

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH  
(through video conferencing)**

CRM-M-3165-2021  
Decided on : 09.12.2021

Rajiv Puri

..... Petitioner

Versus

Mukta

..... Respondent

**CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. S.K.Chaudhary, Advocate  
for the petitioner.

Mr. J.S.Mehndirata, Advocate  
for the respondent.

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**Manjari Nehru Kaul, J.(Oral)**

Prayer in the instant petition filed under Section 482 Cr.PC is for quashing the impugned order dated 04.11.2020 (Annexure P-5) and order dated 22.12.2020 (Annexure P-7) passed by Addl. Sessions Judge, Pathankot vide which the custody of the minor child namely Mehar Puri, aged 4 years, was directed to be handed over to her mother i.e. the respondent on every Saturday from 5.00 pm till 12.00 noon of the next day i.e. Sunday. The custody of the child was thereafter to be handed back to her father i.e. petitioner at 12 noon on Sunday.

Learned counsel for the petitioner has urged that the Court below while passing the impugned order failed to appreciate that the child would be exposed to a great deal of trauma while interacting with different persons during her stay with the respondent-mother over the weekends. It

has also been submitted that the child could not be forced to meet her mother i.e. respondent as she was not emotionally attached to her coupled with the fact that the child had tested positive for Covid-19 on 11.11.2020 as a result of which she was not in the best of her health. A prayer, has, therefore, been made to set aside the impugned order as it was against the interest and well being of the minor child.

Per contra learned counsel appearing for the respondent-mother while vehemently opposing the prayer and submissions made by counsel opposite has submitted that the petitioner had not approached this Court with clean hands and had in fact concealed certain material facts. It has been submitted that the petitioner had failed to comply with the order dated 10.06.2020 (Annexure P-3) vide which he had been directed by the Court below to make the child interact with the respondent-mother on a daily basis through the virtual mode(video conferencing) for at least half an hour twice a day between 8.00 am to 6.00 pm. Learned counsel has submitted that since there had been non-compliance of the aforesaid order, the respondent had been left with no other option but to move an application for contempt of Court. It has been further submitted that as a result, vide order dated 04.11.2020 (Annexure P-5) learned Court below modified the order dated 10.06.2020 and directed that the minor child would be handed over to the respondent on every Saturday at 5.00 pm and handed back to the petitioner at 12.00 noon on the following day. It has also been submitted by the learned counsel that the petitioner thereafter impugned the order dated 04.11.2020 (Annexure P-5) by way of a revision petition under Section 397 Cr.PC, which was dismissed vide order dated 22.12.2020 (Annexure P-7)

and hence, this petition was not maintainable being barred under Section 397(3) Cr.PC and on this ground itself the instant petition deserved to be dismissed. Learned counsel strongly controverted the submissions made by learned counsel that the child was not emotionally attached with the respondent-mother and hence, it would be traumatic, if she was sent to live with the respondent on every Saturday. He submitted that there were photographs and video recordings wherein the child could be seen happily playing and interacting with her mother as and when they met. Learned counsel submitted that in the aforementioned circumstances the impugned orders could not be faulted with as they had been passed after considering the well being and welfare of the minor child and in case the minor child was stopped from meeting the respondent-mother, it would be nothing but cruelty being inflicted upon both the child and the mother.

Heard learned counsel for the parties and perused the material available on record including the impugned orders.

The submissions made by learned counsel for the petitioner that it would be traumatic for the child to spend a night, every week, in the custody of her mother, deserves to be rejected outrightly. The mother being a natural guardian cannot be deprived of the company of her child and the child too cannot be kept away from her mother. Rather, if the child and the mother are kept away from each other, it could lead to a bigger trauma on the child, which would leave scars on her psyche for the rest of her life. It will not be an exaggeration to reiterate a universal fact that any child specially at a tender age needs constant nurturing and guidance of none other than her biological mother with whom she has shared an incomparable

and inexplicable bond right from the security of the womb to the time she was brought into this world and thereafter. The status of a mother in a child's life cannot even be substituted by the biological father. It would be thus, very unfair and traumatic to deprive the child of the love and affection of her mother in her tender years.

The respondent-mother being a natural guardian of a minor child cannot be, thus, denied the custody, as ordered vide impugned order, over the weekends.

The impugned orders do not reflect any perversity, which would warrant interference of this Court in any manner.

Accordingly, the present petition stands dismissed.

**(MANJARI NEHRU KAUL)**  
**JUDGE**

09.12.2021

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| Whether speaking/reasoned: | Yes |
| Whether reportable :       | Yes |