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

+ CM(M) 2450/2024, CM APPL. 25234/2024—Exp. From filing TCR
CM APPL. 25236/2024—Lengthy list of dates

SARA CARRIERE DUBEY

..... Petitioner

Through: Ms. Priya Hingorani, Sr. Adv. with
Mr. Himanshu Yadav with Mr.
Naseem Ahmed, Advs.

versus

ASHISH DUBEY

..... Respondent

Through: Mr. Tanmaya Mehta, Ms. Vandana
Kejriwal, Mr. Tanmaya Mehta & Mr.
Anmol Deep Singh, Advs.

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+ CM(M) 2492/2024, CM APPL. 26501/2024--stay

ASHISH DUBEY

..... Petitioner

Through: Mr. Tanmaya Mehta, Ms. Vandana
Kejriwal, Mr. Tanmaya Mehta & Mr.
Anmol Deep Singh, Advs.

versus

SARA CARRIERE DUBEY

..... Respondent

Through: Ms. Priya Hingorani, Sr. Adv. with
Mr. Himanshu Yadav with Mr.
Naseem Ahmed, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

20.05.2024

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1. The present petitions have been filed by the estranged couple, who are the parties before this court having impugning the same order dated 09.04.2024 passed in Guardianship Petition No. 15/2019 titled as “Sara Carriere Dubey v. Ashish Dubey” by the court of learned Judge Family Court, South, Saket, Delhi. By way of CM(M) 2450/2024 the petitioner/mother, who is also the respondent in the second petition has



assailed the said order to the extent that the learned Judge Family Court has permitted the petitioner mother to take both the children on a holiday within United Kingdom (hereinafter referred to as “U.K”) for a period of 15 days, after the end of the school terms of the children. Whereas, by way of CM(M) 2492/2024 the petitioner/husband herein who is also the respondent in the above- mentioned petition challenges the same order to the extent that the learned Judge, Family Court has permitted the respondent herein to undertake a 15-day vacation with the children in U.K and further permitting the mother to bring the children back to India thereby giving the custody and control of the passports of the children to the respondent mother.

2. The chronology of facts presented below is same in both the petitions. The couple got married under the Special Marriage Act, 1954 on 07.02.2006. The wife is a French national and the husband an Indian citizen. However, it is not necessary to elucidate the details of the other litigation, between the parties but to deliberate over the grievance of the parties vis-à-vis the impugned order.

3. The estranged wife filed a Guardianship Petition bearing GP No. 15/2019 under Section 7 & 9 of the Guardians and Wards Act, 1890 before the learned Principal Judge, Saket Courts, Delhi for the custody of the two minor children born out of their wedlock. Vide a writ petition being W.P (C) 6740/2019, the mother took an undertaking before this court that she would not remove the minor children from NCR of Delhi without orders from an competent court.

4. Later on, 11.12.2019 the mother was allowed to take the minor children to France for an annual trip by the learned Judge, Family Court vide order dated 11.12.2019 subject to the mother furnishing a security to the



extent of Rs. 1 Crore and the father was directed to handover the Indian passports of the minor children to the mother. The order was challenged before this Court, vide order dated 19.12.2019, this Court disposed off the challenges by both the parties to the order dated 11.12.2019 by way of the mutual order whereby the parties agreed that the mother would take the children for vacation in India between 26.12.2019 to 09.01.2020, subject to the condition that before leaving for such vacation, she would give a prior intimation to learned Judge, Family Court informing of the place of her visit as also complete travel itinerary along with contact details. Thus, the order of learned Judge, Family Court was modified.

5. In the meanwhile, the father filed his Guardianship Petition No. 19/2020 under Section 7 & 10 read with Section 25 of the Guardians and Wards Act, 1890 before the learned Judge, Family Court. Once again, the mother filed an application on 11.03.2022 seeking permission to allow minor children to go to France in extension to the proposed U.K visit of the minor son for the purpose of admission interview during May, 2022 however, the learned Judge, Family Court vide common order dated 23.03.2022 dismissed the mother's application to travel to France and allowed travel application of the father to take the minor children to U.K for their assessment for the admission in schools in U.K.

6. Subsequently, the order dated 23.03.2022 was assailed before this court and vide order dated 13.04.2022 this court granted an interim arrangement, where in the mother and the minor daughter were permitted to accompany the father and the minor son to U.K and additionally, the learned Judge, Family Court granted liberty to the mother's parents to accompany



and meet the minor children during their stay in U.K at the expenses of the father.

