Petitioner's throat. This was the result of a trivial matter where Petitioner had displayed some concerns for infant child not being put on his mittens for his protection. That out of courtesy and mercy, and with some hope in of rectification of her ways, Petitioner hesitated reporting this to police for the fear she would be arrested in a foreign country. That numerous texts were exchanged with Respondent No 2 afterwards and in one of the text she accepted that her mother i.e. Respondent No 4 assaulted and strangulate Petitioner. That the same can be provided, if needed. That since the inception of marriage, the Respondent No.2 has been under constant touch and impression of her mother. That the Respondent No.3 and 4 has on innumerable times caused discomfort in the matrimonial ties of the parties.

vi. That it is stated that the Petitioner had to give in to demands of monetary and non-monetary both. That in one such incident that took place on 8th April 2021, Respondent No 2 called 911 and made false statements in front of the Police officers. That after a mediative thought she stole the script right out of notorious George Floyd incident and claimed that the Petitioner did to her what convicted police office did to Mr. Floyd. That she gave false statement under oath that the Petitioner stepped on her 'neck' and caused obstruction to her breathing. She made series of false statements, one after the other. That evidence of her falsehood can be provided to

support the same. Tired of COVID induced difficulties and always too greedy of easy and luxurious life, Respondent No.2 abused federal and state laws and perjured in front of New York state police officers and with full blown conspiracy by other accused and ran away to India with Petitioner's minor on 30th April 2021. Court and police officers found Respondent No.2's statement false and designed to frame someone and hence an investigative case was ordered against Respondent No.2 herself. That Respondent No 2 despite being aware of the investigation, have been hiding behind jurisdictional barriers, and never provided any cooperation in the investigation. The Respondent No.2 very cruelly and narcissistically not only subjected Petitioner to mental and psychological torture through her falsehood and crime of perjury, but she also took away the minor son- who is an American citizen from the custody of the Petitioner. That vide order dated 10th July, 2023 the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida denied all the allegations of the domestic violence. The copy of the order is attached as **ANNEXURE-P2.**

vii. That it is stated that Respondent No.2 ran away with the child to India, mainly due to the fear of being caught for her lies and prosecution. That please note that transportation of American child across the country without Petitioner's consent and without a court order is a federal criminal

offense. The Respondents not only kidnapped Petitioner's child, but they have also held him in illegal custody against Petitioner's will for last more than 3 years. That Respondent No.2 under brain washed by other Respondents made huge demands to ransom money using minor child as the leverage, which is nothing less than extreme mental trauma and harassment caused by her and other Respondents. Their demands have continued numerous times despite Petitioner facing business bankruptcy in United States. Any funds sent for the welfare of the child was not spent on him. That many a times, the Petitioner has tried to give in to the demands of Respondents for the sake of his child. That relevant transaction proofs can be provide at a later stage.

viii. That it is important to note that in June 2016, during one of the arguments, Respondent No.2 physically assaulted Petitioner, by deliberately twisting Petitioner's small hand finger tilting it to 90 degrees therefore resulting in its fracture. Respondent No.2 has depicted her violent behaviour in past, resulting in other physical injuries. None of the incident resulted in even a scratch to her. That the photographs showing the smashed finger is annexed as **ANNEXURE -P3**. The Respondent No.2, dissatisfied with not injuring enough, continued to verbally torture Petitioner while he was driving to hospital and even after she was made aware of initial diagnosis of fracture in hand.

That Petitioner was hospitalized and a surgery on his hand was performed. Metal pins were inserted in his hand and removed many weeks later. Given that his trade involved typing, this incident made huge impact on life. That Petitioner was even prohibited from driving. However, Respondent No.2 continued to force him to drive for every matter requiring driving, including driving more than 1500 Kms from Jacksonville to the Hotel with fractured hand. That Respondent No.2, in her usual display of brutal and callous attitude, did not even once considered to pick-up her in laws when her inflicted injury required Petitioner not to drive. That the Hand Surgery Report from Erie County Medical Center, St, Buffalo, New York is attached as **ANNEXURE -P4.**

ix. That it is apt to mention that in July 2019, Respondent No.2 again in a fit of anger bit Petitioner's left-hand area where thumb meets hand with full force until hand started to bleed and almost repeated her previous act of atrocities towards me. While trying to leave the scene of argument, Respondent No.2 pulled Petitioner towards her and used her mouth to bite with extreme force and duration. Blood was gushing out and bones could be seen from deep wound. Respondent No2 then pressured Petitioner heavily to not seek any medical attention as she recommended wound to heal by itself. The Petitioner escaped the day from the cruelty and drove himself to emergency Section at hospital in Westfield, New York. That

Petitioner can provide the medical report from Allegheny Health Network where he went for treatment. That she has not only caused immense physical harm to me, but she has inflicted emotional, mental, verbal harassments in the past upon Petitioner and his parents. The copy of the medical report is annexed as **ANNEXURE-P4.**

x. That it is pertinent to mention one day argument started wherein Respondent No.3, threatens to falsely implicate Petitioner and his entire family, Respondent No.2 proceeded with kicking him with her legs violently and vigorously. The voice recording of the same can be provided, if required by the Hon'ble Court. That Petitioner asked numerous times on the reason for assault, or why Respondent No.3 threatened to falsely implicate family, Respondent No.1 could not provide any reason. When Petitioner prompted to call police Respondent No.2 pleaded emotionally to not do so. Even though Petitioner ended not call police having mercy on her, a nearby residents to other room in hotel called police which Respondent No.2 misunderstood to have been called by Petitioner. For the fear Respondent No.2 would be thrown in jail, Petitioner did not divulge any details of assault to police at that time. Respondent No.2 carried with her deep grudge of police being called upon her after the incident prompting her to take revenge.

