IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-2949-2025 (O&M)
Reserved on:23.05.2025
Date of decision:28.05.2025

Joginder Singh Sekhon and another **...Petitioners**

Versus

State of Punjab and others **...Respondents**

Coram : Hon'ble Mr. Justice Rajesh Bhardwaj

Present: Mr. S.S.Salar, Advocate,
Mr. Jasjeet Singh Dhaliwal, Advocate, and
Mr. Goldy Jakhar, Advocate, for the petitioner.

Mr. Tarun Aggarwal, Addl. A.G., Punjab.

Mr. Ashish Rawal, Senior Panel Counsel,
for respondent no.2.

Mr. R.S.Atwal, Advocate,
for respondent nos.7 & 8.

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Rajesh Bhardwaj, J. (Oral)

CRM-W-677-2025

1. Application is allowed, as prayed for.

2. Email dated 19.03.2025, Electronic Travel Authorization (ETA) dated 12.09.2024 and Email dated 22.04.2025, marked as Annexures A-1 to A-3, are taken on record.

CRM-W-676-2025

1. Prayer in the present application, filed under Section 528 of the BNSS, 2023, is for impleading Ramndeep Kaur, mother of the child, as petitioner no.2 to pursue the main petition bearing CRWP-2949-2025.

2. Learned counsel for the petitioner has contended that the mother of the child, who is sought to be impleaded as petitioner no.2 in the main petition, is an Australian citizen, who was married with respondent no.7. Out of their wedlock, they were blessed with two children; daughter Ekam Sidhu born on 09.05.2009 and son Kabir Singh Sidhu born on 14.08.2014. However, due to matrimonial discord between them, they got separated in 2019 and decree of divorce was granted to them vide order dated 06.08.2021 passed by the Family Court at Australia. Thereafter, the parenting order was passed by the Federal Circuit and Family Court of Australia (Division No.2) at Melbourne (hereinafter referred to as the "Family Court at Australia") vide order dated 14.11.2022 and as per consent of the couple/parents, custody of both the children was given to the mother. However, respondent no.7-father (hereinafter referred to as the "respondent-father") was granted visiting rights in terms of the aforesaid order. Thereafter, respondent-father, with permission of the Family Court at Australia, granted vide order dated 07.01.2025, brought both the children to India for the period from 08.01.2025 to 02.02.2025. However, the daughter was sent back to Australia in terms of the aforesaid order dated 07.01.2025, whereas the son was kept in India. After expiry of the period granted by the Family Court at Australia, the mother filed the petition before the Family Court at Australia, upon which the Family Court at Australia has passed the recovery order dated 03.03.2025 wherein the Government of India and the police authorities were requested to help in execution of the order passed by that Court and to facilitate return of the child to Australia. He submitted that at the time of passing of recovery order dated 03.03.2025, as the mother was in Australia, therefore, she sent an Email (Annexure A-1) to her father in India authorizing him to initiate legal proceedings in the Hon'ble

Court in India on her behalf for facilitating the return of her son from India to Australia in terms of the recovery order passed by the Family Court at Australia. She also mentioned in her authorization Email that she was also planning to visit India for taking custody of her child [redacted]. While acting as per the authorization given by her daughter, petitioner no.1 has filed the present petition in the nature of *habeas corpus* for search and recovery of the *detenue* [redacted]

On an earlier occasion, learned counsel for the respondent-father has questioned maintainability of the present petition filed by maternal grandfather of the child and not by the biological mother and, thus, the present application has been filed for impleading mother of the child as petitioner no.2 as now she has come to India for taking custody of her minor child.

3. Learned counsel for the petitioner has contended that [redacted] is the biological mother of the child who had earlier authorized her father to file the present petition and, thus, the petition filed is even otherwise maintainable. However, in the interest of justice, she herself be allowed to be impleaded as petitioner no.2 in the present petition. He has also filed the amended memo of parties.

4. Learned counsel for the respondent-father, however, opposed the submissions made by the learned counsel for the applicant and again questioned maintainability of the present petition.

5. After hearing learned counsel for the parties and perusing the available record, it is inferred that mother of the child had firstly authorized her father to file the present petition, as is evident from the Email (Annexure A-1) sent by her to her father as she was not able to come to India to initiate legal proceedings in pursuance of the recovery order passed by the Family Court at

Australia, which had already passed various orders for granting custody of the child to the mother.

6. It is not out of place to mention here that the father had brought the children in India as per the consent order passed by the Family Court at Australia dated 07.01.2025 and though daughter Ekam Sidhu returned back to Australia within the stipulated time but so [redacted] did not return back and was kept in India by the respondent-father. Thus, this Court found force in the submissions made by learned counsel for the petitioner for impleading mother of the child as petitioner no.2.

7. In view of the above, the present application is allowed, applicant [redacted], mother of the child [redacted] is ordered to be impleaded as petitioner no.2 and the Registry is directed to place on record the amended memo of parties.

CRWP-2949-2025

1. The present petition has been filed by the petitioners for issuance of a writ in the nature of *habeas corpus* for searching the *detenue,* namely [redacted] minor grandson of petitioner no.1 and son of petitioner no.2, who is an Australian Citizen, and has been detained by respondent nos.7 & 8, and after searching the minor *detenue,* set him at liberty by giving his custody to the petitioners in compliance of the orders dated 07.01.2025 and 03.03.2025 passed by the Family Court at Australia.

