

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10756 OF 2018

Firdaus Farrokh Havewala

...Petitioner

Versus

Ferieda Rattan Postwalla

...Respondent

....

Ms. Parul Vedak a/w. Devanshi Shah, Ujjwala Wakde i/b. Preetisingh Pardeshi, Advocate for the Petitioner.

Mr. Shreyas S. Adyanthaya, Advocate for the Respondent.

Ms. Freiya, daughter of the parties is present in person.

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CORAM : R. G. KETKAR, J.

DATE : 17th JANUARY, 2019

P.C.

1. Heard Ms. Parul Vedak, learned counsel for the petitioner and Mr. Shreyas Adyanthaya, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 27.8.2018 passed by the learned Judge, Family Court No.3, Pune below Exhibit-69 in Petition No.PA-2/2017. By that order, the learned trial Judge rejected the application made by the petitioner seeking access of the child Freiya. While rejecting the application, the learned trial Judge referred to the FIR being C.R. No.133/2018 lodged under Section 354-A Indian Penal Code, 1860 and Sections 7, 8, 10 and 12 of the Protection of Children

from Sexual Offences Act, 2012 (for short, 'POCSO Act'). The learned trial Judge further noted that the child Freiya is not interested in meeting her father. In view thereof, at this juncture, the petitioner-father cannot be allowed to have access with daughter Freiya.

3. In paragraph-6, the learned trial Judge also noted the submission of the petitioner that he has been falsely implicated in the case under POCSO Act and that he was granted anticipatory bail. In paragraph-7, the learned trial Judge noted that the child in question is 14 years girl. She has specifically informed to the Court vide Exhibit-45 that she does not want to meet her father.

4. That apart, I had occasion to consider this matter in the past. By order dated 19.4.2018 passed in Writ Petition No.3078/2018, the parties were directed to appear before this Court in Chambers on 26.4.2018 at 10:15 a.m.. In pursuance thereof, on 26.4.2018, I have interacted with Ms. Rakhee Howal, representative of 'Muskan NGO', daughter Freiya and parents of Friya. As the petition was withdrawn, I refrained from recording any observations in respect of the interactions I had with the parties, daughter Freiya and Ms. Rakhee Howal, representative of 'Muskan NGO'.

5. This petition was heard on 10.1.2019 and was adjourned till today i.e. 17th January, 2019. Ms. Vedak was permitted to interview the

child Freiya on that date i.e. today and to prepare the minutes of the meeting. She was also permitted to advance the submissions on the next date.

6. Today Ms. Freiya has come to the Court. I have interacted with her in the morning session in open Court. During the interaction, she emphatically made it very clear that she will meet the father on any date only to tell him that she does not want to meet him in future. Having regard to the fact that she is aged about 14 years and also for the reasons recorded in the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order.

7. Ms.Vedak submitted that the welfare of the child is paramount consideration while considering custody aspect. There is no dispute with this proposition at all. The fact of the matter is that consistently the child Freiya has expressed that she does not want to meet the father. In fact, she also had stated that she does not want to see her father.

8. In view thereof, the petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)