



S. No. 1

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

*Reserved on: 14.08.2025**Pronounced on: 08.09.2025*

FAO(MAT) No.01/2025 CM No.1462/2025

SANA AFTAB

...Petitioner/Appellant(s)

Through: Mr. A. H. Naik, Sr. Advocate with
Mr. Shabir Ahmad Najar, Advocate.

Vs.

MOHTASHEM BILLAH MALIK

...Respondent(s)

Through: Mr. Altaf Haqani, Sr. Advocate with
Mr. Asif Wani, Advocate.

CORAM:**HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE****JUDGEMENT**

1. The instant appeal arises out of an unfortunate dispute between the appellant herein and respondent herein over the custody of two minor children, namely Malik Kareem Billah, (born on 17.10.2017 and Malik Rahim Billah, born on 04.11.2019 in the marriage between the appellant herein and respondent herein), originating from the proceedings instituted by respondent herein against the appellant herein under and in terms of the provisions of Guardian and Wards Act, 1890, (for short "the Act of 1890") and order passed therein on 02.01.2025 (for short "the impugned order") by the court of 4th Additional District Judge Srinagar (for short "the court below").
2. The facts leading to the filing of the instant appeal in brief are delineated here under: -



- Appellant herein upon her marriage with respondent herein went to Qatar where the respondent herein was permanently residing and employed as an Electrical Engineer/Senior Manager, however, as ill luck would have it the said marriage got dissolved by the intervention of the Family Court at Qatar which Court on 29.03.2022, decided two cross cases bearing number 882/2021 and 1300/2021 filed by the appellant herein and respondent herein respectively against each other and while dissolving the marriage inter-se the appellant herein and respondent herein, the physical custody of two minor children born in the said marriage was given to the appellant herein.
- However, instead of staying at Qatar the appellant herein along with the minors, traveled/shifted to India between 17th and 18th August 2022, on the basis of new travel documents/passports of the minors as the travel documents/passport of the minors were in the custody of the respondent herein whereafter the respondent herein filed WP(Crl) being No. 636/2022, before this Court on the premise that minors have been kept in illegal custody by the appellant herein which petition finally got culminated into LPA No.216/2022, filed by respondent herein before the Division Bench and same came to be settled by the Division Bench on 24.09.2024 after it came to be reported to the court that since the matrimonial relations inter se the parties has ended into a divorce, the only issue survives qua custody,



the guardianship of two minors in regard to which the respondent herein has instituted the proceedings under section 25 of the Act of 1890, before the court of 4th Additional District Judge, Srinagar.

- During the pendency of the aforesaid LPA, on 01.12.2022, the appellant herein have had made a statement before the Division Bench, that she will go back to Qatar well before the reopening of the school of her elder minor son so that his education does not suffer, and would take all necessary steps for obtaining residency permit in respect of her younger son as well being his sponsor, upon dissolution of her marriage with respondent herein, however, the said order dated 01.12.2022 was alleged to have been violated by the appellant herein in a contempt petition filed by the respondent herein being contempt No.CCP(D) No.04/2023 on the ground that the appellant herein though have had visited Qatar in 3rd week of December, 2022, yet did not take the minors along with her for ensuring compliance of the said order dated 01.12.2022, and taking cognizance of the said violation, reported to the Division Bench, a rule came to be framed against the appellant herein on 24.08.2023, calling upon the appellant herein to show cause as to why she be not punished and consequently, on 06.08.2024, the appellant herein was found by the Division Bench to have committed violation of order dated 01.12.2022, and came to be sentenced/fined Rs.100/- besides



being warned to remain careful and cautious in future while making statement/giving undertaking before the court/s.

3. The court below wherein proceedings under Act of 1890 were instituted by the respondent herein finally decided the said proceedings in terms of the impugned order dated 02.01.2025 and while allowing the said proceedings, it ordered the entrustment of the custody of minor to the respondent herein directing the appellant herein to hand over the custody of the minors to the respondent herein subject to the following conditions: -