2. The peculiar facts, as enumerated from the record of the case, are that petitioner no.2 (mother), respondent no.7 (father) and both their children, namely, [redacted] are Australian citizens. Petitioner no.2 was married to respondent no.7 in the year 2006. Out of the said wedlock, they were blessed with two children; daughter Ekam Sindhu, aged about 16

years (born on 09.05.2009) and so [redacted] aged about 10-½ years (born on 14.08.2014). Both the children were born in Australia. Petitioner no.2 and respondent no.7 ran in rough weather and hence, they got separated in the year 2019 and were divorced on 06.08.2021. Respondent no.7, thereafter, got remarried in the year 2022. Both the parents approached Family Court at Australia and vide consensual order dated 14.11.2022, the said Court had passed a final parenting order. As per the said order, the parents agreed to equally share parental responsibility of both the children. The Family Court at Australia ordered that the children would live with their mother (petitioner no.2) and provided detailed terms and conditions while granting visiting rights to the father (respondent no.7). Thereafter, in September, 2024, the respondent-father filed a petition before the Family Court at Australia for granting him permission to take the children to India for the period from 23.09.2024 to 04.10.2024. In pursuance of the said order, both the children visited India and returned back to Australia within the specific time frame. He again filed similar petition for granting him permission to take the children to India and the Family Court at Australia granted him permission, as prayed, for taking the children to India from 08.01.2025 to 02.02.2025 vide order dated 07.01.2025, subject to the terms and conditions delineated in the minutes of the proposed consent order.

As is evident from the minutes of the consent order dated 06.01.2025, both the children were to be brought back to Australia by the respondent-father on or before 02.02.2025, however, he though sent back daughter Ekam Sidhu on 01.02.2025 but son [redacted] was kept by him in India. Petitioner no.2-mother made her efforts by requesting the respondent-father to send her son back to Australia in terms of the order passed by the Family Court at

Australia on 07.01.2025, however, the same was not adhered to and, thus, she approached the Family Court at Australia again for redressal of her grievances. Resultantly, the Family Court at Australia passed the recovery order dated 03.03.2025 for restoration of custody of the minor child [redacted] to the mother by sending him back to Australia. As per the order dated 03.03.2025 passed by the Family Court at Australia, the direction was given to provide the mother with the application and the supporting documents and any Court order made in the proceedings to any Indian authority for the purpose of locating the child [redacted] in India so as to request to any Court, authority or police force in Republic in India and/or the Commonwealth of Australia to enforce the orders passed. Pursuant to the order passed, petitioner no.2-mother sent an Email (Annexure A-1) to her father (petitioner no.1) authorizing him to initiate legal proceedings in the Court in India for facilitating return of her son [redacted] to Australia, as requested in the order passed by the Family Court at Australia. Thus, the present petition had initially been filed by petitioner no.1 and during the pendency of the present petition, the mother has also returned to India and filed the application bearing CRM-W-676-2025 for impleading herself as petitioner no.2, which application has already been allowed in earlier part of this order and mother of the child, namely, [redacted] has already been impleaded as petitioner no.2.

As the respondent-father failed to comply with the order passed by the Family Court at Australia for return of the son of petitioner no.2-mother, namely, [redacted], within the stipulated time, hence, aggrieved against the inaction/non-compliance by the respondent-father, the petitioners have approached this Court by way of filing the present petition.

3. **CONTENTIONS ON BEHALF OF THE PETITIONERS**

Learned counsel for the petitioners has vehemently contended that marriage of petitioner no.2 and respondent no.7 was dissolved by a decree of divorce granted by the Court at Australia on 06.08.2021. The Federal Circuit Court at Australia, vide order dated 14.11.2022, had passed the parenting order with the consent of both the parents. The Family Court at Australia had taken into consideration welfare of the children and in view of the consent of the parents, they were granted equally shared parental responsibility for the children. However, the children were allowed to live with petitioner no.2-mother and they were also allowed to spend time with their father as per the terms and conditions enumerated in the said order. He has drawn attention of this Court to the order passed and submitted that the provisions for penalty are also mentioned in the parenting order in case of non-compliance of the parenting order. It is submitted that the respondent-father had filed an application before the Family Court at Australia for granting him permission to travel to India with both the Children during school holidays from 08.01.2025 to 02.02.2025. It is submitted that as per the minutes of proposed consent order dated 06.01.2025, the permission was granted subject to the terms and conditions delineated in the said order. The children were to be brought back to Australia by 02.02.2025. However, to the utter shock of the petitioners, the respondent-father has sent back only daughter Ekam Sidhu to Australia on 01.02.2025, whereas the minor so[redacted]u was held back in India in violation of the order passed by the Family Court at Australia. The mother requested the respondent-father for sending back her son [redacted] to Australia in compliance of the order passed, however, he, with mala fide intention, avoided the same on one pretext or the other and feeling aggrieved,

petitioner no.2-mother approached the Family Court at Australia and, thus, the recovery order dated 03.03.2025 came to be passed.

