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

**CR-7432-2024
Decided on : 03.04.2025**

██████████

..... Petitioner

Versus

████████████████████

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Sanjiv Kumar Aggarwal, Advocate and
Mr. Tejas Bansal, Advocate
for the petitioner alongwith petitioner and minor child.

Mr. Ankit Chahal, Advocate
for the respondent alongwith respondent.

VIKRAM AGGARWAL, J (ORAL)

The instant revision petition, under Article 227 of the Constitution of India, assails the order dated 02.12.2024 (Annexure P-1), passed by the Court of learned Principal Judge, Family Court, Jind vide which the application (Annexure P-10), filed by the petitioner for the grant of interim custody of the minor child (Aadhish) was dismissed.

2. Shorn of unnecessary details, the marriage of the petitioner was solemnized with the respondent on 26.05.2019 at Jind as per Hindu rites and ceremonies. A male child ██████████ was born from the said wedlock on 16.12.2021. It appears that certain differences cropped up between husband and wife as a result of which, a petition under Section 13-B of the Hindu Marriage



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Act, 1955 (for short 'the HMA, 1955') (Annexure P-2) for dissolution of marriage was preferred. A joint statement upon first motion was recorded on 31.01.2021 (Annexure P-3). It was stated that the parties had settled their disputes amicably regarding dowry articles, alimony, maintenance etc. and that the respondent (husband) would pay a sum of Rs.9,00,000/- as permanent alimony to the petitioner out of which Rs.4,50,000/- was received by way of a demand draft on the day of the statement and the balance amount was to be received at the time of second motion. It was also recorded that the custody of the minor child [REDACTED] had been handed over by the petitioner to the respondent and that she would not claim his custody and visitation rights in future. It was recorded that both the parties would remain bound by the statement relating to the custody of the minor child.

3. However, on 16.03.2024, the petitioner appeared before the learned Family Court, Jind and gave a statement that she did not wish to take divorce and that she wanted back the custody of the minor child. Accordingly, the Court summoned both the parties for 01.04.2024 for reconciliation purposes which failed. The stand taken by the petitioner was that she had been kept in the dark when the custody of the child was handed over to the respondent by her parents and she was told that the child would be given to the respondent only for the purpose of meeting him. Finally, the petition preferred under Section 13-B of the HMA, 1955 was dismissed vide order dated 15.04.2024 (Annexure P-7). An appeal against the same, preferred by the respondent, is stated to be pending before a Division Bench of this Court.

4. A petition under Section 7 read with Section 25 of the Guardians and



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Wards Act, 1890, seeking custody of the minor child (Annexure P-8) was filed by the petitioner. The said petition was opposed by way of a written statement (Annexure P-9). An application for the grant of interim custody of the minor child (Annexure P-10) was also moved by the petitioner which was also opposed by way of a reply (Annexure P-11)

5. By way of the impugned order dated 02.12.2024, the said application for the grant of interim custody of the minor child was dismissed, leading to the filing of the instant revision petition.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner submits that the impugned order vide which the interim custody of the child was declined and only visitation rights were granted is not sustainable keeping in view the statutory provisions and the law on the subject. Learned counsel submits that the minor child is 3.5 years old and the custody of a child below the age of five years should ordinarily be with the mother. He submits that despite this settled position of law, the learned Family Court, Jind declined to grant interim custody of the minor child to the petitioner. Learned counsel submits that a child of this age cannot live without the mother and for the welfare of the child, it is essential that his interim custody be handed over to the mother. Reference has been made to the provisions of Section 6 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as 'the 1956 Act') and the judgment of the Supreme Court of India in **Roxann Sharma versus Arun Sharma 2015 (8) SCC 318** (Law Finder Doc Id # 651535) and **Pushpa Singh versus Inderjit Singh, 1990 (sup) SCC 53** (Law Finder Doc Id # 245867), the judgments of Division Benches of this Court in **Mukul Chauhan versus Neha**



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Aggarwal and others 2019 (4) RCR RCR (Civil) 342 (Law Finder Doc Id 1488247) and *Saurabh Sharma versus Nishi 2023 (4) RCR (Civil) 586* (Law Finder Doc Id # 2329600) as well as judgment of a Division Bench of the Bombay High Court in *Shantabai Sonu Barathe versus Gautam Vishnu Shellar 1995 (1) HLR 107*.

8. Per contra, learned counsel for the respondent has submitted that there is no illegality in the impugned order. Reference has been made to the documents on record which include the petition filed under Section 13-B of the HMA, 1955, the first motion statement and other documents. It has been submitted that the only endeavour of the petitioner is to obtain the custody of the minor child with a view to pressurize the respondent to pay more money to her.

