possesses the right to be treated as an independent and autonomous individual, free from coercion and undue influence.

11. Furthermore, the identity and autonomy of an adult woman are not defined by her relationships or familial obligations. The Constitution safeguards her right to live freely and make her own choices, without external interference. The notion that her father, or anyone else, can impose their will upon her based on a perceived social role is a direct affront to the right of equality and personal liberty enshrined in our constitution.

12. This Court, therefore, must ensure that the alleged detinue's rights are protected, and her autonomy is respected, without yielding to extraneous considerations. While the concerns of the petitioner, are understandable, they cannot override the alleged detinue's constitutional rights to personal liberty.

13. As a sequel to the above, no ground is made out for issuance of a writ in the nature of Habeas Corpus directing the official respondents to release the detinue namely XXXX XXXX from the illegal custody of respondent No.6.

14. Accordingly, the instant petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

August 28, 2024
poonam

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