He submitted that the respondent-father, in a clandestine manner, had brought both the children to India and hence, has intentionally held the son back in India. It is submitted that petitioner no.2-mother is well qualified and has independent source of income. She is well settled in Australia and has sufficient means to bring up the children. It is submitted that the parental home of the mother is in Punjab and, thus, she initiated the proceedings before this Court by authorizing her father and, thus, the present petition is duly maintainable. He submitted that this Court has the jurisdiction to enforce the order passed by the Judicial Court in a foreign country. It is submitted that the child is about 10- ½ years of age, who is studying in 5th Class in Australia and because of the mischief played by the respondent-father, he has already missed his first session of 5th Class. He further submitted that the respondent-father and his family members are polluting the mind of the child and traumatizing him without taking into consideration the welfare of the child.

It is also submitted that as the minor child was on visitor visa, therefore, he cannot get admission for further studies and the maximum number of days a visitor can stay in India have already expired, but despite that he has been restrained in India by the respondent-father only with the intention to frustrate the orders passed by the Family Court at Australia.

It is also submitted that father of respondent no.7 is having criminal antecedents being involved in more than 10 criminal cases registered against him at Police Station Hanumangarh Town, District Hanumangarh, Rajasthan and the minor child is also stated to be living with him. Thus, it is submitted that even though respondent no.7 is the biological father of the child, however,

he was permitted to bring him to India only as per the consent order passed by the Family Court at Australia but once he has violated the same, the custody of the child with him is illegal being without any authority of law and hence, he prayed that custody of the child/*detenue* be given to the mother in terms of the order passed by the Family Court at Australia dated 03.03.2025 enabling her to take the child back to Australia, which will be in best interest of the child.

To buttress his arguments, learned counsel for the petitioners has relied upon the following judgments:-

1. **Dr. V. Ravi Chandran vs. Union of India & Ors.,** 2009(4), RCR (Civil) 961;
2. **Mrs. Elizabeth Dinshaw vs. Arvand M. Dinshaw and another,** 1987 AIR Supreme Court 3;
3. **Mandeep Kaur vs. State of Punjab and others,** 2021(3) RCR (Civil) 451;
4. **Camila Carolina de Matos Vilas Boas vs. Union of India and others,** CRWP No.1086 of 2025 decided on 22.04.2025;
5. **Yashita Sahu vs. State of Rajasthan & Ors.,** 2020(3) SCC 67;
6. **Mrs. Shilpa Aggarwal vs. Mr. Aviral Mittal & anr.,** 2010(1) SCC 591;
7. **Sumit vs. State of Haryana and others,** Doc Id 223930; and
8. **Vikrama P.V. Mocherla vs. State of Rajasthan and others,** 2024 NCRJ-JP 47816.

4. **CONTENTIONS ON BEHALF OF THE RESPONDENT-FATHER**

Learned counsel for the respondent-father has vehemently opposed the submissions made by learned counsel for the petitioners. He submitted that

respondent no.7 is the biological father of the child and the custody of the child with the father can never be termed as illegal. He submitted that the child has grown up and he can think about his welfare. It is submitted that consent of the child is essential for decision of the case. He has opposed maintainability the present petition which was initially filed by petitioner no.1, who is maternal grandfather of the child. He submitted that India is not a signatory of the Hague Convention and, thus, the order passed by an Australian Court is not enforceable in the Court in India. He submitted that the petition in the nature of *habeas corpus* for seeking custody of the child is not maintainable. The child is living with his father with his consent and, thus, it is submitted that the paramount consideration for decision of such like case is welfare of the child. He submitted that the child is living with the respondent-father at Hanumangarh where he is studying well and hence, this petition is not maintainable in this Court. It is submitted that the respondent-father has filed a petition under Section 7 of the Guardian and Wards Act, 1956 before the Family Court at Hanumangarh, Rajasthan for custody of the child which is pending adjudication. Even otherwise, the child is happy with his father while living in India; he has already been admitted in the school at Rajasthan and welfare of the child, as submitted, is in India and, thus, the present petition deserves to be dismissed.

To buttress his arguments, learned counsel for the respondent-father has relied upon the following judgments:-

1. **Nil Ratan Kundu & anr. Vs. Abhijit Kundu**, (2008) 11 S.C.R. 1111;
2. **Syed Saleemuddin vs. Dr. Rukhsana,** 2001(2) RCR (Criminal) 591;

3. **Sarita Sharma vs. Sushil Sharma,** 2002(2) RCR(Civil) 367;

4. **Paul Mohinder Gahun vs. State of NCT of Delhi & Ors.,** 2005(1) RCR(Civil) 737;

5. **Prince Richard Kofi Atigbor vs. The State of Karnataka & Ors., SLP (**Crl.) No.5523/2025, decided on 28.04.2025;

6. **Nithya Anand Raghavan vs. State of NCT of Delhi & Anr.,** 2017(8) SCC 454;

7. **Nirmala vs. Kulwant Singh & Ors.,** Crl. Appeal No.2194 of 2022, decided on 03.05.2024;

8. **Jose Antonio Zalba Diez Del Corral alias Jose Antonio Zalba vs. The State of West Bengal & Ors.,** 2021 SCC Online SC 3434;

9. **Somprabha Rana & Ors. vs. The State of Madhya Pradesh & Ors.,** 2024(9) SCC 382;

10. **Raja Rekhi vs. State of Haryana and others,** CRWP No.4205 of 2025, decided on 29.04.2025;

