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

**CR-2123-2023 (O&M)
Date of Decision: 13.04.2023**

Sonu Singh

...Petitioner

Versus

Rajpreet Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. M.S. Batth, Advocate
for the petitioner.

Mr. Saurav Bhatia, Advocate
for the respondent/caveator.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 28.03.2023 (Annexure P-7), passed by Ld. Principal Judge, Family Court, SBS Nagar (for brevity 'Family Court'), whereby application filed by respondent-wife for giving interim custody of minor son Japman Singh to her, was allowed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Marriage between the parties was solemnized on 12.01.2014 as per Sikh rites and rituals. After their marriage, both of them moved to New Zealand in the year 2014 itself. They both returned to India on 31.12.2018 as they were unable to get their Visas extended. Thereafter both of them started living at the

native village of petitioner i.e., Village Bheen, Tehsil Nawashahr, District SBS Nagar.

2.2. On 02.08.2019, a son was born to the parties. He was not having good health since his birth and his regular treatment is going on from Dr. Puneet Galhotra, at Phagwara. However, respondent had never paid any heed towards the health of her minor son and petitioner always used to take him to the doctor. Rather, respondent started harassing him and his family members also started giving false applications to the police authorities. The complaint given to police was later on withdrawn after executing a compromise through respectable persons of the society.

2.3. At last, respondent herself left the matrimonial home on 13.08.2022 leaving her minor son with petitioner and started living with her parents. Thereafter, again she had moved a complaint to SSP, SBS Nagar on 20.08.2022, which was later on withdrawn by her on 13.09.2022. After three months thereof, the complainant filed a petition under Section 25 of the Guardians and Wards Act, 1890 read with Section 6(a) of the Hindu Minority and Guardianship Act, 1956, for handing over the custody of minor to respondent. Alongwith the said petition an application was also filed for handing over the interim custody of minor son to her during pendency of the said petition. Ld. Family Court allowed the said interim application in favour of respondent vide impugned order.

3. Learned counsel for petitioner would argue that respondent has no resources to properly bring up the minor child and her previous attitude towards minor has resulted in serious health problem to the child. He relies upon judgment of the Supreme Court in *Vasudha Sethi and others vs. Kiran V. Bhaskar and another, 2022(2) R.C.R. (Civil) 32* to contend that there is no hard and fast rule and decision of custody has to be taken on the basis of its own facts and

circumstances. He further relies upon Allahabad High Court's judgment in *Amit vs. Nirmal Sahu, 2009(5) R.C.R. (Civil) 258* to contend that word 'ordinarily' mentioned in Section 6(a) of the Hindu Minority and Guardianship Act, 1956 does not mean 'necessarily' and therefore, in the instant case, though the age of minor child is less than 5 years but it does not necessarily mean that his custody has to be given to mother of child.

4. Learned counsel appearing for caveator/respondents opposes the petition. He would argue that firstly, only a relief of interim custody has been given to the respondent, and the main petition under the Guardian and Wards Act read with Section 6(a) of The Hindu Minority and Guardianship Act is still pending. Even otherwise, in view of the facts and circumstances of the case, as per Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the custody of minor child has to be with respondent-wife only which is also in the welfare of the child in the case in hand. Secondly, he would argue that judgments relied upon by learned counsel for petitioner do not squarely cover the case of petitioner since both the judgments have arisen from Habeas Corpus writ and in the case in hand, only an interim custody of minor child has been granted to the respondent after considering all aspects by Ld. Family Court.

5. Apart from the reasons given by Ld. Court below, as reproduced above, I am of the view that on none of the counts learned counsel for petitioner has been able to convince me that interim custody of minor child granted to respondent-wife is not in the welfare of child.

6. No material irregularity in law or procedure has been committed by Ld. Court below while passing the impugned order calling for interference in exercise of extraordinary revisional jurisdiction.

7. In view of the aforesaid, revision petition is dismissed being devoid of merit.
8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 13, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No