- I. That she shall make possible the daily video call of wards with their father or any of her relatives, nears and dears. That he will submit his whatsapp or any other available mode for interaction and mention the same in the undertaking.
- II. That she shall forward the marks report of each and every exam to respondent through any mode.
- III. That any other decision regarding the welfare of minors shall be communicated to respondent without any failure.
- IV. That every vacation of wards be spend with the mother/father alternatively. The petitioner shall bear all the travel expenses of minor wards in this regard. To facilitate the visitation rights of mother, after the transfer of permanent custody of children to father, it is directed that during school holidays longer than 5 days, they would be entitled to bring the children back to Kashmir to meet their mother.
- V. That the two Eid festivals will be celebrated by wards on alternate basis, one with the mother and one with father.
- VI. That the petitioner shall submit an undertaking before this court with two persons from Kashmir as surety on his behalf, that he will comply the directions of this court.
- VII. That whenever the respondent shall visit the Kashmir/Srinagar, he be given free access to interact and meet the children, without any hindrance.
- VIII. That he will take care of their health and conduct the medical examinations of wards yearly and convey the medical examination report to the respondent.
- IX. That the said visitation rights shall remain continue till the minor wards attain the age of majority and custody of the minor wards shall remain intact with the petitioner till they attain the age of majority, subject to any change of circumstance. Office is directed to issue a certificate accordingly after the respondent/non-applicant furnishes an undertaking with above stated conditions. The petitioner shall be responsible for the health, welfare, education, etc and also the physical and moral development of the above said minor wards and shall be responsible to take all effective measures for the safe custody of minor wards and their educational career as well, as defined under the provisions of Guardians and Wards Act.



4. The appellant herein being respondent before the court below in the said guardianship proceedings has challenged the impugned order dated 02.01.2025 in the instant appeal, *inter alia*, on the premise that court below passed the impugned order in hot haste without application of judicial mind and on the basis of conduct of the appellant herein, that too without taking into consideration the blameful conduct of the respondent herein having even taken cognizance of by the court at Qatar, for having assaulted the appellant herein and had been found guilty of said criminal assault by the said Court and that the conduct of the parties were not subject matter before the court below, but the custody and welfare of the minors and that the appellant herein had been sole caretaker of the minors ever since their birth having put all efforts to nourish and develop the minors socially, mentally, educationally and spiritually and that the court below passed unjust and irrational order and that the court below even wrongly gave undue weightage to the financial capacity of the respondent herein as against the financial capacity of the appellant herein and committed sheer injustice against the appellant herein overlooking the fundamental dominant matter of the welfare of the minors while measuring the same on the basis of financial capacity of the respondent herein and that the court below also failed to advert to the fact that the appellant herein have had been entrusted the custody of minors by the competent court at Qatar and even upheld by the Superior/Apex Court there at Qatar as well after having been thrown challenge to by the respondent herein and that court below in the process of passing the impugned order not only prejudiced the rights of the appellant herein but also the interests of the minors as well.

**Heard counsel for the parties and perused the record.**

5. Before advertng to the case in hand on merits, it would be significant to mention here that law governing child custody in India is mentioned in Act of 1890 and in the case of Muslims, also by their Personal Law as well, and the Act of 1890 by its very nature and concept is a secular law for appointment and declaration of guardians and allied matters, irrespective of caste, community or religion, though in certain matters, the Courts give consideration to the Personal Laws of the parties as well, thus suggesting that the Act of 1890 and Personal Laws occupying the field are complementary and not in conflict to each other signifying that the Courts in India are obliged to read both laws together in a harmonious way.

6. It is also pertinent to mention here that in the matter of child custody, it is well settled position of law that the courts while determining any proceedings thereunder the said laws, the exercise of power and jurisdiction would be guided by sole and paramount consideration of what would subserve the interest and welfare of the minor and that the welfare of the minor remains the dominant consideration throughout and that the term "welfare" has to be taken in its widest sense, to include the moral as well as physical well-being, of a minor inasmuch as to have regard to the ties of affection. A reference in this regard to various judgements passed by the Apex Court from time to time would also be relevant hereunder;

The Apex Court in case titled as **“Tejaswini Gaud and Ors. Vs. Shekhar Jagdish Prasad Tewari and Ors.”**, reported in **2019 (7) SCC 42**, has *inter alia* held that the court while deciding the child custody case is not bound by the mere rights of the parents or guardians and though the provisions of special statutes govern the rights of the parents or guardians,



but the welfare of the minor is the supreme consideration in such cases and the paramount consideration for the court ought to be child interest and welfare of the child.

Further the Apex Court in case titled as “**Vasudha Sethi and Ors., Vs. Kiran V. Bhaskar and Another**” reported in **2023 (17) SCC 478**, has also held that the issue of custody of a minor, whether in a petition seeking habeas corpus or in a custody petition, has to be decided on the touchstone of the principle and that the welfare of a minor is of a paramount consideration and the rights of the parties to a custody dispute are irrelevant.