9. I have considered the submissions made by learned counsel for the appellant.

10. Parties were called in person as well and this Court interacted with them in the Court room as also in the chamber.

11. Before advertng to the merits of the case, it would be apposite to refer to the statutory provisions and the law on the subject. Section 6 of the 1956 Act prescribes the natural guardians of a Hindu minor;

6. Natural guardians of a Hindu minor.—

The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother:

provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;



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(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi)

The proviso to Section 6 (a) of the 1956 Act lays down that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother.

12. The settled law on the subject also is that the custody of a minor child below the age of five years would ordinarily be with the mother. Reference can be made to the judgment of the Supreme Court of India in the case of **Roxann Sharma versus Arun Sharma** (supra). Reference in this judgment was also made to the earlier judgments in the cases of **Mausami Moitra Ganguli v. Jayant Ganguli**, 2008 (4) RCR (Civil) 541 : 2008 (5) Recent Apex Judgments (R.A.J.) 614 : (2008) 7 SCC 673 and **Sarita Sharma v. Sushil Sharma**, 2000 (2) RCR (Civil) 367 : 2000 (2) RCR (Criminal) 194 : (2000) 3 SCC 14;

“10. We shall now consider the relevance of the precedents cited before us by the learned Senior Counsel for the Father. In Sarita Sharma vs. Sushil Sharma (2000) 3 SCC 14, in defiance of the orders passed by the Jurisdictional Court in the U.S., the mother, Sarita, had returned to India with two children from their matrimonial relationship. The High Court viewed that the divorce decree and custodial directions having emanated from a competent



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Court deserve to be honoured, and accordingly allowed the Habeas Corpus Petition and directed the mother to return the custody of the children to the father, Sushil. This Court was not persuaded that further consideration by Courts in India as to whether the interests of the children, which were paramount, stood foreclosed and could not be cogitated upon again. As regards [Section 6](#) of the HMG Act, it opined that although it constitutes the Father as a natural guardian of a minor son it could not be considered as superseding its paramount consideration as to what is conducive to the welfare of the minor. These observations were reiterated and this Court reversed the decision of the High Court holding that the interests and welfare of the children dictated that the custody should be with their mother. This case, therefore, militates against the legal and factual position which the Father seeks to essay before us. It is also important to underscore the fact that both the children were over the age of five, a fortiori, the custody should not have been reversed in the case in hand by the High Court from the Mother to the Father since Thalbir was then around one year old and is presently still less than three years old.

11. Learned Senior Counsel has next drawn our attention to [Mausami Moitra Ganguli vs. Jayant Ganguli](#), (2008) 7 SCC 673. In this case also, this Court was confronted with the custody conflict over 10 year male child. We must be quick to point out that the Court did not consider [Section 6](#) of the HMG Act after detailing the factors which were indicative of the position that the welfare of the child lies with continuing the custody with the father, this Court dismissed the mother's appeal. The facts are totally distinguishable. The ratio continues to be that it is the welfare of a minor which has paramount importance.

12. [The HMG Act](#) postulates that the custody of an infant or a tender aged child should be given to his/her mother unless the father discloses cogent reasons that are indicative of and presage



the livelihood of the welfare and interest of the child being undermined or jeopardised if the custody retained by the mother. Section 6(a) of HMG Act, therefore, preserves the right of the father to be the guardian of the property of the minor child but not the guardian of his person whilst the child is less than five years old. It carves out the exception of interim custody, in contradistinction of guardianship, and then specifies that custody should be given to the mother so long as the child is below five years in age. We must immediately clarify that this Section or for that matter any other provision including those contained in the G&W Act, does not disqualify the mother to custody of the child even after the latter's crossing the age of five years.

13. We must not lose sight of the fact that our reflections must be restricted to aspects that are relevant for the granting of interim custody of an infant. The Trial is still pending. The learned Single Judge in the Impugned Order has rightly taken note of the fact that the Mother was holding a Tenured College Professorship, was a post-graduate from the renowned Haward University, receiving a regular salary. Whether she had a Bi-polar personality which made her unsuitable for interim custody of her infant son Thalbir had not been sufficiently proved. In the course of present proceedings it has been disclosed that the Father has only passed High School and is not even a graduate. It has also not been denied or disputed before us that he had undergone drug rehabilitation and that he was the member of Narcotics Anonymous. This is compounded by the fact that he is not in regular employment or has independent income. As on date he is not an Income tax assessee although he has claimed to have earned Rupees 40,000 to 50,000 per month in the past three years. We must again clarify that the father's suitability to custody is not relevant where the child whose custody is in dispute is below five years since the mother is per se best suited to care for the infant during his tender age. It is for the Father to plead and prove the



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Mother's unsuitability since Thalbir is below five years of age. In these considerations the father's character and background will also become relevant but only once the Court strongly and firmly doubts the mother's suitability; only then and even then would the comparative characteristic of the parents come into play. This approach has not been adopted by the learned Single Judge, whereas it has been properly pursued by the learned Civil Judge."

