

Petitioners no.1 and 2 are the maternal uncle and aunt and petitioners no.3 and 4 are the maternal grandparents of minor Hitansh Gupta. Marriage of Manvi Gupta (sister of petitioner no.1) was solemnized with respondent no.1 Shrey Gupta on 19.11.2015 according to Hindu Rites and ceremonies. Out of the wedlock, son namely Hitansh Gupta was born on 24.09.2019. On 01.01.2022, Manvi Gupta died in her matrimonial home. FIR under Sections 304-B read with Section 120-B IPC was registered against her husband and other family members. The minor child is in custody of the petitioners. Since the petitioners wanted to admit the minor child in M.I.S. Mount International School, Ludhiana and the school authority apprised the petitioners regarding the requirement of the documents at the time of admission of minor child i.e. legal documents of child custody, valid ID proof of Custodian Guardian, child ID proof, Birth Certificate etc., so the petition was filed. During pendency of the said petition, respondents moved an application (Annexure P-8) to hand over the custody of the minor to the applicants/respondents by way of declaration as Guardian of the person and property of the minor.

4. Learned counsel for the petitioners has argued that Manvi Gupta was compelled to end her life on the demand of dowry. No doubt, respondent no.1 – Shrey Gupta is father of the minor child but he has compelled mother of the minor to end her life. The police, after investigation, has filed the challan under Section 306 IPC against Shrey Gupta. It has further been contended that respondent no.1 left the house after the death of Manvi Gupta, leaving his minor child unattended. His

maternal family started caring of him. The maternal family of the minor has been taking care of him since when he was just about two years old. The minor is in custody of the petitioners since then. The Court has also framed charge under Section 306 IPC. Although this Court has stayed the further proceedings but atmosphere in the house of respondents is such that the minor cannot live there with pleasure, where his mother met with unnatural death. Reliance in this regard has been placed on a judgment of this Court passed in Somvir vs. State of Haryana and others reported as **2022(3) RCR (Criminal) 937**, on a judgment of Hon'ble Supreme Court in the case of Nil Ratan Kundu and another vs. Abhijit Kundu reported as **2008(3) RCR (Civil) 936**, a Division Bench judgment of this Court in Neelam vs. Man Singh and another reported as **2015(2) RCR (Civil) 291** and also on a judgment of Patna High Court in the case of Bimla Devi vs. Subhas Chandra Yadav 'Nirala' – Law Finder Doc Id # 150629. It is the further contention of learned counsel for the petitioners that the Court of learned Additional Principal Judge, Family Court, Ludhiana failed to take into consideration the welfare of the minor child and has wrongly passed the order for handing over the custody of the minor child to the respondents.

5. On the other hand, learned counsel for the respondents has submitted that Shrey Gupta is natural father and guardian of the minor child. There is no allegation of demand of dowry or harassment meted out to deceased Manvi Gupta by her husband or in-laws. She suffered losses as she was dealing in share market and being upset, she committed suicide.

Neither her husband nor any of her in-laws family members are responsible

or abetted her in any manner to commit suicide. It has further been apprised to this Court that Shrey Gupta has already been released on bail and the minor child can be taken care of by his father, who is natural guardian. There is no ground that minor should not live with his father, who is completely able to look after him as he is his only child. Although the police has submitted challan under Section 306 IPC but revision petition bearing CRR-1903-2022 was filed by respondent no.1, wherein this Court was pleased to stay the framing of charge under Section 306 IPC against Shrey Gupta. In support of his contentions, learned counsel for the respondents has relied upon a Division Bench judgment of this Court in **Rajinder Kumar Mehta and others vs. Rinkesh Malhotra – Law Finder Doc Id # 1436042.**

6. I have heard submissions of learned counsel for the parties and have perused the case file.

7. There is no dispute that after the death of mother of minor child, he was in custody of his maternal uncle, who cannot be considered as stranger to the minor. Respondent no.1 Shrey Gupta was nominated as accused and case was registered against him under Section 304-B IPC. A suicide note was also found, written by his wife but ultimately, police filed the challan under Section 306 IPC against Shrey Gupta. The Court has already framed the charge. Shrey Gupta has already been released on bail and the order of framing charge has already been stayed by this Court.

8. The paramount consideration in the custody cases is welfare of the minor. In case **Bimla Devi (supra)**, it is held by Hon'ble Patna High

Court that the normal rule is that the father is the natural guardian but that rule is not to be followed when there is allegation of murder of his wife against him. In case Somvir(supra), it is held that the petitioner being accused of having driven his wife to commit suicide, cannot be handed over custody of his child as such course of action is not considered to be paramount welfare of the child.

9. Learned counsel for the respondents has relied upon Rajinder Kumar Mehta (supra), but in that case, the respondent was arrested and after facing the trial, he was acquitted of the charges levelled against him and pursuant to his acquittal, he sought custody of his children. On the basis of evidence led on the record, it was held that the children being of 11 years and 08 years of age, their father should be allowed to exercise his right of custody of children.

10. In the instant case, Councillor was appointed by this Court, who interacted with the child and submitted his report. There is nothing on the file to show that the child is not being treated well by his maternal family. The atmosphere in the father's house of minor child cannot be considered good for the welfare of the child as the family is facing allegations of forcing his mother to commit suicide and keeping in view his tender age, it would not be in the interest of the child that his interim custody be given to his father, at this stage, during the pendency of the case.

11. Keeping in view what has been discussed in the preceding paragraphs, the present revision petition is allowed and the order dated 31.10.2022, passed by Additional Principal Judge, Family Court, Ludhiana,

allowing application of the respondents for interim custody of minor child, is hereby set aside.

12. All the pending applications in this revision petition shall stand disposed of along with this judgment.

November 03, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.