The Apex Court has also in case titled as “**Arathy Ramachandran Vs. Bijay Raj Menon**” reported in **2025 SCC Online SC 1044**, reiterated that in cases of child custody the paramount consideration should be the welfare of the child and the utmost sincerity, love and affection showered by either of the parents, by itself, cannot be a ground to decide the custody of a child.

7. It is also pertinent to mention here that right of every child to grow in an atmosphere of love, security and dignity is part of the guarantee enshrined under Article 21 of the Constitution of India, as the expression "life" under the said Article 21 has received the broadest possible interpretation from Constitutional Courts and is understood to mean more than mere animal existence and has also been held to include the right to live with dignity, to receive care, protection, moral upbringing, and to enjoy the emotional security of parental affection.

8. It is also significant to mention here that Articles 39(f) of the Constitution of India though falling under the Directive Principles of State Policy, obliges the State and its instrumentalities, including the Courts, to



ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.

9. Further India's International Commitments also strengthen the above Constitutional dimension and as a signatory to the United Nations Convention on the Rights of the Child (UNCRC), India has undertaken to recognize the best interests of the child as a primary consideration in all actions concerning them.

10. It would also be appropriate to mention here that Articles 14 and 15 of the Constitution of India reinforces the principle of equality and non-discrimination and in the matter of custody of a minor, neither the father nor the mother can claim preference merely on the ground of gender as both stands on a equal pedestal and in the matter of custody the welfare of child, should be the decisive factor alone consideration and allowing any gender based presumptions to determine the custody of minor child would in essence amount to discrimination - a state of affairs, forbidden by the Constitution.

11. The aforesaid constitutional principles of dignity, equality and liberty, therefore, coalesce with international standards to provide a holistic framework for custody adjudication and thus courts while exercising their *parens patriae* jurisdiction cannot lose sight of this Constitutional directive as also the India's International Commitment which treats the welfare of a minor child as a matter of paramount importance. Therefore, the custody jurisprudence in India cannot be confined to the four corners of statutory text, but has to be understood and applied in harmony with the Constitutional guarantees of equality, dignity, liberty and non-discrimination, thereby elevating the welfare of minor child to the status of a



Constitutional imperative. Thus, any custody arrangement dealt with under custody proceedings by the court that undermines these essential elements would fall foul of the Constitutional Mandate.

12. Keeping in mind the above and reverting back to the case in hand, the perusal of the impugned order would tend to show that the court below has decided matter of custody of the minors in favour of the respondent herein, *firstly*, on the basis of the conduct of the parties; *secondly*, on the basis of the standard of living and income of the parents and *thirdly*, upon the age, gender and the preference of the minors.

13. Insofar as the aforesaid ‘first’ ground (conduct) on the basis of which the matter has been decided by the court below, it has been concluded by the court below that the conduct of the appellant herein was unfair, in that, she, had violated the custody order of the Qatar Court by leaving Qatar without permission of the said court, after obtaining new passports of the minors that without informing the respondent herein, and also later violated her own undertaking made before this Court on 01.12.2022 in LPA No.216/2022 supra for taking the minors back to the Qatar and instead travelled to Qatar alone for which violation she was held guilty of contempt and even fined Rs.100/- by this Court vide order dated 09.09.2024. On the other hand the court below while assessing the conduct of the respondent herein noted the same to be fair and transparent for having fairly contesting the cases in Qatar court having returned custody of the minors to appellant herein after visitation and also having travelled all the way from Qatar to attend every single hearing in conducting the cases over here.

However, this Court is not inclined to agree with the view of the court below in regard to the above so called blameworthy conduct of the appellant



herein for the reason, that while the appellant herein may have violated the aforesaid orders in the past, that lapse by itself cannot outweigh the paramount consideration of the minors present and future welfare, in that, custody of a minor may not be altered merely on account of punishment upon a parent for breach of an order of the court of law. The court below has seemingly been influenced by said breach and the punishment of the appellant herein in particular by this Court on 09.09.2024 overlooking another aspect of the matter as to what compelled the appellant herein to put herself to peril by violating the said court orders and the court below while judging the conduct of the appellant herein on this account as unfair has completely been oblivious to the fact that respondent herein had also been convicted by the Qatar court for assaulting the appellant herein during the pendency of the aforesaid cases filed by the parties against each other in Qatar Court for which the respondent herein have had been also sentenced to fine only on the plea of the appellant herein, and in view of such conduct of the respondent herein, the conduct of the appellant herein by traveling to India from Qatar along with minors as well as her travelling back to Qatar alone in breach of an undertaking given before this Court can be considered in a constructive manner as well, as the appellant herein can safely be said to have put herself to peril of contempt and goes on show that in every act of her's, she, the appellant herein have had the welfare of the minors in mind and even when leaving the Qatar along with minors without informing the respondent herein in view of his conviction and sentence for the assault upon the appellant herein, thus it can but natural be said that the appellant herein was justified to leave the Qatar along with minors from such hostile environment which otherwise should have affected the psyche of the minors