11. **Smali Bagga vs. State of Punjab and others,** 1996(2) RRR 202;

12. **Vaidehi vs. I. Gopinath,** 1993(2) HLR 647;

13. **Ms. Gulnar Joshi vs. State of Goa & Ors.,** 2025 NCBHC-GOA 708;

14. **Shahna Garg Advani vs. The State of Maharashtra & anr.,** CRWP No.10982 of 2024, decided on 28.04.2025;

15. **Pavan Kumar Kathuroju and others vs. State of Telangana and others.,** SLP (Crl.)No.12309 of 2023 decided on 27.09.2023;

16. **Pavan Kumar Kathuroju and others vs. State of Telangana and others.,** SLP (Crl.)No.12309 of 2023 decided on 05.01.2024;

17. **Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others**, Crl. Appeal No.838 of 2019 decided on 06.05.2019.

18. **Kala Aggarwal Vs. Suraj Prakash Aggarwal, 1992(48) DLT 218,** decided on 27.03.1992.

5. **CONTENTIONS OF THE RESPONDENT-STATE**

Learned State counsel has filed the status report by way of affidavit of Gurdev Singh, PPS, ACP (West), Ludhiana. He submitted that the Station House Officer had inquired from respondent nos.7 and 8 and found that the alleged *detenue* was brought to Ludhiana along with the respondent-father to attend a marriage function and it was informed that the respondent-father has taken him to village Chak Jawala Singh Wala, Tehsil and District Hanumangarh, District Rajasthan. He submitted that the respondent-father has violated the order of the Family Court at Australia dated 07.01.2025 and, thus, the present petition deserves to be allowed.

FINDINGS OF THE COURT

6. I have heard learned counsel for the parties and perused the available record with their able assistance. This Court has also interacted personally in the chamber with petitioner no.2-mother and the chil[redacted]u.

7. On hearing the arguments raised by both the sides, the precise issues arose for consideration of this Court, are as follows:-

1. Whether custody of the child K[redacted]ith the respondent-father, after expiry of the period granted by the Family Court at Australia vide consensual order dated 07.01.2025, is illegal being without any authority of law?

2. Whether the present writ petition in the form of *habeas corpus,* initially filed by petitioner no.1 having authorization of petitioner no.2 and after impleadment of petitioner no.2, lateron is maintainable in the peculiar facts and circumstances of the case?

3. Whether the order passed by the Family Court at Australia is enforceable by judicial intervention in India?

4. Whether this Court is having jurisdiction to entertain the present petition?

5. Whether on consideration of welfare and best interest of the child, his custody deserves to be given to petitioner no.2-mother and she be allowed to take him to Australia?

8. As inferred from the facts and circumstances of the case, the marriage between petitioner no.2 and respondent no.7 was dissolved by a decree of divorce dated 06.08.2021. Thereafter, the parenting order was passed by the Family Court at Australia on 14.11.2022 (Annexure P-1). This order dated 14.11.2022 was passed with consent of both the parents. Clauses (1) to (4) of the said order dated 14.11.2022 read as under:-

> **"*THE COURT ORDERS BY CONSENT THAT:***
>
> *1. All previous parenting orders relating to the children of the marriage [redacted] born 9 May 2009 an[redacted] born 14 August 2014 ("the children") be and are hereby discharged.*
>
> *2. The parties have equal shared parental responsibility for the children, [redacted]U born 9 May 2009 ("Ekam") an[redacted] born 14 August 2014 ([redacted]r").*
>
> *3. The children live with the wife.*
>
> *4. The children, Ekam and Kabir, spend time with the husband as follows:*

a. *In week 1 of a fortnightly cycle, commencing 9 November 2022 and each alternate week thereafter from the conclusion of school (or 3:30 p.m.) Wednesday until 10:00 a.m. Saturday:*

b. *In week 2 of a fortnightly cycle, commencing 16 November 2022 and each alternate weekend thereafter, from the conclusion of school (3:30 p.m.) Wednesday until 4:00 p.m. Sunday:*

c. *During the school term holidays as agreed between the parties and in default of agreement, for one half of all school term holidays, wit[redacted] live with the Wife for the first half and with the Husband the second half, with changeover to occur on the middle day of the holiday period at 3:30 p.m.;*

d. *During the long summer holidays as agreed between the parties and failing agreement, on a week about basis, commencing with the Wife in week one, at the conclusion of school; and*

e. *As otherwise agreed* between the parties in writing."

9. Attachment A, annexed with the parenting order dated 14.11.2022, provides legal obligations, penalties for failing to comply with a parenting order and location and recovery orders, which are as follows:-

"Your legal obligations

* *You must do everything a parenting order says. In doing so, you cannot be merely passive but must take positive action and this positive obligation includes taking all reasonable steps to ensure that the order is put into effect. You must also positively encourage your children to comply with the orders. For example where the order states your children are to spend time with another party, you must not only ensure that the children are available but must also positively encourage them to go and do so. There are agencies in the community that can help you and your family adjust to and comply with the order (see details above).*

* *The order remains in force until a new parenting order or parenting plan changes it in some way.*

* *Even if the needs or circumstances of you, the child or the other party change, the court order applies until it is formally changed by a court or, in some situations, you enter into a parenting plan with the other party.*

* *Sometimes people talk to each other about changing arrangements set out in a parenting order. These talks do not change the order.*

If you and the other party agree to change the arrangements, you may enter into a parenting plan or apply for consent orders that vary the existing orders. For more information about consent orders, go to www.fcfcoa/gov.au, call 1300 352 000 or visit a family law registry near you.