xi. That it is pertinent to note that Respondent No.2 has always shown a brutal and agitated

attitude towards Petitioner since the inception of their marriage. That her interest and that of other Respondents has always been eventual monetary gain from the relationship. That there have been innumerable instances of physical, verbal, and psychological abuses by her upon Petitioner which exist till date. That there have been instances of inhumane behaviour wherein she burnt Petitioner's legs by pouring hot cooked lentils, inflicted head injuries so on and so forth. That the Petitioner is annexing a photograph whereby head injury inflicted by Respondent No.2 is evidently visible for the perusal of the Court. The same is annexed as **ANNEXURE -P5**.

xii. That it is submitted that between a short period of April 2021 and March 2022 total of INR 21,51,658 of martial funds were transferred without Petitioner's consent. That Respondent No.2 made a demand for Rs.50 Lacs for the child and Rs. 50 Lacs for herself. Numerous text messages evidence of such coercion is available.

xiii. That it is submitted in financial year 2020 when Petitioner was raising his minor child with Respondent No.2, their hotel business was heavily struck by pandemic and income tax return reflects an economic loss of Rs. 20 Lacs. That Respondents No. 3 & 4 have been on lookout for such opportunities of financial distress to influence Respondent No.2 to take extreme measures to extract funds and move to India where those funds can be in their control. The Respondent

No.2, under the influence of law abusing Respondent No.3, with backing by sister of Respondent No.2, engaged in incessant money extortion techniques USING Atharva (minor child) as a shield to achieve their objectives. Respondent No2. remit money from USA to India to an account controlled and used by Respondent No.3 for many months.

xiv. That it is submitted that Petitioner had ownership of a Hotel Business at Findley Lake, New York, USA. That due to the above-mentioned mental harassments and financial hardships caused by the Respondent No.2, the Petitioner left with no other choice has filed under Chapter 11 a bankruptcy petition at Bankruptcy Court in Buffalo, New York, USA. Petitioner's hotel business had been in financial trouble and never really recovered due to damages by Respondent No.2's actions. That Petitioner was forced to file business bankruptcy on 19th Sept 2022 in Buffalo, in bankruptcy court of Western New York.

xv. That it is stated that all of the Respondents have been intimidating Petitioner and his family that if Petitioner do not give them money, they will implicate false legal cases upon them and will not give custody & meeting rights of his child. That it is germane to mention that Respondent No.2 had cunningly sneaked the minor son out of Petitioner's lawful custody and illegally transported minor child to India without any permission, approval, and agreement on 30th April 2021. Further torture was caused when Petitioner was not allowed to have appropriate access

to his child. Please note that Petitioner's son is a United States citizen and not India citizen still she has caused immense mental and psychological trauma by detaching & parting Petitioner from his only son. That such a conduct is nothing short of extreme violence against any human. All the acts of all Respondents have been deliberate, conscious with full premeditation.

xvi. That it is submitted that the day-to-day lifestyle of Respondent No.2 is riddled with fraud, lies and law abuse. That Respondent No.2 misrepresented and defrauded US consulate in receiving US passport with full knowledge of having no consent from Petitioner. That Respondent No.2 did evade paying taxes in USA and is there a Tax Warrant in her name. That Respondent No.2 stole from New York State's funds for unemployment claim for which she was not eligible due to running away to India and thus defrauding the state. That Respondent No.2 also submits a fraudulent resume to receive employment with Amazon in India. That the Petitioner has also filed a complaint of perjury against the Respondent No.2 on 9th August, 2022 for levelling false allegations on Petitioner. The copy of the same is annexed as **ANNEXURE -P6.**

xvii. That it is submitted Petitioner has been at the receiving ends of violence which has been caused over all these years by the Respondents. That the mental & psychological violence still continues till date by deliberately disassociating, separating &

disuniting the minor son of the Petitioner from his lawful custody.

xviii. That it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parents patriae, has in promoting the best interests of the child.

xix. That it is submitted that it is not to say that the question of custody will be

determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between the rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he or she will be equipped to face the problems of life as a mature adult.

xx. That in ***Gippy Arora Vs State of Punjab, Cr WP 543 of 2008, has observed and held in para 15 and 18 as under:***

"15. After careful perusal of the judgments cited by counsel for the respondents, I am of the considered opinion that in none of the said judgments it has been laid down as a rule of law that in all cases of production and custody of the child by a natural guardian should be dismissed merely because it is for another Court i.e. Court of Guardian Judge to determine the question of welfare of the minor child in custody of another person. In view of the ratio of the judgments i.e. Manju Tiwari's case (supra) and a Division Bench of Kerala High Court in Eugenia Archetti Abdullah's case (supra), this Court is of the opinion that High

Court can exercise jurisdiction vested in it under Article 226 of the Constitution of India with respect to the issuance of a writ of habeas corpus when the custody of the child has been taken away by one of the natural guardian by playing a fraud upon the another. It is established from various documents produced on the record that the child in the present case is 11 months old. The custody was with mother but respondent No.2 had come to Amritsar in the month of June, 2008. Respondent No.2 had approached the petitioner wife. He was permitted to take Dasasya Singh with him for two days but on the third day he took him away from Amritsar on June 12, 2008 (Thursday) without telling the petitioner. Thereafter he filed a petition under Section 13 of the Hindu Marriage Act before the Family Court at Ahmedabad on June 24, 2008 and obtained a status quo order regarding the custody of the child in a fraudulent manner. Such a conduct of respondent No.2 on the face of it reflects that he has committed breach of trust with petitioner. He has played a fraud by deliberately deceiving the petitioner with a design to secure the custody of Master Dasasya Singh by taking unfair advantage of the circumstances. It is a clear case of deception in order to gain the custody of the child causing simultaneous loss to another. The Supreme Court in the case of S.P. Chengalvarjna Naidu (dead) by L.Rs. v. Jagannath, 1994 AIR(SC)853 observed as follows:-

Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward

Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/ decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

18. The contention of counsel for respondent No.2 would have found weight in case he had acted in a fair manner. After having fraudulently taken away the custody of the child from an area falling within the jurisdiction of this Court, he has taken a stand that the petitioner is not of sound mind as such welfare of the child lies with respondent No.2. A person who seeks the equity must do equity. It does not lie in the mouth of respondent No.2 to play a fraud with the petitioner and later on claim that he has got a preferential right to keep the custody of the child. The manner in which the child has been taken away from the petitioner cannot have the approval and sanction of law. He should have adopted a legal procedure to take the custody of the child."

xxi. That it has been time and again held that While resolving the disputes between the rival claimants for the custody of a child, the aim of the Court must be to choose the course which will best provide for the healthy growth, development and education of the child so that he or she will be equipped

to face the problems of life as a mature adult.

xxii. That to further add to the ongoing sufferance of the Petitioner, the Respondents have blocked the mobile numbers of the Petitioner and did not allow him to talk or see his child. That the Respondents have solely decided to cut off all the ties of herself and child with the Petitioner and his family members thereby causing extreme mental cruelty upon the Petitioner and his family.

xxiii. That the Respondents have blocked all interaction between the Petitioner and the children in order to alienate the child completely from the Petitioner and to deprive them of the Petitioner's love and affection That as a father, is nothing short of cruelty being inflicted upon the Petitioner as well as the children.

xxiv. That the Respondents' obsession for exclusive custody of the minor child is very much detriment to the child's interest and upbringing.

xxv. That the Petitioner filed a petition in Family Court of State of New York of Chautauqua County for sole custody of the minor child. The summons for the same were duly served and copy of the same is annexed as **ANNEXURE -P7.**

xxvi. That the Petitioner also filed a petition for dissolution of marriage before the courts of Florida, United States. That while dissolving the marriage, the sole custody of the child was once again given to the

Petitioner. The copy of the order is attached as **ANNEXURE -P8.**

3. That the Petitioner is therefore approaching this Hon'ble Court for production, meeting and handing of the minor child along with handing over of his official documents like passport etc. who is unlawfully detained by the Respondents as he is an American citizen. That due to tender age of the minor child it will be for the welfare and in the interest of the minor child that their custody be handed over to the Petitioner.
4. Being aggrieved by the actions of the Respondents and in particular the unlawful detention of the minor children of the Petitioner and getting a sole custody order from courts of United States, the Petitioner is hereby filing a Writ Petition in the nature of Habeas Corpus inter alia on the following grounds:

GROUNDS

a. **BECAUSE** the writ of Habeas Corpus is a time tested last resort measure for securing of the life and liberty of ordinary persons when jeopardized by excesses committed by some entities.
b. **BECAUSE** the extraordinary powers of this Hon'ble Court are most appropriately prayed for in cases such as the present case for protecting the most helpless and powerless persons in a society against state authorities and other elements who have impeded upon their liberty.

c. **BECAUSE** due to tender age of the minor children it will be for the welfare and in the interest of the minor children that their custody be handed over to the Petitioner.

d. **BECAUSE** the Respondents have committed the grave act of cruelty and it will be in the best interest of the children if their custody is handed over to the Petitioner for their betterment.

e. **BECAUSE** it has been held in plethora of cases that a petition for issuance of a writ of habeas corpus to recover the custody of minor child if the minor child is in illegal custody or being detained in custody which would be detrimental to the interest of the minor child is maintainable.

f. **BECAUSE** this is a case of return of a naturalised citizen of America holding an American Passport. That please appreciate that the very fact that the minor is a naturalised citizen of US with American passport and on that account he might, in all probability, have good avenues and prospects in the country where he is a citizen.

g. **BECAUSE** it can’t be overlooked that in taking into account the entire facts and circumstances and the environment in which the child had born and was brought up in his initial building years coupled with the fact that he is a naturalised American citizen, his return to America would be in his best interest. That he

has been brought up in the social and culture value milieu of USA and, therefore, accustomed to the lifestyle, language, custom, rules and regulations of his native country viz., USA. Further, he will have better avenues and prospects if he returns to USA, being a naturalised American citizen.

h. **BECAUSE** the Hon'ble Supreme Court held in ***Manju Tiwari v. Dr. Rajendra Tiwari, (SC) :AIR 1990 SC 1156*** that the "Hon'ble Supreme Court/High Courts can in exercise of its writ jurisdiction under Article 32/226 of the Constitution direct by issuance of a writ of habeas corpus that custody of a minor be given to any other person till decision of the question of its custody by the Guardian/Family Court in accordance with law."

i. **BECAUSE** as held in ***Gohar Begam Vs. Suggi alias Nazma Begam (1960) 1 SCC 597,*** "..Mere availability of an alternate remedy of filing custody petition under the HMG Act/the GW Act is no bar to exercise of extra ordinary writ jurisdiction for issuance of a writ of Habeas Corpus."

j. **BECAUSE** the ***Hon'ble Supreme Court held in Tejaswini Gaud and Ors. Versus Shekhar Jagdish Prasad Tewari and Others, Criminal Appeal No. 838 OF 2019***, it was held that, "*…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…".

k. **BECAUSE** the parties, with the intention of permanently settling down in the US, had decided to have their child born in the US. That the parties had made a conscious decision to have their child born in the US and to make their child a US citizen. Thus, there was a clear intention of the parties to reside in the US permanently.