and had the intention of the appellant herein to isolate the minors from the respondent herein, the appellant herein would not have been so inclined and active in handing over the custody of the minors to the respondent herein as and when directed by this court during the pendency of the aforesaid WP(Crl) 636/2022 or LPA supra.

14. The aforesaid next ground for entrusting the custody of the minors by the court below to the respondent herein has been the standard of living and income of the parties having observed that that the financial status and standard of living of the parents constitute a relevant consideration for custody of a minor and concluded that respondent herein being financially more secure than the appellant herein has expressed readiness to bear all the expense of the minors at an international standard and that his financial capacity had remained undisputed and the court below has though acknowledged that the financial resources cannot by themselves be decisive in this regard, yet has concluded that the evidence on record suggest better future prospects of the minors with the father respondent herein coupled with a positive environment and living conditions conducive to their holistic growth and development.

Though it may be true that the respondent herein is financially better placed than the appellant herein, yet financial affluence cannot alone overreach the other critical factors, such as, emotional value, continuity of care, and cultural/social ground of minors and the mother's comparatively modest means in the instant case cannot be said to be rendering her unfit as a custodian, as in law, the term “welfare” appearing under the Act 1890 has been interpreted by the courts consistently in its widest sense i.e. the



consideration of the court would not only be extended to physical well-being of a minor, but would also include moral and physical welfare.

Indisputably, the minors herein have been residing with the appellant herein for the last two years and disrupting their present environment by shifting their custody to the respondent herein would certainly unsettle them emotionally, socially, and academically, and there is nothing on record or else in the impugned order suggestive of the fact that the interests and welfare of the minors were in any manner affected during their stay with the appellant herein. Furthermore, at this stage of their development, the minors herein require not only food, shelter, and amenities that even a domestic help may provide, but consistent emotional, nurturing, moral guidance, and the warmth of familial care is also most important factor and component the minors would need. It needs to put on record that the appellant herein is stated to be engaged in her own business and has more flexibility to adjust to her work schedule to suit the minors requirements and is moreover residing with her parents thereby ensuring that the minors will have an additional care, love and supervision of their maternal grandparents.

Even the courts in India have consistently held that the care and affection of mother during the tender years of minors is of paramount importance and mothers role in upbringing them is indispensable unless the conduct of the mother is shown to be directly harmful to the welfare of the children.

Record also bears testimony to the fact that the respondent herein, despite his strong financial strength has also professional commitments and obligations and owing to those he cannot be expected to provide the same



level of day-to-day attention and presence that the appellant herein has been providing to the minors ever since she had their custody.

15. The Court below lastly has also taken into account and consideration age, gender and the purported preference/inclination of the minors towards the respondent herein, while passing the impugned order and has noted that the minors are emotionally balanced affectionate towards their parents and not hostile to their mother appellant herein demonstrating that their bond with the mother appellant herein remains intact and healthy being vital for their stability and the court below upon personal interaction with the minors at different stages has also recorded that the siblings shared their deep bond with each other and did not wish to be separated and while acknowledging their affection with their parents, the court below observed that the minors exhibited a distinct inclination towards their father respondent herein and even expressed desire to accompany him to Qatar and were found to be emotionally balanced and genuinely attached to their father notwithstanding the fact that they had been residing with their mother appellant herein for last two years in India/Kashmir and the court below concluded that the minds of minors was natural and untutored.

However, the court below seemingly has attached much importance to the children's gestures and inclination towards their father respondent herein while holding that such emotions could not be brushed aside and consequently held that on account of their demonstrated attachment with their father respondent herein, the welfare, comfort and future prospectus of the minors would be better secured in the custody of the father respondent herein rather than the mother appellant herein.