If you want to change a parenting order and the other party does not agree, family dispute resolution can help you and the other party work through your disagreement. Resolving issues this way is less formal than going to court and should cost less in money, time and emotion. If an agreement cannot be reached, you may consider applying to a court for orders.

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Penalties for failing to comply with a parenting order

A court can only penalize someone for failing to comply with a parenting order, which has not been altered by a parenting plan, if another person files an application alleging the person did not comply with the order. After considering all the facts of the case and applying the law, a cout may decide that:

1. *the alleged contravention was not established.*
2. *the contravention was established but there was a reasonable excuse*
3. *there was a less serious contravention without reasonable excuse, or*
4. *there was a more serious contravention without reasonable excuse.*

If a court finds that you have failed to comply with a parenting order without reasonable excuse, it may impose a penalty. Depending on the situation and the type and seriousness of the contravention, a court may:

* *vary the primary order*
* *order you to attend a post separation parenting program*
* *compensate for time lost with a child as a result of the contravention*
* *require you to entire into a bond*
* *order you to pay all or some of the legal costs of the other party or parties*
* *order you to pay compensation for reasonable expenses lost as a result of the contravention*
* *require you to participate in community service*
* *order you to pay a fine*
* *order you to a sentence of imprisonment.*

In addition to these orders, a court may also adjourn the case to allow you or the other party to apply for a further parenting order.

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Location and recovery orders

If you breach a parenting order and you cannot be found, a court may make a location order. This order requires other people or organizations, including government departments, to give any information they have about where you and the child may be located.

If you breach a parenting order by failing to return the child as required, a court may also make a recovery order. This is an order issued to the Marshal of the Court, all officers of the Australian Federal Police and all state and territory police officers to find and recover the child. The order may also allow a search of any vehicle, vessel aircraft or any other premises where the child may be found."

10. It is evident from above that the aforesaid parenting order is amenable to any change with the consent of both the parties and in pursuance of the same, the respondent-father was allowed to travel to India with both the children on the basis of the Minute of Proposed Consent Orders, which reads as under:-

"FAMILY LAW ACT 1975

IN THE FEDERAL COURT AND FAMILY COURT OF AUSTRALIA AT MELBOURNE

File No.MLC6470/2024

BETWEEN

S [redacted]

(Applicant Father)

AND

[redacted]

(Respondent Mother)

IT IS ORDERED BY CONSENT THAT:

1. That the Father be permitted to travel to India with the children, [redacted] *born on 14 August 2014 during the school holidays from 8 January 2025 to 2 February 2025.*

2. If the children are already on the airport watchlist then the Australian Federal Police give effect to this Order by removing the children from the Family Law Watchlist in force at all points of arrival and departure in the Commonwealth of Australia.

3. The Mother will make the children's passport and any visa documents required for travel available to the Father at least 2 days prior to any planned overseas travel by the Father with the children, and for the purpose of obtaining any visas for the children to travel.

4. The Father must provide the Mother with a detailed travel itinerary and contact details for the children while they are overseas.

5. The Father must facilitate communication between the children and the Mother while the children are overseas.

6. The Father will return the passport, visa documents and children's documents in relation to travel to the Mother within 7 days of the children returning from overseas travel.

7. 5 days prior to travel, the Applicant Father pay $100,00 (Security Amount) in the Joshi Lawyers Trust Account.

8. In the event the Applicant Father fails to return to Australia with the Children in accordance with these orders, the Security Amount be released to the Respondent Mother.

9. Upon the Applicant Father returning to Australia with the Children in accordance with these orders, the Security Amount be released to the Applicant Father.

10. Upon Father returning to Australia from the travel, if the children not on the airport watchlist Australian Federal Police place [redacted] *r a period of 2 years on the Family Law Watchlist in force at all points of arrival and departure in the Commonwealth of Australia and maintain the children on the Watchlist until the Court orders its removal or with consent of all parties.*

Dated: 6 January 2025."

11. Though, with the consent of both the parents, the Family Court at Australia allowed the respondent-father to travel India for the period running from 08.01.2025 to 02.02.2025. However, the respondent-father on coming to India, had tried to overreach the order passed by the Family Court at Australia by sending back only the daughter and not the son. Once the father did not adhere to the order passed by the Family Court at Australia and request has been made by the mother, then on hearing the application, the Family Court at Australia passed the recovery order dated 03.03.2025. Relevant portion of the said order read as follows:-

"THE COURT ORDERS THAT:

1. Pursuant to Section 67U of the Family Law Act 1975 a Recovery Order issue authorizing and directing the Marshal, all officers of the Australian Federal Police and all officers of the Police Forces of all

States and Territories of the Commonwealth of Australia, with such assistance as may be required, and if necessary by force:

(a) to find and recover the c[redacted]orn 14 August 2014 ("[redacted] and to deliver the said child to the Applicant Mother forthwith, she being a person entitled to have the said child live with her pursuant to orders made in the Federal Circuit and Family Court of Australia on 14 November 2022; and

(b) to stop and search any vehicle, vessel or aircraft and to enter and search any premises or place in which there is at any time reasonable cause to believe that the child/ren may be found.

