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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 2128/2018**

GAURAV KAPOOR

..... Petitioner

Through: Ms. Soumya Kumar and
Mr. Aditya Samadder, Adv.
along with Petitioner in person.

versus

STATE & OTHERS

..... Respondents

Through: Mr. Rahul Mehra, Standing
Counsel (Crl.) for the State
with Mr. Chaitanya Gosain and
Mr. Tushar Sannu, Advocates
with SI Dinesh Chandra PS
Keshav Puram, Delhi.
Dr. Vinod K. Tewari and
Mr. Manindra Dubey, Adv. for
R-4 along with R-4 in person.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

ORDER
29.08.2018

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1. The Court has perused the report dated 19th August 2018 of the learned Child Counsellor and Mediator. The Court thanks her for the detailed report. A copy thereof each will be provided to the counsel for the Petitioner and the counsel for Respondent No.4 with the express understanding that it will be kept confidential by each of their respective clients and not shared, even with the child. Further, neither the Petitioner nor Respondent No.4 will use the

said report in any manner in proceedings hereafter.

2. The Court has heard counsel for the parties. With the interest and welfare of the child being of the highest priority in matters of this kind, the Court finds that the impression it had gathered during the interaction with the child on the previous date, is confirmed by the conclusion reached by the learned Child Counsellor and Mediator. At this point in time, the child wishes to live with his mother and continue his studies in Mumbai.

3. It was submitted by learned counsel for the Petitioner that the Court should take into account the fact that the mother had taken away the child in violation of a binding consensual order passed by the Family Court in Rohini by which custody of the child was granted to the father.

4. While this was also the *prima facie* impression that persuaded the Court to issue notice and require Respondent No. 4 to be present in the Court with the child, it now appears that perhaps her primary concern was the best interests and welfare of her 11 year old son who is clearly very deeply attached to her and wants to remain with her at this point in time.

5. It is then submitted by leaned counsel for the Petitioner that any observation made by this Court at this stage should not affect any order passed by the Family Court in the future on the issue of custody and on visitation rights.

6. Orders of this nature are not 'cast in stone' at one point in time. They will be required to periodically reviewed keeping in view the welfare and best

interests of the child.

7. At this stage, the learned counsel for the Petitioner states that the Petitioner may be granted visitation rights at least once in two weeks over the weekends so that the schooling of the child will not be affected in any manner.

8. The Court accordingly modifies the order dated 1st April 2015 passed by the Family Court Rohini and directs as under:

- (i) The custody of the child Chaitanya will now remain with his mother (Respondent No.4) at Mumbai and he will continue his schooling there.
- (ii) The Petitioner is permitted to take the child from the residence of Respondent No.4 at Mumbai for a period of four (4) hours to any public place on a Saturday or a Sunday, once every two weeks, subject to the mutual convenience of the Petitioner, Respondent No. 4, and the child.
- (iii) During the initial visits, the mother/Respondent No.4 may remain in the vicinity but shall permit the Petitioner to have personal time with his child. However, if the circumstances change thereafter, and the child is comfortable in the company of the Petitioner, she may permit the Petitioner to spend time separately with the child without her having to remain present.
- (iv) The Petitioner will inform Respondent No.4 at least 48 hours in advance regarding each of his visits.

9. It will be open to the parties, after one year from now, to seek a

variation/modification of the above order, by applying to the Family Court at Rohini Courts which shall decide such application on merits uninfluenced by the observations in this order and in light of the facts and circumstances at that time keeping in view the best interests and welfare of the child.

10. As far as the intervening period of one year is concerned, if there is any difficulty in the implementation of the above directions, it will be open to the Petitioner, Respondent No. 4, and even the child, to apply to this Court for directions.

11. The apology tendered on affidavit by Respondent No.4 in response to the contempt notice issued to her on 1st August 2018 is accepted and the contempt notice is discharged.

12. The petition is disposed of in above terms.

13. *Dasti* under the signatures of the Court Master to the parties.

S. MURALIDHAR, J.

VINOD GOEL, J.

AUGUST 29, 2018

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