16. It is significant to mention here that during the hearing of the instant matter at one stage, I, initially interacted with the parties in order to explore a possibility of amicable settlement between them qua the custody of the minors which, however, did not yield any fruitful results, so much so, the parties were also persuaded to undertake co-parenting of the minors which however, was outrightly declined by the counsel for the respondent herein subsequently in the open Court during the hearing of the case and instead insisted for consideration and disposal of the case on merits.

17. It is also pertinent to mention here that after concluding the hearing of the case and reserving the same for orders, I also have had an interaction with the minors in my chambers for approximately 40 minutes after they were brought by the appellant herein pursuant to the desire expressed by me in the open court on the date of reserving of the case for orders, to interact with the minors besides on the request of the appearing counsel for the respondent herein. The said interaction was held in absence of either of the parents of the minors and the minors were made comfortable with casual talks and while the younger child was roaming around the entire chamber playing with the things present and did not seem to know as to where he was and what for he was called, the elder child on the other hand had the impression that they have been called regarding their passports and asked me that if I was the judge holding their passports and also asked me that if I had seen his latest report card of the school and that how well has he performed in his last examination (which report card I had been shown during the aforesaid interaction by the appellant herein herself). The said elder child did not express any resentment towards either of the parents showing that he was not tutored to state either in favour of the appellant herein or against the



respondent herein, however, was saying all from his own perspective and also stated that his mother appellant herein was very happy on his performance in the school in the recent examination and upon being asked about as to any such concern was shown and expressed by the respondent herein towards his studies, he said “probably” and that the respondent herein was more interested in taking them to Qatar. Even upon being asked that in the event they travel to Qatar without the appellant herein along with the respondent herein who would look after them there at Qatar, he in response candidly answered **probably a maid**. His hesitation and visible discomfort at this response revealed that even without explicit words, a clear preference to the care by the appellant herein reflecting instinctive understanding of his own needs. No direct question vis-a-vis the preference of either of the parents with whom they would like to stay was posed for two reasons: one, that they did not seem to be aware of the exact situation and second, that answer to such a question by a child of 5 or 7 years of age cannot be objective but subjective based on their likes and dislikes, about the place they have lived or living at present, surroundings strictness or leniency by a particular parent etc. etc.

Here it would be advantageous to refer to an extract of a recent research qua the development in child custody litigation by Dr. Richard Gardner noticed and referred by the Apex Court in case titled as “**Col. Ramneesh Pal Singh Vs. Sugandhi Aggarwal**” reported in **2024 SCC online 847** wherein at para 17 the same has been extracted as under: -

.....The American Academy of Psychoanalysis, 1985]. It has at least two psychological destructive effects:

(i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling



painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts,

(ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality."

18. Thus, it can safely be said in view of above that the inclination of minors though relevant cannot be the sole ground for determining the custody especially at such a young age when their wishes are impressionable and can be influenced by temporary comfort or on promises of material advantages.

19. It is worthwhile to mention here that the counsel for the respondent herein while making his submissions during the course of hearing of the instant case also heavily referred and relied upon the concept of **Hizanat** provided in Islamic jurisprudence and defended the impugned order of the court below on the said concept as well besides on the question of the conduct of the appellant herein inasmuch as the strong economical capacity of the respondent herein and contended that the mothers right of custody of a minor under the said concept of Hizanat extends only up to the age of 2 years in case of a son and 7 years in case of a daughter after which the custody of the minor mandatorily has to shift to the father being the natural guardian.

In regard to the said plea of Hizanat urged by the counsel for the respondent herein, it needs to be mentioned here that there is a distinction between the concept of custody and guardianship and even though they often are used interchangeably, same are distinguished in law. Custody or Hizanat in Islamic terminology refers to actual care, upbringing and day to day



supervision of the child and guardianship known as *Wilayat* is of wider scope and extends to authority over the person and property of the minor and while the father is regarded under Muslim law as the natural guardian, custody is treated not as the entitlement of either parent, but as a right of the child to receive care in the most natural, secure, and nurturing environment. Furthermore, in Muslim Personal Law first and foremost custody of the minor belongs to the mother and she cannot be deprived of that right so long as she is not found guilty of misconduct or disqualified on legally recognized grounds and said right of mother of custody continues unless such disqualification is established.

