

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

CRM-M-31016 of 2019

Date of Decision: November 07, 2019

Asha Rani

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. P.S.Hundal, Senior Advocate with
Ms. Namita Khandari, Advocate,
for the petitioner.

Mr. B.S.Sewak, Additional Advocate General, Punjab,
for the respondent.

Mr. Amit Dhawan, Advocate,
for respondent No.2.

Amol Rattan Singh, J. (ORAL)

By this petition, the petitioner seeks the custody of her grand child, i.e. the six year old daughter of her late son, who (as per case of the prosecution) as per the complainant in FIR No.181, dated 14.06.2019, had committed suicide, for which respondent No.2 (the wife of the deceased and mother of the child), and another co-accused have been arraigned as such accused.

Respondent No.2, upon her arrest, is stated to have taken the child with her to prison, even though the child was studying in school at that time. She thereafter moved an application before the learned Magistrate that custody of the child be given to her sister, which application is stated to

have been dismissed. Thereafter, the petitioner is stated to have filed an application before the learned JMIC, SAS Nagar on 15.06.2019 (Annexure P-3), seeking that the custody of the minor child be given to her as the child is studying in school.

That application was also dismissed by the learned Magistrate, vide an order passed on that very date, i.e. 15.06.2019 (Annexure P-4), stating therein that respondent No.2, i.e. the mother of the child, had got recorded her statement that she does not want to give custody of her child to her sister-in-law (stated to be Namita Khandari). Thereafter, recording that though Namita Khandari was present in Court, the petitioner herself, i.e. Asha Rani (grand mother of the child) was not present, and that since respondent No.2 was the mother of the child, she was her natural guardian and therefore it would be appropriate that the child be sent along with the mother while she was in judicial custody.

That order having been challenged, the learned Revisional Court (Additional Sessions Judge, Mohali), vide an order dated July 9, 2019, dismissed the revision, holding to the same effect, that the mother being the natural guardian who was not ready to give custody of her child to her mother-in-law, the custody could not be so given.

It has been further observed therein that the application in question had been filed without recourse to any provisions of the Guardians and Wards Act and further, that no revision against an interlocutory order could be filed, in terms of Section 397(2) Cr.P.C.

Thereafter, this petition having been filed, on 22.10.2019 the

following order had been passed by this Court:-

“Learned counsel for the applicant-petitioner would address arguments as to how, in the face of proceedings under the Guardians and Wards Act, 1890 pending, even temporary custody of the child can be given to the applicant-petitioner, with even such custody (on temporary basis), in the prima facie opinion of this Court, to be considered by the Court as is seized of proceedings in that matter.

Adjourned to 01.11.2019.”

Today, Mr. Hundal relies upon a judgment of the Allahabad High Court in **Smt. Imtiaz Bano Vs. Masood Ahmad Jafri and others, 1979 AIR (Allahabad) 25**, as also one of the Orissa High Court in **Ram Chandra Sahoo Vs. State of Orissa and another 2013 (126) AIC 421**, and submits that as per the judgment of Orissa High Court, with the father of the child in that case having been taken into custody on account of him being an accused in a case registered under the provisions of Section 304-B of the IPC, (with obviously the mother of the child having died), that Court held that it was the fathers' parents who would be the natural guardians of the child, which Mr. Hundal submits is the same situation even presently, with the mother of the child being in custody and involved as an accused in a serious crime, with the father having died.

He further submits that in fact respondent No.2, i.e. the mother of the child, had filed an application to the school of the child stating that in case of she (the mother) not being available, her mother, i.e. the mother of respondent no.2, who would be the natural guardian, and nobody else.

Having considered the matter, upon the aforesaid arguments raised, even from that point of view, firstly, it is to be stated that the natural guardian of the child would be the mother upto the age of five years and thereafter the father, in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956 (as has also been submitted by Mr. Hundal).

The child is stated to be above 5 years of age and therefore, had the father been alive, then in terms of that provision, he would have been the natural guardian.

However, the contention that since the father has died and therefore it would be his parents (especially his mother) who would be the natural guardians of the child, is a contention that cannot be accepted by this Court, at least at this stage, even though the mother is alleged to be an accused in an offence alleged to have been committed by her, punishable under Section 306 of the IPC.

Obviously, the commission of that offence is still to be proved, and with this Court having already ordered her to be admitted to bail today, in the petition filed by her seeking such bail, (with this court having held that she having remained in custody for about five months and no prosecution witnesses having been examined so far, the trial would obviously take a long time), I do not see how the two situations are *pari materia* with each other. (when compared with the situation in '*Sahoos*' case (supra)), because the mother of the child is very much alive.

Consequently, the petition is dismissed, with however, the petition filed by the petitioner under the provisions of the Guardian and

Wards Act, to be dealt with wholly on its own merits.

(AMOL RATTAN SINGH)
JUDGE

November 07, 2019
adhikari/atul

Whether reasoned/speaking: Yes/no
Whether reportable: Yes/no