

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1283 of 2016

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Syed Naiyer Haroon, son of Syed Md. Haroon, Resident of Flat No.103, Faiz Apartment, Khagari Gali Road, Samanpura, P.O. B.V. College, P.S. Shastri Nagar, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through Home Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Deputy Inspector General, Patna Range, Patna.
5. The District Magistrate, Patna.
6. The Senior Superintendent of Police, Bihar, Patna.
7. The City Superintendent of Police, Patna, District- Patna.
8. Syeda Sameena Hussain, daughter of Dr. S.S. Eqbal Hussain, resident of House No. 326, Patliputra Colony, P.S.- Patliputra, District- Patna.
9. Dr. S.S. Eqbal Hussain, son of Late Syed Hasrat Hussain, resident of House No.326, Patliputra Colony, P.S.- Patliputra, District- Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Y.V. Giri, Sr. Advocate
Mr. Surya Narayan Roy,
Mr. Ashish Giri, Advocates

For the State : Mr. Nadeem Seraj, GP 5

For Respondent No.8 & 9: Mr. Naresh Kr. Malhotra, Sr. Advocate
Mr. Binod Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 10-03-2017

This writ petition under Article 226 of the Constitution is virtually an application for guardianship of the minor child of the petitioner Syed Naiyer Haroon and Syeda Sameena Hussain-respondent no. 8.

2. We have heard learned senior counsel for the petitioner



Mr. Y.V. Giri and learned senior counsel for respondent no. 8 Mr. Naresh Kumar Malhotra as well as Mr. Nadeem Seraj, learned Government Pleader No. 5 for the State at length.

3. The writ petitioner also personally came down to India from Doha in the country of Qatar. We have accordingly also heard the parties in person in Chambers with the child Syed Asbaque Haroon.

4. The first thing we would like to record, is that for some reason the matrimonial relationship between the petitioner and respondent no. 8 has completely broken down, inasmuch as the writ petitioner claims to have already divorced respondent no. 8. Fortunately for us, the issue before this Court is not the relationship between the petitioner and respondent no. 8 as husband and wife but it is with regard to the custody of their child. The unfortunate part is that the child, who is about 5 -6 years of age, needs special care and attention. He has a medical condition "Autism" because of which it is not possible for either of the parents to independently and individually bring up the child. He needs assistance, care, affection and security 24 hours. The solution is not time share parenting but the only solution for the child who needs special care is shared parenting where both the parents are available. But as noted above, the matrimonial alliance has broken down and it is difficult to expect the parties to share common accommodation even though that is the ideal solution. After considering various options, we are happy to note that the parties have



come to an amicable settlement for the sake of their son. Both parents are equally conscious and have equal emotional attachment with their son which is but natural. Parties agreed that respondent no. 8, the estranged wife, the writ petitioner and the child would travel to Qatar together. In fact, when the child has to travel by air, he has to be accompanied by both the parents. The estranged husband petitioner would arrange for necessary travel documents, travel papers and tickets for his son and his divorced wife, respondent no. 8 who has to travel to Qatar and stay at Qatar as a visitor as long as the law of that country permits. If need be for the purposes of renewal of visa facility, both would come and spend time in India preferably coinciding with festivals subject to availability of leave. Petitioner would bear all expenses of the child's fooding, his stay and his schooling and all other expenses including reasonable expenses for the stay and sustenance of respondent no. 8. This shared parenting, we hope, would have favourable results as the child needs a lot of compassion apart from professional assistance.

5. Of course, it goes without saying that the writ petitioner assures that he is ready for ensuring the safety of respondent no. 8 at Qatar and she would equally reciprocate. Keeping in view the interest of the child, it must be remembered that no parent acting singly would have in fact the stamina and patience or control on the emotion to look after the child all along. The child needs special care and is extra



demanding. This can be made available to the child only by the joint efforts of the two parents. So they have, for the sake of the child, agreed to the above. The total financial security would have to be provided by the petitioner both for the child and for respondent no. 8. It is agreed between the parties that the primary custody of the child would remain with the mother, while the father and other relatives would have full right as well as duty to continuously visit the child in care of respondent no. 8 in the morning and evening on the holidays so that the child does not feel the absence of family as a whole. The parties would avoid any acrimonious scenes in front of the child.

6. Let parties work towards this understanding as arrived at by them. Till such time the petitioner is able to arrange for the travel of respondent no. 8 and the child to Qatar, it would be respondent no. 8 who would decide whether she would stay with the child either at Patna or, as she would commend to stay, at Mysore where the child is receiving professional help. But that is the stage not for long for we hope that the petitioner would get necessary travel documents and permission at the earliest.

7. In our view, this would be the best solution for all concerned in the facts and circumstances of the case as things are obtaining today. We hope that both the parties, even though there is no matrimonial relationship between them, would consider their parental responsibility in proper perspective and live in relative harmony for



the purposes of their child who needs special care and attention. With this hope, we conclude this proceeding.

8. The writ petition stands disposed of with the aforesaid observations and directions.

(Navaniti Prasad Singh, J)

B.T/Ibrar

(Vikash Jain, J)

AFR/NAFR	AFR
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