As regards the duration of custody, The “**Hanafi School of Muslims**” prescribe that mother is entitled to the custody of a son until the age of seven years and of a daughter until nine years. Whereas, “**Shafi School**” prescribes no fixed age limit, holding that the child should remain with the mother until capable of making a choice, upon which the child may decide with whom to reside. The “**Maliki School**” recognizes the mother’s custody of a son until puberty and of a daughter until her marriage and under the “**Hambali School**” mothers custody extends until the child attains seven years of age, after which the child may choose between the parents.

Thus, Islamic jurisprudence while affirming the father’s guardianship, nonetheless accords the mothers priority in custody during the formative years of a child, recognizing her unique ability to provide maternal affection, comfort and early nurturing. Crucially, the principle that the mother’s custody ceases beyond a particular age does not imply an automatic transfer of custody of the child to the father. Therefore, no rigid or mechanical rule



of age can override the paramount consideration of Child's welfare, which remains the touchstone in all custody matters and decisions.

Furthermore, the above plea raised by counsel for the respondent herein that the mother cannot retain the custody of the minors beyond a certain age is also inconsistent with the Constitutional guarantee enshrined under Articles 14 and 15 of the Constitution of India, in that, gender equality forms the cornerstone of our constitutional order and it cannot by any stretch of imagination be presumed that the father, by virtue of his dominant personality status, has a preferential right over the mother in the guardianship or custody of a minor. The custody jurisprudence, therefore, while risking repetition is not to be confined merely to a statutory enactments, but also to Constitutional Principles and therefore the Child's welfare, rather than the gender of the parents as well should be only decisive factor.

20. Besides, above it is equally settled by the courts that while considering the custody matter under the statutory provision, courts should not ordinarily remove the custody of parent with whom the minors are already residing, unless compelling and exceptional circumstances, demand otherwise and even under such circumstances the non-custodial parent should ordinarily be granted visitation rights so that, the children are not deprived of the parental and maternal guidance.

21. In the instant case, the minors have lived with both the parents since 2022, however, thereafter they remained in the custody of the appellant herein within the jurisdiction of this Court and in the event the custody of the minors is shifted to the respondent herein now who intends to take them



to Qatar, this Court would also lose the Supervisory jurisdiction in the matter, if the same is required in future.

22. For what has been observed, considered and analyzed hereinabove, the custody of the minors cannot be changed from appellant herein firstly, merely as a punitive measure against the appellant herein on account of the past violations of the custody order of Qatar Court or else qua the undertaking given before this Court, in that, those acts seemingly were done by her concerning for the safety and welfare of the minors particularly in the light of the conviction of respondent herein by the Qatar Court as also in view of the fact that the minors emotional wellbeing, stability and continued care with mother appellant herein are not shown to have been jeopardized in any manner and secondly, the financial support of the respondent herein in residing abroad promising better material prospectus is not found to be sufficient to change the custody of the minors from that of the appellant herein to the respondent herein as disrupting the settled environment of the minors in Kashmir (India) where they have been residing for last two years with the appellant herein would run contrary to their welfare. Resultantly, the welfare of the minors, therefore, is clearly found tilting in favour of their continued custody with the appellant herein. However, at the same time, it cannot be lost sight of that the respondent herein seemingly is a doting father who has shown his keen desire to have the exclusive custody of the minors. Thus, in order to provide the respondent herein a fair and reasonable access to the minors, it is hereby directed as under: -

- i) The respondent herein shall have the interim custody of the minors as and when the respondent herein comes over to Srinagar, Kashmir, however, for a maximum period of Five



days subject to the comfort of the minors and also that the same does not affect or disturb their studies/education.

- ii) The respondent herein shall also have the interim custody of the minors alternatively on the eve of Eid's in case the respondent herein visits Srinagar Kashmir, on the said occasion of Eid's.
- iii) The respondent herein also shall be entitled to make video call/s to the minors on every Sunday, the schedule whereof shall be fixed by both the appellant herein and respondent herein mutually.
- iv) The respondent herein shall also be entitled to have the interim custody of the minors alternatively during the school vacations of the minors, in case, the respondent herein visits Srinagar, Kashmir, the schedule of which vacation be fixed by the parties herein mutually.

23. In view of above, the instant appeal is allowed and the impugned order dated 02.01.2025 passed by the court of 4th Additional District Judge, Srinagar, is set-aside.

24. However, liberty is given to the parties herein to seek further orders from the competent court of law those may be warranted and required hereafter on account of any change in the circumstances.

25. Disposed of along with all connected applications.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

08.09.2025

Ishaq

Whether order is speaking?

Yes

Whether approved for reporting?

Yes