l. **BECAUSE** the Petitioner had filed substantive proceedings for custody of minor child in the Florida Court, and the Florida Court has passed orders in favour of the Petitioner, granting sole custody to the Petitioner. Hence, considering the settled principles of law, it is clear that the respondent cannot choose to disregard orders passed by the Florida court. Till date, there are no orders passed in favour of the Respondent in either of the proceedings initiated by her in India.

m. **BECAUSE** it is beneficial for minor child to stay in the US, in the area where the petitioner and respondent were residing. The minor child being a US National, is also entitled to all the health care facilities in the US, which

includes comprehensive insurance packages covering the minor child.

n. **BECAUSE** the Petitioner never consented for bringing the child to India, and it was wrongly brought to India by the Respondent. That Respondent has done wrongdoings by removing minor child from one country to another. That A reference was made to the judgment in ***Re H. (infants); (1966) 1 All ER 886*** where the mother had removed the children to England without approval of the New York Court and without having consulted the father though they were residing in New York. It was held that the children were American children and that the American court was the proper court to decide the issue of custody.

o. **BECAUSE** in ***Vasudha Sethi and Ors SLP (Crl.) No. 7129 of 2021)*** held that "*….even if the child was less than 5 years old, the child could be repatriated to the US….*"

p. **BECAUSE** the expression "best interest of the child", which is always kept to be of paramount consideration, is indeed wide in its connotation, and it cannot remain only the love and care of the primary caregiver i.e. the mother in the case of the child who is only a few years old and the basis for any decision taken regarding the child, is to ensure fulfilment of his basic rights and needs, identity, social well-being and

physical, emotional and intellectual development.

q. **BECAUSE** of the tender age of the minor child, natural process of grooming in the environment of the native country is indispensable for his comprehensive development. There is no reasonable ground to believe that minor child should not be repatriated to the US. That he Respondent is not justified in unreasonably depriving minor child of the company of his father. The respondent cannot deprive minor child of his basic human rights only because she has suddenly decided that she does not want to go back to the US, where the parties were permanently settled.

r. **BECAUSE** 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.

s. **BECAUSE** as held in **Sayed Saleemuddin v. Dr Rukhsana, (2001) 5 SCC 247,** "*The object and scope of a writ of habeas corpus in the context of a claim relating to custody of a minor child fell for consideration and it was held that in a habeas corpus petition seeking*

transfer of custody of a child from one parent to the other, the principal consideration for the Court would be to ascertain whether the custody of the child can be said to be unlawful or illegal and whether the welfare of the child requires that the present custody should be changed.

5. *That the Petitioner craves leave of* this Hon'ble Court to rely on other grounds and judgements at the time of hearing/argument of the present petition with the kind permission of this Hon'ble High Court.
6. That this Hon'ble Court has the territorial jurisdiction to adjudicate upon the disputes between the parties as the cause of action arose within the territorial jurisdiction of this Hon'ble Court.
7. The present Writ Petition has been filed at the earliest and without any delay.
8. That similar Petition was been filed by the Petitioner which was dismissed as withdrawn and copy of the order is annexed herewith as **ANNEXURE -P9.**
9. This petition is being made bonafide and in the interest of justice.

PRAYER

In view of the facts and circumstances mentioned above, it is most respectfully prayed that this Hon'ble Court may be pleased to pass the following order/orders: -

a. To issue Petition under Article 226 of the Constitution of India read with section 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023 for issuance of a writ of habeas corpus directing the Respondents for securing production, handing over of the minor child along with handing over of his official documents to the Petitioner
b. Issue a direction to the Respondent No. 1 to trace the minor and produce them before court.
c. Pass any other appropriate order or relief which this Hon'ble Court may deem fit in the peculiar facts and circumstances of the present case, may kindly be passed in favour of the Petitioner.

It is further prayed that, the Petitioner be exempted from filing certified/legible/fair copies of Annexure with the present petition owing to urgency. However, true translated copies of the same are being annexed with the instant petition. Therefore, filing of certified/legible/fair copies of Annexures annexed with the present petition may kindly be dispensed with and true translated copied of the same may kindly be taken on record, in the interest of justice, equality and fair play.

PETITIONER

VERIFICATION

I, Arun Kumar Singh S/o Sh. Udai Vir Singh aged about 40 years, do hereby solemnly affirm:-

1. That I am the Petitioner in the above mentioned case.
2. That contents of Para no. 1 to 9 are true and correct to the best of my knowledge and belief. The last para is prayer made to this Hon'ble Court.

Verified at Chandigarh on day of 2024.

PETITIONER

CHANDIGARH **PREETI MANDERNA & AMRINDER SINGH**

DATED: **D-4672/14 & D-4619/14**

98713-15073 & 99713-50374

Counsels for the Petitioner

IN THE HON'BLE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP NO.___ OF 2024

ARUN KUMAR SINGH …PETITIONER

VERSUS

STATE OF HARYANA & ORS. …RESPONDENTS

Total Amount of Court Fee Affixed

IN THE HON'BLE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP NO.___ OF 2024

ARUN KUMAR SINGH …PETITIONER

VERSUS

STATE OF HARYANA & ORS.

…RESPONDENTS

AFFIDVIT OF SH. ARUN KUMAR SINGH S/O UDAI VIR SINGH AGED ABOUT 40 YEARS R/O H.NO 13, 19-A/4 A. N. Jha Marg, George Town, 211002, ALLAHABD, UTTAR PRADESH HAVING AADHAR NO. 378751403314 AND CONTACT NO. +1 904 704 2410

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That the deponent is fully conversant with the facts of the criminal writ petition as such competent to swear this affidavit.
2. That the deponent has read and understood the contents of the petition along with the prayer and the grounds and deponent believe that all the facts stated therein in the petition are true and correct and the petition is being filed in this Hon'ble Court with the knowledge and belief of the deponent.
3. That the annexure filed along with this petition are true typed copies/fair copies of their respective originals.