13. In the said case, the Supreme Court of India transferred the custody of the minor child to the mother, the custody having been given to the father by the High Court. In the case of ***Pushpa Singh versus Inderjit Singh*** (supra), it was held by a Three Judges Bench of the Supreme Court of India that where the issue of the custody of a minor child arises and the child is less than five years old, the paramount interest of the child lies in giving custody to the mother. A similar view was taken by a Division Bench of this Court in ***Mukul Chauhan versus Neha Aggarwal and others*** (supra).

14. The question which, therefore, arises for consideration is as to whether the situation is a normal situation warranting the custody of the minor child to be with the mother or there are certain circumstances out of the ordinary which would impel this Court to not hand over the interim custody of the minor child to the mother at least at this stage, the petition for custody being pending before the learned Family Court.

15. Having examined the matter in its entirety including the statutory provisions and the law on the subject coupled with the facts of the case, this Court is of the considered opinion that for the present, the interim custody of the minor child aged about 3½ years, the date of birth being 16.12.2021, should remain with



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the father. The reasons for the same are numerous;

1. The petition filed under Section 13-B of the HMA, 1955 contained a specific recital that parties had agreed that the custody of the minor son Aadhish would remain with the respondent-husband and that the petitioner-wife would not claim custody or meeting rights even in future. This recital was incorporated in the joint statement also, recorded on 31.01.2021.
2. The stand taken by the petitioner that the custody of the minor child was handed over to the respondent by keeping her in the dark is unacceptable. The petitioner is stated to be a well educated woman and, therefore, it cannot be accepted that the recital in the petition as also in the joint statement was incorporated by keeping her in the dark.
3. It has also come on record that the petitioner adopted some coercive method to obtain the custody of the minor child when the matter was pending before the learned Family Court, Jind. It has not been elaborated as to what coercive methods were adopted. However, the order dated 03.04.2024 (Annexure P-6), passed by the Court of learned Principal Judge, Family Court, Jind duly records that the petitioner-wife will not create any circumstances to forcibly take the custody of the minor child and that she would be allowed to meet the child only w.e.f. 2:00 p.m. to 4:00 p.m. in the Court room. This fact has been noticed in the impugned order as well.
4. The petitioner has lost her father and she lives with her paternal



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uncle (Taya) and maternal aunt (Massi). On the contrary, the respondent is stated to be working from home and lives with his mother. It appears that the child is looked after by the father and the grand-mother (respondent's mother). Upon a comparison of the two, this Court is of the opinion that for the present, the house of the respondent would have a more conducive atmosphere for the child. Upon having been asked as to why the petitioner is living with her maternal aunt, it was stated that from the very beginning, she has been living with her maternal aunt.

5. The petitioner is stated to be giving tuitions of mathematics and is stated to be earning about Rs.10,000/- per month whereas the respondent is in the work of digital marketing and is stated to be working from home. He is stated to be earning a reasonable amount with which the child can be looked after.

6. There is an allegation levelled against the petitioner by the respondent about her involvement with another girl. Though, such allegations are common in matrimonial disputes and parties often level allegations and counter allegations, upon interaction with the respondent, it was found to be his concern about the said alleged relationship. Under such circumstances, in the considered opinion of this Court, for the present, the welfare of the child would be to remain with the respondent.

7. To top it all, I interacted with the parties as also with the child. Despite best efforts on the part of the mother, both in Court where



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parties were asked to sit as also in the chamber and kept on clinging to the father, the child did not go to the mother. When the mother was not in the chamber and only the child was there with the father, the father was asked to leave the chamber. The moment the father got up, the child started crying inconsolably stating that he would not leave his father. It cannot be denied that being of a very tender age, the child would cling to the parent with whom he has been living for a while. If the custody is given to the mother, the child may behave in the same manner if the custody is again attempted to be given to the father. However, one thing that emerges is that the child is happy with the father and to uproot the child again at this stage may not be in the best interests of the child.

16. All the aforesaid circumstances show that the situation in hand is not an ordinary situation. The custody of the child is with the father for the last more than one year now. To forcibly give the interim custody of the child to the mother at this stage may have an adverse impact on the mental well being of the child who, as already noted, appeared to be quite comfortable in the custody of the father. Keeping in view solely the welfare of the child in mind at this stage, I do not deem it appropriate to grant the interim custody of the child to the petitioner.

17. In any case, visitation rights have already been granted to the petitioner and the main petition is still pending before the learned Family Court, Jind which shall be decided on its own merits.

18. In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.



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However, nothing observed hereinabove shall be construed to be an opinion on the merits of the case.

Pending application(s), if any, stand(s) disposed of accordingly.

(VIKRAM AGGARWAL)
JUDGE

03.04.2025
mamta

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