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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 21st August, 2023*

+ **MAT.APP.(F.C.) 190/2022 & CM APPL. 52834/2022**

MANPREET SINGH

.... Appellant

Through: Mr. Dalip Anand and Mr. Chetanya
Puri, Advocates.

versus

TRIPAT KAUR KOHLI AND ANR.

.... Respondent

Through: Mr. Akshay Dahiya and Mr.
Siddharth Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

NEENA BANSAL KRISHNA, J

1. The appellant father has filed the present Appeal against the impugned Judgment and Order dated 05.09.2022 vide which the appellant seeking custody of the minor daughter under Section u/s 25 of the Guardians and Wards Act, 1890 has been dismissed by the learned Principal Judge, Family Court, South-East Delhi

2. The **facts in brief** are as stated in the present appeal that the appellant father got married to Respondent No.1 according to Hindu (Sikh) Rites and Ceremonies on 18.02.2006 and one daughter namely Miss Prabhleen Kaur Kohli was born from the said wedlock on 08.03.2007. The appellant got arrested by the police in a false case under Section 364/302/201 IPC on 12.05.2008 and remained



in judicial custody till 15.01.2015. The respondent No. 1 along with the child, left the matrimonial home in May, 2008 without the permission of the parents of the appellant while he who was in judicial custody. The respondent No.1 thereafter, sought divorce from the appellant and blackmailed that in case he did not agree to the divorce, she would make his life miserable. She thereafter, filed a false case in CAW Cell, implicating the appellant and his family members by making false allegations; however, with the intervention of the respectable relatives, she agreed to withdraw her complaint. It is further stated that pursuant to the settlement, all the dowry articles were returned to respondent no.1 on 10.06.2008 but she refused to honour her part of Agreement wherein she had agreed to hand over the custody of the child to the parents of the appellant. She again filed a complaint in the CAW Cell in September, 2008 and insulted and humiliated the family members of the appellant.

3. The mother of the appellant/paternal grandmother filed a petition under Section 25 of the Guardians and Wards Act, 1890 against the respondent no.1 and the interim custody for one day was granted to her by the Guardian Judge, THC, Delhi. Aggrieved by the said Order, the respondent no.1 filed a Civil Misc. (Main) before this Court and this Court granted right to the grandmother to meet her granddaughter with the direction to withdraw the custody petition before the Trial Court and the same was accordingly withdrawn by the mother of the appellant.

4. The appellant on getting a regular bail from the High Court of Chandigarh vide Order dated 05.01.2015, filed the present petition for the custody of the child whom he had not been able to meet ever since the day of his incarnation in jail. The grounds for claiming the custody were that



the child was attached to the grandmother/Dadi and on every visitation she enquired from her about her father i.e. the appellant. However, the respondent no.1 misguided the child and instructed her to address the grandmother as Aunt. It was claimed that the appellant was residing in joint family and in his absence; his mother with whom the child had special affection, would well look after the child. He also stated that he is the natural father of the minor daughter and thus, sought permanent custody of the child.

5. The petition was contested by the respondent who asserted that the appellant was involved in the heinous crime under Section 364/302/201 IPC in FIR No. 92/2008, PS Kundli, Haryana registered on 12.05.2008 and he has been in judicial custody since then. The child who was then about one year, is not safe in the custody of the appellant who repeatedly extended threats to respondent and their daughter. It was further claimed that the appellant was misusing the privilege of bail granted to him and claimed that the petition was not maintainable. It was further asserted that the appellant had played a fraud on the respondent no.1 and her family members as he suppressed that he was suffering from Type-1 diabetes and was dependent upon insulin injections. Moreover, she was subjected to physical beatings, torture and harassment and various acts of cruelty by the appellant and other family members. It was further stated that the appellant has been convicted in the said criminal case and sentenced to life imprisonment and looking at his antecedents, it is not safe to hand over the custody of the child to the appellant. It was claimed that the appeal is liable to be dismissed.

6. Learned Principal Judge, Family Court observed that while



considering the Guardianship Petition, it is the welfare of the child which is of paramount consideration. The parties admittedly have been living separately for more than 14 years and the child has been in the exclusive custody of the respondent No.1, her mother. It was not in dispute that since the day of separation of the parties in 2008, the appellant has not met the child and the respondent has been taking care of the child who is now about 15 years of age and is in the formative years. The father has been convicted and serving the sentence for life imprisonment under Section 364/302/201 IPC. Therefore, it would not be in the interest and welfare of the child to grant her permanent custody to the appellant father. However, considering that he is the natural father, he was allowed to meet the child on every 3rd Saturday of the month in the Family Court, Saket from 2.00 PM to 3.00 PM subject to the condition that during her examinations, the visitation shall take place as per the convenience of the child.

7. Aggrieved by the said judgment, the present appeal has been preferred.

8. **Submissions heard.**

9. Essentially, the appellant has asserted that he being a natural father is entitled to better access to the child than meeting her for one hour in a month.

10. It is not in dispute that the child since the age of one year, is in the custody of mother. The appellant/father is facing sentence to life imprisonment for the offence under Section 302 and 201 IPC. He may be on bail presently but looking at his antecedents and his conviction in a criminal case of the most heinous nature making his future uncertain, it



cannot be considered in the interest and welfare of the child to grant her custody to the appellant. Moreover, it cannot be overlooked that the appellant has practically had no access to the daughter since she was one year old, and is practically a stranger to the appellant. The child is now 15 years old and she is in her formative years wherein she needs the care and protection of the mother more than any other person. Furthermore, the appellant cannot claim the custody by asserting that his mother would take care of the child.

11. Learned Principal Judge, Family Court has rightly declined the permanent custody of the child to the appellant, but considering that he is the natural father, in interest of welfare of the child, appellant has been granted limited visitation right for one hour in a month.

12. We find that the impugned order does not suffer from any infirmity and the appeal along with the pending applications is hereby dismissed.

**(SURESH KUMAR KAIT)
JUDGE**

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 21, 2023/AT