2. A copy of this order be emailed and faxed immediately to the AFP Operations Coordination Centre and the Department of Foreign Affairs and Trade ("DFAT") by the Melbourne Registry of the Federal Circuit and Family Court of Australia.

3. The Respondent Father be required to provide, within 3 days, the current address at whic[redacted] in India via email to the Applicant Mother's solicitors, directed to eb@barbayannislaw.com.au.

4. IT IS RESPECTFULLY REQUESTED that the Police authorities of and in the Republic of India, the Court of and in the Republic of India and the Chief Welfare authorities of and in the Republic of India lend their assistance, if they or any of them can assist consistently with the law of the Republic of India, with the enforcement of this recovery order (Order 1 herein), and the reunification of the Mother with the children pursuant to the orders made in this Court on 14 November 2022 and 3 March 2025.

5. The Applicant Mother be permitted to, and is directed to provide this application and supporting documents filed herein, and any Court Orders made in this proceeding or in prior proceedings, to DFAT and/or any Indian authority for the purposes of locating the child, [redacted]U, born 14 August 2014, in India, and to request the assistance of any court, authority or police force in the Republic of India and/or the Commonwealth of Australia to enforce these orders.

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AND THE COURT NOTES THAT:

A. The Respondent Father was, by order of this court and his own application, permitted to remove the children [redacted] from the Commonwealth of Australia for the purpose of a holiday in Republic

> *of India. The Respondent Father was required and had promised, that he would return both children on or before 4 2 February 2025. The Respondent Father returned the child Ekam, but has detained the* [redacted] *has not returned that child to the Commonwealth of Australia.*

12. Perusal of the order passed by the Family Court at Australia would show that the respondent-father was allowed to take the child in India for a specific period, i.e. 08.01.2025 to 02.02.2025. Once the said period is over and without any further extension by the Family Court at Australia, the custody of the child thereafter with the father is without any authority of law and, thus, the Court finds the custody, after expiry of the period which was granted by the learned Family Court at Australia, as *prima facie* illegal with the respondent-father.

13. The issue with regard to the maintainability of a petition in the form of a writ of *habeas corpus* for the custody of a child to a parent has been dealt with by the Supreme Court in **Yashita Sahu's case (supra)** wherein it has been held the writ in the nature of *habeas corpus* is maintainable even if child is in custody of another parent. Relevant paragraph of the said judgment is reproduced hereasunder:-

> *"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 and Ors.,*** *(1987) 1 SCC 42,* ***Nithya Anand Raghavan v. State (NCT of Delhi) & Anr.,*** *(2017) 8 SCC 454 and* ***Lahari Sakhamuri v. SobhanKodali****, (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."*

14. Hon'ble the Supreme Court, in **Tejaswini Gaud's case (supra),** had held that the writ of *habeas corpus* would be maintainable where it is proved that detention of the minor child by a parent or others was illegal and/or without any authority of law. Relevant paragraph of the said judgment is reproduced 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 on 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."*

15. Thus, this Court draws its force from the aforesaid rulings of the Supreme Court and hence, it is held that the present petition in the form of *habeas corpus* for restoring custody of the minor child to the mother is maintainable as the custody of minor child [redacted] with the respondent-father is found to be *prima facie* illegal and without any authority of law.

16. The issue regarding enforcement of order of a foreign court through judicial intervention in India has been dealt with by Hon'ble the Supreme Court in **Shilpa Aggarwal's case (supra),** wherein it has been held that that the order of the Court foreign with regard to custody of minor child can be

implemented by Indian Courts. The relevant paragraphs of the said judgments are as under:-

> *"25. It is not as if the High Court was oblivious of the fact that it was the paramount duty of the Court to look after the interests of the minor child. It has referred to the celebrated decision of this Court in* ***Elizabeth Dinshaw's case (supra)****, wherein it was emphasised that in matters of custody of minor children, the sole and predominant criterion is the interest and welfare of the minor. Further, while relying upon the judgment in* ***Sarita Sharma's case (supra)****, the High Court did consider the decision in* ***Surinder Kaur's case (supra)****, where the facts were very similar. Yet, the High Court, relying on the decision of this Court in* ***Sarita Sharma's case (supra)*** *came to the conclusion that the Courts in this country cannot be guided entirely by the fact that one of the parents had violated the order passed by a competent foreign Court. Choosing to rely on the doctrine of Comity of Courts, the High Court directed the appellant to return the minor child to the jurisdiction of the U.K. Court as the said Court was closest to the issue involving the custody of the child and would thoroughly examine the claim of the appellant and the respondent no.1 to be entrusted with the custody of the child.*
>
> *xxx xxx xxx xxx*
>
> *27. It is evident from the aforesaid order that except for insisting that the minor be returned to its jurisdiction, the English Court did not intend to separate the child from the appellant until a final decision was taken with regard to the custody of the child. The ultimate decision in that regard has to be left to the English Courts having regard to the nationality of the child and the fact that both the parents had worked for gain in the U.K. and had also acquired permanent resident status in the U.K. The High Court has taken note of the fact that the English Court has not directed that the custody of the child should be handed over to the respondent father but that the child should be returned to the jurisdiction of the Courts in the U.K. which would then proceed to determine as to who would be best suited to have the custody of the child. In our view, the approach of the High Court takes into consideration both the questions relating to the Comity of Courts as well as the interest of the minor child, which, no doubt, is one of the most important considerations in matters relating to custody of a minor child. It has been rightly observed by the High Court following the decision in* ***Surinder Kaur's case***