4. That the deponent has not filed any such petition in this Hon’ble court or in the Honb’le Supreme Court of India.

CHANDIGARH **DEPONENT**

DATED

VERIFICATION

Verified that the contents of para no.1 to 4 of the above affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed there from.

DEPONENT

LIST OF DATES & EVENTS

S.NO	DATE	PARTICULARS
1.	25-11-2015	The marriage of the Petitioner with Respondent No.2 in Pryagraj, Uttar Pradesh
2.	14-02-2018	That out of wedlock a son was born named Atharva
3.	24-11-2016	That parties travelled India stayed for two weeks
4.	09-02-2017	Respondent flew back to US
5.	June 2016	Petitioner's finger was smashed by Respondent No.2
6.	July 2019	Physical harm being inflicted upon Petitioner by Respondent No.2
7.	30-04-2021	Respondent No.2 solely without permission and intimation took the minor son out of

		custody of Petition from United States
8.		Writ Petition dismissed as withdrawn.
9.		

CHANDIGARH **PREETI MANDERNA & AMRINDER SINGH**

DATED: **D-4672/14 & D-4619/14**

98713-15073 & 99713-50374

Counsels for the Petitioner

2024:PHHC:143977

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

233

CRWP-8059-2024 (O&M)
Date of decision: 11.11.2024

Arun Kumar Singh **...Petitioner**

Versus

State of Haryana and others **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Preeti Manderna, Advocate
for the petitioner. (Through VC)

Ms. Nidhi Garg, AAG, Haryana.

Mr. Deepak Goyat, Advocate and
Mr. Ashwani Talwar, Advocate
for respondents No. 2 to 4.

MANISHA BATRA, J. *(Oral)*

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India making prayer for issuance of a writ in the nature of Habeas Corpus directing the official respondents to get the alleged detenue, who is son of the petitioner, released from the illegal custody of respondents No. 2 to 4 and hand over the custody of the child to the petitioner.

2. Shorn of unnecessary details, the brief facts of the case relevant for the purpose of disposal of the present petition are that the petitioner, who is an NRI, residing in USA, was married to respondent No. 2-Meghna Rana on 25.11.2015. Soon after the marriage, both of them left for USA on 15.12.2015. While residing in USA, they were blessed with a male child on 14.02.2018, namely Atharva Kumar Singh, who being born in USA, is an American citizen. However, the relations between the parties became strained

2024:PHHC:143977

and sour, for which, both of them started accusing each other. In the petition, the petitioner has also alleged that respondent No. 2 had made false allegations against the petitioner of harassing and subjecting her to cruelty. Rather, it was respondent No. 2, who had mistreated the petitioner and even caused injuries to him, while subjecting him to mental and psychological torture. Eventually, they separated on 09.04.2021 and respondent No. 2 flew back to India along with the Child on 30.04.2021. The petitioner had filed a petition before jurisdictional Court at Florida and vide order dated 25.07.2023, the petitioner was awarded sole parental responsibility of the child. He had also filed a petition alleging domestic violence against him, caused by respondent No. 2 but the same was rejected on 10.07.2023 on the ground that the alleged acts of domestic violence had occurred approximately four years ago and the incidents were too remote to support an entry of an injunction. While mentioning several instances in this petition when the petitioner was harassed and humiliated by respondents No. 2 to 4 and that respondent No. 2 has abducted his minor son, it is prayed that a writ of habeas corpus be issued directing respondent No. 2 to hand over the custody of the child to him.

3. Learned counsel for the petitioner has argued that the petitioner, being natural guardian of the child, is legally entitled to get his custody. The child has been forcefully detained by respondent No. 2, who is not taking his proper care and for the welfare and well being of the child, his custody must be handed over to the petitioner. Learned counsel for the petitioner has relied upon the authorities cited as ***Gippy Arora vs. State of Punjab, CRWP-543-2008,*** *decided on 22.12.2008*, ***Manju Tiwari vs. Dr. Rajendra Tiwari (SC) : AIR 1990 SC 1156, Gohar Begam vs. Suggi @ Nazma Begam (1960) 1 SCC***

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597 and ***Tejaswani Gaud and ors. vs. Shekhar Jagdish Prasad Tewari and ors. : Criminal Appeal No. 838 of 2019*** to submit that a habeas corpus writ petition is maintainable for seeking custody of a child, who is illegally detained by someone. While submitting that the petitioner, being father, is legally entitled to get the custody of his son, it is urged that the petition deserves to be allowed.

4. Reply, on behalf of respondents No. 2 to 4, has been filed. While denying the allegations as levelled by the petitioner, it is submitted therein and learned counsel for respondents No. 2 to 4 has argued that although the petitioner has obtained a decree of divorce against her from Circuit Court of Seventh Judicial Circuit at St. Johns County, Florida but the same is not applicable between them being *ex-parte* order. Respondent No. 2 has filed three litigations i.e. a petition under Section 12 of the Domestic Violence Act, a petition under Section 125 of Cr.P.C. as well as a divorce petition under Section 13 of the Hindu Marriage Act before the Courts at Panchkula in India but despite having knowledge about the same, the petitioner has not appeared in any of the proceedings and has not paid any maintenance to her as well as minor child. It is further submitted that she is the natural parent of the child, who is her son and, hence, the custody of the child with her cannot be termed as illegal. Preliminary objection as to the maintainability of the present petition has also been raised by learned counsel by submitting that the appropriate remedy for the petitioner would be to file a petition under the provisions of Guardians and Wards Act, 1890 to seek custody of the child and not to file a petition before this Court seeking issuance of a writ of habeas corpus for that purpose. It is further submitted that she is maintaining the child

