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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 29.11.2023***+ **CM(M) 1236/2023 & CM APPL. 39332/2023, CM APPL. 51993/2023, CM APPL. 51994/2023**

SARINA

..... Petitioner

Through: In person (through VC)

versus

KOSHLINDER SHARMA

..... Respondent

Through: Mr.Rohit Sharma, Adv. and
Ms.Babli Kala, Adv.(DLSA)**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed by the petitioner challenging the order dated 09.03.2022 (hereinafter referred to as the 'Impugned Order') passed by the learned Principal Judge, Family Court (South-West District), Dwarka Courts, New Delhi (hereinafter referred to as the 'Family Court'), in GP No. 88/2019, titled ***Koshlinder Sharma v. Sarina.***

2. By the Impugned Order, the learned Family Court has passed a consent order granting visitation right to the respondent with the child, who is around eight and a half years old, on every 1st and 3rd Saturday of the month from 2.30 PM to 4.30 PM at the Children Room, Family Court, Dwarka, and virtual visitation with the child on every 2nd and



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4th Sunday of the month from 6 PM to 7 PM.

Petitioner's Submissions

3. The petitioner challenges the said order by contending that an FIR No. 540/2022 under Section 10 of the Protection of Children from Sexual Offences Act, 2012 has been lodged in the Police Station, Dwarka, as the respondent tried to inappropriately touch the child during one of the visitations. Moreover, the charge-sheet has also been filed against the respondent for the alleged offence.

4. The petitioner states that though the above order was modified by the order dated 05.01.2023 passed by the learned Family Court, to the extent that there will be no contact right to the respondent herein during the visitation with the child and the physical meeting shall be under the supervision of the Incharge/official of the Children Room, Dwarka District Court, the respondent still tried to make physical contact with the child.

5. The petitioner, who appears in person, submits that physical meeting of the child with the respondent would have adverse impact on the child and, therefore, should not be allowed.

Respondent's submissions

6. On the other hand, the learned counsels for the respondent submit that except for the statement of the petitioner about the respondent inappropriately touching the child, there is no other evidence in support of such assertion. In this regard, they rely upon the contents of the charge-sheet filed by the police against the respondent.



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7. They further submit that the learned Family Court has made adequate arrangements for the protection of the child in its order dated 05.01.2023, and the complaint made by the petitioner is merely to deny the meeting between the respondent and the child.

Analysis and Findings

8. I have considered the submissions made by the learned counsels for the parties.

9. At the outset, it is noticed that the present petition has been filed challenging the order dated 09.03.2022 passed by the learned Family Court, which subsequently stands modified by the order dated 05.01.2023. The Order dated 05.01.2023 passed by the learned Family Court is not in challenge in this petition. Passing it off as a mere technicality, however, no adverse inference against the petitioner is taken on this account.

10. A reading of the order dated 09.03.2022 also reflects that it was passed with the consent of the parties and, therefore, cannot be challenged.

11. Be that as it may, the learned Family Court, in its order dated 05.01.2023, after taking into account the charge-sheet that has been filed against the respondent, has modified the visitation rights, by observing as under:

“12.As far as prayer of respondent for cancellation of visitation rights are concerned, I find that it would not be appropriate to cancel the visitation right of the petitioner because it will adversely affect the welfare of the child. But at the same time this Court find that visitation right already passed in this matter are liable to be modified to the extent that there shall be no contact right to petitioner during



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the meeting with child till further order and physical meeting shall be in the supervision of the Incharge/Official of Children Room, Dwarka District Court."

12. I have also perused the copy of the charge-sheet that has been placed on record, which *inter alia* records as under:

"Thereafter the Incharge Children Room Dwarka Court Mr Pawan Kumar was examined and narrated the entire facts to him. On this he stated that on 15.10.2020, Mrs Sarina informed him that her husband Mr Koshlinder touched the private part of her minor child. But that time many parents along-with children their were present in the Children room. There is no CCTV Camera installed inside the room. No such incident was happened in-front of him. Neither he saw any incident of touching nor any parents complained against the father of the child. During the visit, he was always present in the children room so that no unnecessary incident can happen in the court. Then the previous involvement of the accused Koshlinder Kumar Sharma was checked through SCRB and found nil report which is also on record. Now the investigation of the case has been completed in all respect. Except the statement of the complainant and the minor child, no CCTV & audio/video evidence is on record. Victim has supported the version of FIR. As per the contents of the FIR & statement U/s 164 CrPC of the victim, there is sufficient evidence on record to prosecute the accused Koshlinder Sharma S/o Sh Subhash Chand Sharma R/o HNo B-305, Gali No. 5, Hari Nagar, ND Age 55 yrs U/s 10 POCSO Act in the Col No 11 of the Chargesheet. This final report is submitted for consideration before the Hon'ble court for judicial verdict. All the statements of the witnesses have been recorded."

13. Keeping in view the report of the investigation conducted by the police, I see no reason to modify the Order dated 05.01.2023 that has been passed by the learned Family Court. It is noticed that the visitation rights are to be exercised by the respondent in the presence



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of the Incharge/official of the Children Room and there is a strict prohibition against the respondent making any physical contact with the child.

14. In view of the above, I find no merit in the present petition. The same is dismissed. The pending applications also stand disposed of.

15. There shall be no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 29, 2023/ns

Click here to check corrigendum, if any