

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

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**Transfer Application No.345 of 2023 (O & M)  
Date of decision :-20.03.2023**

**Mandeep Kaur****.....Petitioner****Versus****Phool Kamal Singh @ Phool Komal Singh****.....Respondent****CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ramandeep, Advocate  
for the petitioner.

**NIDHI GUPTA J. (Oral)**

1. Prayer in this petition filed by petitioner is for transfer of the petition bearing No. GW/35/2022 filed by respondent-husband under the Guardian and Wards Act, 1890 (hereinafter referred as 'the Act') read with Sections 6 and 9(3) of the Hindu Minority and Guardianship Act, 1956, titled as 'Phool Komal Singh vs. Mandeep Kaur' pending in the Court of Principal Judge, Family Court, Fatehabad to a Court of competent jurisdiction at Samana, District Patiala.

2. Respondent has filed the above petition seeking custody of the minor daughter, namely, Samrath Kaur, who is currently residing with the petitioner at Samana, District Patiala.

3. Learned counsel for the petitioner, inter alia, submits that:

- i) that the parties solemnized marriage on  
21.11.2018.

- ii) that a female child was born out of the wedlock on 12.4.2020.
- iii) that the petitioner along with minor daughter is living with her parents at Samana, District Patiala.
- iv) That the proceedings arising out of petitions :-
  - (a) under Section 125 Cr.P.C.; and
  - (b) FIR dated 22.1.2022, under Sections 406 and 498-A IPC, registered at Police Station City Samana, District Patiala; and
  - (c) Criminal complaint bearing No.COMI-775/2022 against the respondent;filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Samana, District Patiala.
- v) That the petition filed by the husband under Section 9 of the Hindu Marriage Act, 1955 has also been transferred from Fatehabad to Patiala vide order dated 23.2.2022 passed by Co-ordinate Bench of this Court in TA-1075-2021 (Annexure P-2).
- v) that the distance between the place of residence and place of proceedings is 150 kms. (one side).
- vi) that as per Section 9 of the Act, respondent has to file the petition for custody of the minor daughter where she ordinarily resides.

4. I have heard learned counsel for the petitioner.

5. The legal position in such like cases as the present one, is well established. As per Section 9 of the Act, petition for custody is required to be filed where the minor child ordinarily resides. In the present case, minor daughter is admittedly residing with petitioner at Samana, District Patiala.

6. After going through the entire paper-book, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner-wife will have to bear the litigation expenses and transportation expenses and in case, notice of motion is issued, even the respondent-husband has to bear the litigation expenses and in view of the above facts, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The petition bearing No. GW/35/2022 filed by respondent-husband under the Act, titled 'Phool Komal Singh vs. Mandeep Kaur' pending in the Court of learned Principal Judge, Family Court, Fatehabad is transferred to a Court of competent jurisdiction at Patiala.
- b) The ld. District Judge, Fatehabad is directed to transfer complete record pertaining to the aforesaid case to District Judge, Patiala.
- c) The parties are directed to appear before the District & Sessions Judge, Patiala on 20.04.2023.
- d) The District Judge, Patiala will assign the said petition to the Court of competent jurisdiction.

7. As already noticed above, since the petition is being disposed of without issuing notice to the respondent, accordingly, in these peculiar circumstances, in order to ensure appearance of the

parties before the District Judge, Patiala on 20.4.2023, it is directed that a copy of this order be sent to the respondent(s) through registered post, besides sending a copy of this order to the District Judges concerned through e-mail. Petitioner through her counsel, present in the Court, is directed to ensure her appearance accordingly.

Disposed of.

March 20, 2023

Vijay Asija

**( NIDHI GUPTA )**  
**JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No