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and is bearing all of his expenses to the best of her capacity and in case the custody of the child is given to the petitioner, the same will not be in the welfare of the child. Hence, it is urged that the petition is liable to be dismissed. To fortify his arguments, learned counsel for respondents No. 2 to 4 has relied upon the authorities cited as ***Mrs. Kanika Goel vs. State of Delhi through SHO and another : 2018 (3) RCR (Civil) 844, Somprabha Rana and ors. vs. State of Madhya Pradesh and ors. : 2024 INSC 664, Nirmala vs. Kulwant Singh and ors. : 2024 SCC Online SC 758, Anju Sharma vs. State of Haryana and other : 2024 NCPHHC 106868, Amandeep Kaur vs. State of Haryana and others : 2023 (1) RCR (Criminal) 47, Neelu Talotra vs. State of Punjab and ors.: 2024 (4) RCR (Civil) 451*** and ***Lalit Mohan vs. State of Punjab and ors. : 2015 (4) RCR (Criminal) 72.***

5. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

6. This is an admitted position that the petitioner was married to respondent No. 2 on 25.11.2015 and they were blessed with a son, namely Atharva Kumar Singh, who being born on 14.02.2018 is of the age of 06 years, 08 months and 28 days as on today. The claim of the petitioner is that respondent No. 2 was a quarrelsome lady and used to misbehave and mistreat him and after separating from him, she had illegally brought the child to India on 30.04.2021. He has also alleged that respondent No. 2 or respondents No. 3 and 4, who are parents of respondent No. 2 respectively, are not able to take care of the minor child.

7. No doubt, this Court while dealing with a petition for issuance of a writ of habeas corpus with regard to custody of a minor child may direct

return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances. However, such decision must depend on the totality of the facts and circumstances of each case brought before the Court. A writ of habeas corpus in child custody matters can be invoked only in those cases where the person having the child is not entitled to his/her legal custody. In child custody matters remedy lies only under Guardianship and Wards Act and it cannot be bypassed by filing a habeas corpus petition unless the corpus of the child is in illegal or unauthorized custody. Reliance in this can be placed upon ***Pavan Kumar Kathuroju v State of Telangana, 2024 SCC OnLine SC 31.*** Reliance can also be placed upon ***Nirmala'***s case (supra), wherein Hon'ble Supreme Court, while relying upon ***Yashita Sahu vs. State of Rajasthan and others : 2020 AIR (Supreme Court) 577*** has held that the habeas corpus is a prerogative writ which is an extraordinary remedy and recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that 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 is by a person who is not entitled to his legal custody and in child custody matters, the writ of habeas corpus is maintainable only where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law. Similar view was expressed by Hon'ble Supreme Court in ***Rajeswari Chandrasekar Ganesh vs. State of Tamil Nadu and others 2022 SCC OnLine SC 885.*** Reference can also be made to authority cited as ***Nithya Anand Raghavan vs. State (NCT of Delhi) & Anr. : (2017) 8 SCC 454***, wherein Hon'ble Supreme Court has observed that

in a habeas corpus petition, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person/respondent named in the writ petition. In ***Kanika Goel***'s case (supra), Hon'ble Supreme Court was dealing with a case where a minor girl child had USA passport and had travelled to India on tenured Visa, which had expired. The child was with her biological mother. It was observed that it did not mean that she was in unlawful custody. The order of High Court directing the wife to return to USA along with minor daughter was set aside and it was directed that the custody of minor child would remain with the mother until she attained the majority or the Court of competent jurisdiction, trying issue of custody of minor child, ordered to the contrary. In ***Anju Sharma****'s* case (supra), it was observed by this Court that in child custody matters, the power of High Court in granting writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act, as the case may be. In cases arising out of 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. 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 inquiry is required, it 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 in a petition for habeas corpus. In

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Vasudha Shetty and others vs. Kiran V. Bhaskar and another : AIR 2022 SC 476, it was observed that a writ Court, while dealing with the issue of habeas corpus, cannot direct a parent to leave India and to go abroad with the child. If such orders are passed against the wishes of the parent, it will offend his/her right to privacy. A parent has to be given an option to go abroad with the child. Now, in issue of custody of a minor, whether a petition seeking habeas corpus or in a custody petition, has to be decided on the touchstone of the principle that the welfare of the child is of paramount importance. In ***Amandeep Kaur***'s case (supra), the mother of a minor child had filed a writ of habeas corpus seeking production of minor child and handing over custody as well as passport to her. The child was in custody of his father. He had not removed child in violation of any order passed by any competent authority. He was in custody of the child for a period of more than four years and three months before the petition seeking to invoke the writ of habeas for the purpose had been filed. It was observed that no circumstance as alleged or urged in the petition indicated that there was any imminent danger to the life and liberty of the child. There was no *prima facie* material to establish as to how vesting of custody of child with the mother was in best interest of child as only ground urged was that the child was a citizen of Italy. It was held that the reasons cited by the mother for directly approaching the High Court instead of taking recourse to alternative efficacious remedy as per law did not fall within recognized exceptions by the Hon'ble Supreme Court through various judicial pronouncements and the writ petition filed by the mother was dismissed.