(supra) *that it was the English Courts which had the most intimate contact with the issue in question to decide the same.*

17. The aforesaid issue has also been dealt with by a Coordinate Bench of this Court in **Camila Carolina de Matos Vilas Boas's case (supra),** wherein almost similar facts and circumstances were involved, and while relying upon various judgments of Hon'ble the Supreme Court, observed as under:-

"19. The Hon'ble Supreme Court in ***Shilpa Aggarwal Versus Aviral Mittal*** *2010 (1) SCC 591 held that where a child is wrongfully removed from the country of habitual residence in defiance of a Court order, Indian Courts should ordinarily facilitate the return of the child to that jurisdiction. Similarly, in* ***V. Ravi Chandran (Dr.) Versus Union of India and others*** *2010 (1) SCC 174, Hon'ble the Supreme Court underscored the importance of respecting the jurisdiction of foreign Courts and not allowing India to become a haven for litigants attempting to escape lawful orders passed abroad.*

20. The prima facie conduct of respondent No.8 in suppressing critical facts while seeking to prolong his stay in India, retaining the child (alleged detenue) in defiance of the directives issued by the Canadian Court, and now facing allegations of parental abduction in Canada, clearly points to an attempt to evade legal accountability. The approach of respondent No.8 is not only lacking in bona fides but also indicative of an effort to manipulate jurisdiction by creating fortuitous circumstances, which cannot be permitted or condoned by Indian Courts. It needs to be stated with emphasis that the jurisdiction of Indian Courts cannot be attracted by the deliberate creation of artificial facts or flouting foreign judicial orders. It also needs to be pointed out that respondent No.8 has instituted proceedings before the Principal Judge, Family Court, Kharar, District Mohali, seeking permanent custody of the child (alleged detenue), clearly reflecting his unwillingness to return to Canada. Such conduct unmistakably suggests an attempt at forum shopping on the part of respondent No.8.

21. Although it has been vehemently argued by the learned counsel for respondent No.8 that the present dispute is essentially a custody battle of alleged detenue and does not give rise to a cause of illegal detention, this Court is unable to accept such a proposition in the present context. The retention of the alleged detenue in India, in violation of lawful orders passed by the Court of competent

> *jurisdiction in the alleged detenue's country of habitual residence, coupled with the expiry of his Indian VISA, renders such custody prima facie illegal. It is not open to a parent to disobey Court orders, refuse to return the child as per undertaking, and then seek to characterize the resultant custody as lawful under Indian law.*
>
> *22. In habeas corpus proceedings involving custody of a minor, it is imperative to strike a balance between the principle of comity of nations and the paramount consideration of the welfare of the child. While international comity must be respected, the decisive factor must always be the best interest of the child. In the present case, it is undisputed that the alleged detenue is a Canadian national, and therefore, his welfare must be assessed in that context."*

The aforesaid judgment has been upheld by Hon'ble the Supreme Court in SLP (CRL.) No(s).8112-8113/2025.

Thus, this Court decides the aforesaid issue in affirmative.

18. Admittedly, petitioner no.2-mother is the daughter of petitioner no.1, who is a resident of Punjab. The marriage of petitioner no.2 has already been dissolved and she had authorized her father to file the present petition. It is also revealed from the status report that the respondent-father had firstly brought the children at Ludhiana to attend a family function at the house of respondent no.8. All these facts would show that the cause of action has arisen to the petitioners in the State of Punjab from the very beginning. Thus, this Court finds that even if the father has taken the minor child in Rajasthan at a later stage, the mother was competent to file the present petition to seek her legal remedies before this Court.

19. Now I come to the question of welfare of the minor child, which is of paramount consideration for this Court. Learned counsel for the respondent-father has contended that the child was traumatized in the company of the mother and hence, his welfare is with the father. However, the daughter has been sent back to Australia by the respondent-father within the specific time

period, whereas only son has been kept behind in India. The conduct of the respondent-father would itself negate the contention raised by his learned counsel, for the reason that if behaviour of the mother is not conducive to the son, then the same would have to be detrimental to the daughter as well. But surprisingly, she had been sent back to the mother, whereas the son has been restrained and not allowed to go back to the mother.

20. That even if the stand of the respondent-father is taken to be true, only for the sake of the arguments, then it is also not understandable as to why he kept mum for a period of 2- ½ years in Australia and not applied for change of the parenting order on the said ground though the said remedy was available to him in Australia but he did not avail the same, which also falsifies the aforesaid stand of the respondent-father.

21. In the arguments raised by learned counsel for the respondent-father, the emphasis has been given that paramount consideration for deciding the custody of a child is his welfare. The welfare of the child cannot be solely dependent on the emotions of the child as he is not in a position to analyze the intricacies of his future life. The child was sent with the respondent-father by the Family Court at Australia to visit India for a family function and petitioner no.2-mother had consented for the same but unmindful of the wrong intention of the respondent-father in keeping the minor child restrained in India in defiance of the order of Family Court at Australia.

