

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

Sr. No.215

CRWP-5770-2022

Date of decision : 15.6.2022

Pooja Rani

.....Petitioner

VERSUS
State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.S. RAMCHANDRA RAO

Present: Mr. Amit Sharma, Advocate for the petitioner

Mr.Karanbir Singh, AAG, Punjab for respondent Nos. 1 and 2

Mr.Mayur Kumar, Advocate for respondent Nos. 4 and 5

M.S. RAMCHANDRA RAO, J. (ORAL)

This petition has been filed seeking a writ of habeas corpus with regard to a new born baby boy born on 23.5.2022, who is alleged to be in custody of respondent Nos. 4 and 5 by the petitioner. The petitioner is admittedly the natural mother of the baby.

Before the birth of the child to the petitioner, respondent Nos. 4 and 5 had requested the petitioner and her husband to give the child in adoption, and after the birth of the child, the child was taken away by respondent Nos. 4 and 5, who obtained an agreement from the petitioner and her husband allegedly by use of force.

It is contended that the petitioner is the natural mother and the natural guardian of the child, that there is no valid adoption as per the

provisions of The Hindu Adoptions and Maintenance Act, 1956 (for short 'the Act') and there is also no registered document concerning the adoption as per Section 16 of the Act.

Counsel for respondent Nos. 4 and 5 does not dispute that the petitioner is the natural mother of the baby boy and there is no registered agreement in their favour as to the adoption. The Hindu Adoptions and Maintenance Act, 1956 does not envisage an agreement to adopt a child, who is not yet born. Thus, respondent Nos. 4 and 5 cannot claim to be in lawful custody of the minor child in question.

In view of the above, the present writ petition is allowed and respondent Nos. 4 and 5 are directed to hand over the custody of the baby boy to the petitioner forthwith. It is open to respondent Nos. 4 and 5 to take steps to enforce any agreement, which they have, in an appropriate Court of law against the petitioner and her husband with regard to their claim for adoption of the said child. No costs.

15.06.2022

gsv

[M.S. RAMCHANDRA RAO]
JUDGE

Whether speaking/reasoned

:

Yes / No

Whether reportable

:

Yes / No