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8. In the present case, there is no dispute about the fact that respondent No. 2 is the biological mother of alleged detenue, who was born out of the wedlock of the petitioner and respondent No. 2. Hence, it cannot be stated that his custody with respondent No. 2 is illegal in any manner. There is nothing on record to show that before the event of respondent No. 2 coming to India along with the child on 30.04.2021, the petitioner had filed any appropriate petition before the jurisdictional Court at USA seeking custody of the minor child and was either given his custody or was given some visitation rights, so that it can be stated that by separating the child from the petitioner or denying his visitation rights, respondent No. 2 has defied the said order. Although, the petitioner has placed on record a copy of order dated 25.07.2023 showing that the jurisdictional Court at Florida had given him the sole parental responsibility of the child but it is not disputed that the said order was passed *ex-parte,* that too in the absence of respondent No. 2 as she had been residing in India since April, 2021. So far as the principles of comity of Courts are concerned, obviously the Courts in one jurisdiction should honour and enforce judicial decisions or laws of another jurisdiction, provided such actions do not violate public policy or sovereignty. This concept is grounded in international and inter-jurisdictional cooperation, ensuring that Courts give deference to the rulings of foreign or external Courts when appropriate. However, at the same time, when an *ex-parte* order is passed by a foreign Court, the Court in another jurisdiction needs to be more careful and should scrutinize if the same meets certain criteria, such as fairness, due process and opportunity of hearing to both the parties. More so, the order dated 25.07.2023 can be executed only when respondent No.2 goes back to USA along with the

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child. However, no such direction can be issued to respondent No. 2, being an adult. This Court had even an interaction with the child in the retiring room and found him to be too tender in age and totally immature to be able to form any independent opinion of his own as to which parent he should stay with. So far as the ratio of law laid down in the judgments relied upon by the petitioner is concerned, the same is not disputed at all. However, the same is not applicable to the peculiar facts and circumstances of the present case as in those cases, it was held that a writ of habeas corpus can be issued when the child has been taken away by one of the natural guardians by playing a fraud upon the another or the child was detained by either of the parents illegally and without any authority of law, which is not so in the present case. Hence, in the totality of the facts and circumstances, it is held that no direction can be issued to private respondents to hand over the custody of the child to the petitioner.

9. In view of the discussion as made above and without making any comment on the allegations and counter allegations made by the parties against each other, this Court is of the view that no case has been made out by the petitioner to issue any direction to the private respondents for handing over the custody of the child to the petitioner. Accordingly, the present is dismissed, being devoid of any merit.

10. However, liberty is granted to the petitioner to avail his alternative remedy in accordance with law, if so advised.

11.11.2024 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

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Whether reportable *Yes/No*

CRWP 8059 of 2024
Habeus Corpus Order – High Court at Chandigarh

JUDGEMENT DEFECTS

Arun K Singh (Petitioner)

QUARRELSOME LADY?

Item #6, Page 4: "The claim of the petitioner is that respondent # 2 was a quarrelsome lady and used to misbehave and mistreat him and after separating from him, she had illegally brought child to India on 30.04.2021, he has also alleged that Respondent #2 or Respondent #3 and 4, who are parents of Respondent # 2 respectively, are not able to take care of minor child"

OBJECTIONS:

- High Court has difficulty calling domestic violence by its nature. Domestic violence is gender neutral and respondent #2 was not just causing quarrelsome and misbehaving she was active in domestic violence, committed crimes like parental abduction, defrauding courts, New York state and the United States of America. Domestic violence is a crime in USA and women are equally punishable as man. It cannot be a child welfare to have child allowed with a violent parent. It is demeaning to petitioner to classify her acts in simple "misbehave", when the acts were purely criminal.

- My claim is not #3 and #4 not taking care of child, my claim is they are overriding, blocking access, asking ransom to the tune of 1Cr and violating all possible rights of natural and legal guardian. High Court seems to be defectively ok with whoever mother parent entrust the child with to abuse, take over the rights of child's father. Do the mother os this nation has rights to assign parenting to anyone. Respondent #3 and #4, even if they take care of child, is not the reason to take away my rights. What if a kidnapper

INVOKING WRIT OF HABEUS CORPUS

Item #7, Page #5: "1. A writ of Habeus Corpus in child custody matters can be invoked only in those cases where the person having the child is not entitled to his/her legal custody. 2. In child custody matters remedy lies only under Guardianship and Wards Act and it cannot be bypassed by filing a habeas corpus petition 3. Unless the corpus of the child is in illegal or unauthorized custody".

OBJECTIONS:

- Person having custody are NOT entitled to his custody. The child is a US citizen, and the United States do not recognize only the petitioner as natural and legal guardian. Court sets a dangerous precedent where foreign children can be brought on in India and foreign judgements are completely ignored. The habitual place of residence of child was USA, the foreign nations court and their laws are competent court and competent laws.

- High court resonates the language of the respondent too close and it is concerning when the respondent's sister, as a High court lawyer has touted for years her ability to get by any adverse action on her due to her position at the court.

- There is no way Petitioner BYPASSED any law. Respondents never served and summon through legal channel, which is central authority of India, despite forcing the petitioner to serve summons on his cases through same central authority, a procedure only abused by the respondent but still faithfully followed by the petitioner.

- It is wrong to say the remedy is on Guardianship Act and Habeus does not provide any remedy in such cases. IF THERE IS A FOREIGN DECREE, Supreme has granted relief to petitioner numerous times in past. I am providing examples of at least 10 Supreme Court cases in which ALL of them the remedy was provided by Habeus Corpusa and children were returned to foreign nations/

- The corpus of the child IS in illegal hands, there is no identification of the child with India, the United States not only has given sole custody to petitioner, they have also observed respondents criminal behavior and barred them from any physical contact with the child, given the full range of illegal behavior displayed by the respondent.

Pavan Kumar Kathuroju vs. State of Telangana, reported as 2024 SCC OnLine SC 31

Item # 7, Page #5: Reliance on this case can be placed upon Pavan Kumar Kathuroju vs. State of Telangana, reported as 2024 SCC OnLine SC 31.

OBJECTIONS:

- This was not an international parental kidnapping case,

- The petitioner did not have any existing custody order. There was no foreign jurisdiction involved.

- Why did the high court rely on this judgment? Both parents were in India, and the child was an Indian citizen.

- This case was obviously no similarity with my case on selection of this case as being listed (when other similar cases are available), raises questions on good faith of the order itself.