22. On interaction with the child, the Court observed that the child was answering in a way as if he was tutored. However, the duty of the Court is of utmost sensitivity in the facts and circumstances of the case. The child as on date may be enjoying his stay in India, however, for his temporary/short-lived enjoyment, his future cannot be compromised and hence, this Court, on

considering overall facts and circumstances of the case finds that the welfare of the child lies in his native country Australia.

23. It has been submitted before this Court by the respondent-father that the child has already been admitted in a school at Hanumangarh, Rajasthan. The arrangement made, as submitted, seems to be mere an eyewash so as to frustrate the order passed by the Family Court at Australia. Even otherwise, it has also come on record that Surender Singh, grandfather of the minor child in whose company the minor child is stated to be living, is/was involved in more than 10 criminal cases registered at Police Station Hanumangarh Town, District Hanumangarh, Rajasthan. Furthermore, the petitioners have specifically pleaded in paragraph no.2 of the petition that the respondent-father got remarried in the year 2022 and the said pleading has been specifically admitted by the respondent-father in his affidavit dated 02.05.2025. The relevant extract of the aforesaid affidavit reads as under:-

> *"ii.* ***Minor child is living at Hanumangarh since 14.01.2025 amongst company of his grandparents and extended family of distinguished Uncles and Aunts in a complete homely atmosphere. The grandparents and the extended family members give the minor child comforts the attachment, support and enjoyable family time. Respondent no.7 who was remarried in 2022 has no children from his second marriage and both respondent no.7 and his present wife are extremely happy and devoted to the minor child and give him the best of their quality time****."*

From above, it is crystal clear that the minor child is actually living in the company of his grandparents and his extended uncles and aunts and since the respondent-father has been remarried, therefore, there would be probability that the respondent-father is not living with the minor child and residing separately with his second wife. On the other hand, nothing has come

on record that petitioner no.2 has been remarried. Once the respondent-father has been remarried, then it is obvious that the welfare of the child is with petitioner no.2-mother, who has not been remarried only because of the reason that she wants to devote her life for her children's well being, their happiness and to make them successful in every aspect of life. In these circumstances, the question arises with whom the welfare of the minor child rests and the answer is obvious, with petitioner no.2-mother.

Thus, the Court finds the argument raised by the learned counsel for the respondent-father without any force and hence, rejected.

24. I have carefully gone through all the judgments relied upon by learned counsel for the respondent-father but found all of them distinguishable either on facts or on law and though some of the judgments support case of the petitioners.

25. During the course of hearing, the respondent-father expressed apprehension that he shall be arrested on his arrival at Australia on initiation of proceedings at the behest of petitioner no.2-mother. However, learned counsel for the petitioners has denied the same and submitted that petitioner no.2-mother has no such intention as she is only interested in restoration of custody of the minor child to her. In order to show her *bona fide,* she had also filed an affidavit that she would not initiate any criminal proceedings against the respondent-father at Australia as it would also have negative impact on the minor child.

26. Hon'ble the Supreme Court has repeatedly held in catena of judgments that in *habeas corpus* proceedings involving custody of a minor, it is imperative to strike a balance between the principle of comity of nations and the paramount consideration of the welfare of the child. While international

comity must be respected, the decisive factor must always be the best interest of the child and while deciding matters of custody of a child, primary and paramount consideration is welfare of the child. If welfare of the child so demands, then technical objections cannot come in the way. A child, especially a child of tender years requires the love, affection, company, protection of both parents. A child is not an inanimate object which can be tossed from one parent to the other. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding custody matters of a child.

27. In view of the totality of the circumstances, this Court is of the considered opinion that the continued custody of the minor child with the respondent-father, who is remarried and residing with his second wife, is unjustified, contrary to the orders of a competent foreign Court, violative of the principles of comity of Courts, and not conducive to the welfare of the child.

28. Before parting, it must be unequivocally observed that Indian Courts cannot be reduced to instruments of convenience for litigating foreign nationals seeking to sidestep judicial proceedings in their own jurisdictions. The constitutional writ jurisdiction of the Indian Courts is neither designed nor intended to be misused in this manner.

29. Accordingly, in the wake of the reasons stated above, the present writ petition is hereby allowed. The respondent-father is directed to hand over the minor child Kabir Singh Sidhu along with his Passport and all other travelling documents which are in custody of the respondent-father, to petitioner no.2-mother Ramandeep Kaur forthwith while acting upon the orders dated 14.11.2022, 07.01.2025 and 03.03.2025 passed by the Family Court at Australia, failing which the respondent-State is directed to restore custody of the minor child [redacted] alongwith Passport and all

other travelling documents to Ramandeep Kaur, mother of the minor child, without any delay. After restoration of custody of the minor child [redacted]h [redacted]o her, petitioner no.2-[redacted]eing biological mother of the child and having full legal rights for his custody as per the various orders passed by the Family Court at Australia, would be at liberty to take the minor child to Australia, their native country.

30. All the pending applications stand disposed of.

May 28, 2025 **(Rajesh Bhardwaj)**
vinod* **Judge**

Whether Speaking/Reasoned: YES
Whether Reportable: YES