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

**CRWP NO. 7496-2023 (O&M)
DATE OF DECISION : 16.10.2023**

Navjot Kaur**...Petitioner****Versus****State of Punjab and others****...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Shakti Mehta, Advocate,
For the petitioner.

Mr. Mohit Thakur, AAG, Punjab.
Mr. S. S. Majithia, Advocate,
For respondents No.4 to 7.

ARUN MONGA, J. (ORAL)

In an unfortunate and regrettable turn of events, despite this Court having at length made extensive efforts to facilitate reconciliation between the parties, they are yet again before this court seeking indulgence to resolve their differences. Endeavour for reconciliation between the parties is borne out from order dated 13.09.2023 passed by me, which is self speaking and is reproduced herein below :

“ The matter has been heard at some length.

In course of hearing today, this Court also interacted with the parents of minor child as well as minor in the chamber sans their counsels. Petitioner is a physician (gynecologist) and her husband (respondent No.4) is a qualified dentist but works in a Multi-National Pharmaceutical Company. In the larger interest of protecting their marriage and keeping the welfare of child paramount, petitioner (mother) as well as respondent No.4 (father) have taken a joint call to make earnest efforts to try and live together by keeping their differences aside and with a fresh look towards each other.

It also transpires that petitioner is also due for another child and expressed that she is all the more interested to save her marriage, both in the interest of child to be born as well as for the minor son who needs love and affection of both the parents and the joy of a sibling. This Court appreciates the constructive and positive outlook shown by both the parents. They came to the

Court separated from each other with hostile attitude, but are leaving from here together with happy and smiling faces, their son gleefully playing with them, to live together for next few days on trial basis at their matrimonial home, though of course on the persuasion of the court, but decision to do so ultimately is their own.

This Court wishes both the parents and the minor child all the best in their earnest endeavor to live together for the next few days and hopes that the instant petition shall be withdrawn on the next date of hearing and they shall thereafter live happily together as a family.

Post it on 19.09.2023.”

2. *Apropos*, during today's resumed hearing, it transpires that despite resuming cohabitation, the parties' attempt only lasted for four to five days. They are now separated once again and back in this Court to contest for the custody of their child. Petitioner is the mother, and seeks issuance of writ in the nature of *habeas corpus* directing the father to hand over the custody to her.

3. The petitioner, a gynecologist and IVF specialist, entered into marriage with respondent No.4 on January 29, 2017, in Chandigarh. However, later on the marriage fell on rocks, for alleged reasons stated in the petition. Said reasons, being not relevant for the purpose of deciding the instant petition, though both parties have leveled cross allegations on each other, are not being narrated herein.

4. Learned counsel for private respondents No.4 to 7 opposes the petition. He contends that false allegations have been leveled in the petition. Defense is that in September 2019, the petitioner herself left the minor child initially at her parental home and took up employment in Jalandhar. Subsequently, she abandoned the child once more to undergo IVF training from November 2019 to January 2020 in Udaipur, Rajasthan. In February 2020, she left the minor child at her parental home yet again and accepted a full-time position as an IVF consultant.

5. Currently the minor son is in exclusive custody of his father and the petitioner-mother is denied access to him and hence the instant petition.

6. Given the aforementioned facts, this Court can though intervene in child custody matters through a habeas corpus, albeit with a primary focus on the child's welfare and betterment, rather than determining parental rights concerning custody. Ultimately, neither parent can be deemed to have the child in illegal custody, as both are equally entitled to seek custody of their child, but in accordance with law.

7. Be that as it may, in course of today's proceedings, both the parents, in the presence of their learned counsel, have yet again reached an interim arrangement which is mutually acceptable to them in the larger interest and welfare of the minor child. Said arrangement can be described as a “rotational custody” plan for their minor son. It is worth noting that both parents reside in close proximity to each other, 4-5 houses away, within the same neighborhood.

8. Petitioner and father of the minor child have agreed, by mutual consent, that until one of them initiates legal proceedings to seek permanent custody of the child, they will share rotational custody. This ensures that the child does not miss out on the love and care of either parent. The child's father works from home, while the mother, a Physician/Gynecologist, needs to attend her OPDs and perform surgeries as and when necessary.

9. The interim arrangement reached by both parents in the presence of their legal representatives is summarized as follows:

- i. The father will drop the child off at school every morning, and the mother will pick him up at the end of the school day.
- ii. Between 2:30 PM and 5:30 PM, the child will stay with the mother, as the father is occupied with his professional responsibilities during this time. The mother typically leaves for her OPDs at 6 PM, and the father will collect the child at 5:30 PM

from the mother's residence, dropping the child off at school the following morning.

- iii. Regarding weekends and vacations, they have agreed that the first weekend of each month will be spent with the father, while the second weekend will be with the mother. This alternating arrangement will continue from week to week and month to month, until altered either by mutual consent or by an order of competent court.
- iv. As regards vacations, it has been mutually decided to split the time evenly, with the first half of vacation with the father and the second half of vacation with the mother. They have also agreed that they can switch this vacation arrangement by mutual understanding in certain specific situations.
- v. The above rotation custody arrangement shall continue to operate until altered either by mutual consent or by an order of competent court.

10. Petition is disposed of with the expectation that both parents will cooperate mutually and act in the best interest of their child. They are encouraged to prioritize their child's well-being over personal disputes and hostility, rather than using the child as a tool to settle their personal differences. They shall also endeavor to give up their hostility towards each other and try to live happy while separated, in case they cannot live happily together, in the better interest of parenting their son.

11. Pending application(s), if any, shall also stand disposed of.

OCTOBER 16, 2023

Shalini

Whether speaking/reasoned : Yes/No

(ARUN MONGA)

JUDGE

Whether reportable :

Yes/No