- Also why did the High Court did not provide interim custody to petitioner as was ordered in this case by Supreme court for the petitioner. In my case High Court "chose" to grant me no relief. If I have a custody order, why should I not be granted at least interim custody, while respondent seeks other remedy at least until current order is in effect. ONE PARENT WITH NO EXISTING CUSTODY ORDER BEING PERMITTED TO KEEP THE CUSTODY OF CHILD WHILE THE OTHER PARENT WITH EXISTING CUSTODY ORDER BEING ASKED TO SEEK OTHER RELIEF BY HIGH COURT IS COMPLETELY **UNFAIR** AND REEKS OF **IMPROPER INFLUENCE** BY THE RESPONDENT.

Yashita Sahu Vs State of Rajasthan and Ors: 2020 AIT (Supreme Court) 577

Item # 7, Page # 5: "Habeus Corpus is a prerogative writ which is an extraordinary remedy and recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is not available or is ineffective". It has been held that in child custody matters, the power of the high court in granting the writ is qualified only in cases where the detention of the minor is by a person who is not entitled to his legal custody and in child custody matters, the writ of habeus corpus is maintainable only where it is proved the detention of minor child by a parent or others was illegal and without any authority of law."

OBJECTIONS:

- Only the cases where adverse action to petitioner were taken are listed in citations were high court. This case has key differences to my case (why the cases with similarity omitted?)

  - In this cited case, the U.S. court had awarded joint legal custody to both parents but primary physical custody to the father. While in my case the respondent is barred from having any custody, legal or physical, given her conduct and criminal behavior. Petitioner is granted both physical and legal custody.

  - To remind, respondent abused the court and legal process, perjured and got caught and refused to cooperate in legal proceedings. Court order before child's abduction was impossible in my case.

- In the cited case, petitioner asked for the respondent to return to USA, which Supreme court did not agree on. In this case Petitioner is only asking return of the child and not the adult mother.

- Finally, the supreme court ruled in cited case, the matter of child custody be decided in a competent U.S. court, considering the child's best interests. In the key difference in my case is the US competent court has already decided, and nothing is pending, two times in this case. There is nothing for the US court to decide upon, other than issuing an arrest warrant against respondent for child abduction.

- The custody of the child by respondent for a foreign minor is deemed illegal in his home country. And the method child was transported is also a criminal matter. Just because the respondent is hiding behind jurisdictional barriers, it does not make it legal custody.

- Respondent duped the courts, demanded ransom immediately reaching India, evade taxes and has a warrant against her, she committed fraud by filing unemployment claims and received illegal funds, committed fraud by trying to obtain passport illegally, committed fraud by submitting false resume to obtain employment.

- With all respect to Indian laws, the child's transportation and being held captive is not an act with authority of law or authority of morality.

Rajeswari Chandrashekhar Ganesh vs. State of Tamil Nadu and Ors. (2022 SCC OnLine SC 885)

Item #7, Page #5: "Similar views was expressed by Hon'ble supreme court, Rajeswari Chandrashekhar Ganesh vs. State of Tamil Nadu and Ors. (2022 SCC OnLine SC 885)"

OBJECTIONS:

- This is GRAVE INJUSTICE to petitioner, that the High Court has denied petitioner relief while listed this case where Supreme Court had granted appropriate relief to the petitioner. This case is an example why the relief should be granted to petitioner and not and example for denying the relief.
- The mother sought the return of the children to the U.S., where they had been residing before the dispute.
- The father was directed to apply for a visa to the U.S. and travel with the children. If the visa was denied, the mother was permitted to travel to India and take custody of the children to return to the U.S.
- The court allowed for the revival of the shared parenting plan previously ordered by the Ohio court once the children returned to the U.S.

- Like this case I have custody from USA, but unlike the case I have granted no relief by the High Court, not even an interim order. Why should my parenting plan be not imposed upon? Respondent cannot travel to USA due to her criminal background.

Nitya Anand Raghavan vs. State (NCT of Delhi) & Anr. (2017) 8 SCC 454

- The Supreme Court rejected a rigid application of the doctrine of comity of courts in this case. It was highlighted that Indian courts are not mere enforcers of foreign judgments. Instead, they must independently evaluate the child's welfare.
- In this specific case, the Supreme Court found that the High Court had erroneously focused on the enforceability of the UK court's order rather than considering the child's welfare in the Indian context.

OBJECTIONS:

- By citing this cases, High Court is implying the petitioner only comes with a basis of a foreign decree to claim custody of child. Which is wrong. There is more basis on Child Welfare aspects than comity of nations to hand over custody to petitioner. Respondent has criminal tendencies, abusing law, perjury, abduction, tax evasion, fraud in USA and India, legal terrorism, jeopardizing child welfare, causing injuries to the child, being careless. Even being a natural guardian she would be in jail, for child related issues in USA, let alone other crimes she and Rajinder Rana has been involved in. I AM NOT ASKING FOR A RIGID APPLICATION OF MY FOREIGN DECREE.

Kanika Goel Vs State of Delhi & Another case (2018)

OBJECTIONS:

- This case has two key differences which could have driven the adverse decision by petitioner. The child in question was a Girl Child 2 years old while in my case the child is male child 6 years old.
- As per guardianship act 1952, first natural guardian for a child more than 5 year old, is the father.
- It is INJUSTICE by high court, despite all evidences for respondents criminal behavior, despite being designated as primary natural guardian by constitution of India and despite having court order from child's home country, high court judge chose not to even grant me an interim relief to keep even temporary custody when referring to civil courts and while

proceedings are pending there. What is the reason respondent should keep a 7-year-old son? When they have nothing to support her claim? It is clear case of favoritism. Respondents' sister is a high court lawyer.