7. It is pertinent to mention that vide Guardian Petition bearing G.P No. 15/2019 the mother has sought to be appointed and declared as the sole legal guardian of the person and property of her minor children and seeking restrain orders against the father for taking the minor children from the custody of the mother. The father through his Guardian Petition bearing G.P No. 19/2020 has also sought exclusive custody of both the minor children. The legal issue involved in both the custody petitions makes it all the more clear that why both the parties are aggrieved by the impugned order passed by the learned Judge, Family Court.

8. On 15.03.2024, the mother had once again filed an application before the learned Judge, Family Court seeking permission to allow the minor children to go to a trip to France with her during their term break in the month of July, 2024 to which, the learned Judge, Family Court passed the order on 09.04.2024, wherein it disposed of the application of the mother by permitting the mother to take both the children on a holiday within U.K for a period of 15 days and further allowing relatives from the mother's side to visit U.K. and spend time with children. On the other hand, the father is aggrieved by the same order and has challenged the part where the mother is permitted to bring the children back to India, thereby giving the custody and control of their passports in the hands of the mother. The above-stated chain of events has led to the present petitions.

Submissions of the mother

9. Ms. Priya Hingorani, learned Senior Counsel submits on behalf of the mother that the only question for consideration before this court is whether



learned Judge, Family Court while exercising its *parens patriae* jurisdiction, can perpetually restrain the minor children from visiting their maternal grandparents residing in France. The maternal grandparents of the children are above 70 years of age suffering from severe medical ailments and thus travelling to U.K. would be neither feasible for them nor suggested seeing their age debilitating illness.

10. It is submitted on behalf of the mother that the children have expressed their desire to attend the family re-union, being organized at “La Guiberderie” situated in Longue-Jumelles City, France to mark the centenary year of the purchase of the ancestral family home and to meet their maternal relatives, spend more time sight-seeing and doing leisure activities which is being organized in France in the month of July, 2024. In case the children are not allowed to go to France, it would amount to isolation of children from their maternal side of the family.

11. It is submitted that the father has misled the court in believing that there is an apparent risk related to the mother taking to children to France. The mother though a French national holds the OCI card and aadhaar card issued by the Indian authorities. She owns several immovable properties in India, individually & jointly and has her roots in India. If she wanted, she could have gone back to France much earlier with the children, which is not the case. Moreover, the apprehensions of the father are totally unfounded since both the children are Indian Nationals and are Indian Passport Holders.

12. It is submitted that there is no valid reason for denying the minor children the permission to travel to France. The mere fact that the mother is a French national and therefore the minor children have French Identification Cards cannot be the basis for an indefinite embargo upon the



minor children to travel France. Moreover, right to travel abroad is an important human right as laid down by the Hon'ble Supreme Court in the case of **Satish Chandra Verma v. Union of India C.A No. 3802/2019**. It was also submitted that no court till date has adjudicated on the issue that present is a case of flight risk, which are frivolous apprehensions of the father and children cannot be made to lose their desire on such frivolous apprehensions.

13. The learned Senior Counsel further submits that children had visited their maternal family in France on multiple occasions previously on each year before disputes arose, and the children returned back to India safely. The learned Senior counsel submits that the order passed by the learned Trial Court is neither expedient nor practical as family function is arranged in France and no useful purpose would be served to travel to U.K. for spending vacation time with children.

Submissions of the father

14. Mr. Tanmaya Mehta, learned counsel for the father has outrightly opposed the request of the mother. He states that the mother is at an acknowledged flight risk - as is born out from repeated orders passed by this court. The children have never been allowed to travel abroad independently with the mother nor their passports have ever been allowed to be in mother's custody.

15. The learned Judge, Family Court permitting the mother to retain the passports of the children while in United Kingdom directly runs into the teeth of various orders passed by this Court as the control and custody of the passports of the children was never given to the mother and it was allowed to be with the father.



16. Learned counsel for the father submitted that the mother has concealed this fact from the court that both their children have French Nationality Card and there is a high probability that if the children are permitted to go to France with the mother they might not return back to India as it would be easy for them to attain French passport on the basis of French Nationality Card.

17. The learned counsel further submitted that the application dismissed by the learned Judge, Family Court vide the impugned order is not the first application seeking the said relief, mother has attempted similar applications seeking identical reliefs but has always been denied such permissions by this court as well as learned Judge, Family Court acknowledging the fact that the respondent is at flight risk, who cannot be trusted to return with the children to India. The learned counsel heavily relied upon the orders passed by this Court on 16.12.2019 in CM(M) 1786/2019 whereby the order passed on 11.12.2019 by the learned Judge, Family Court allowing the children to travel to France with mother was stayed and in continuation of the same, the above-mentioned petition was disposed of by order dated 19.12.2019 whereby the mother was allowed to take the children for vacation within India. And on order dated 23.03.2022 passed by learned Judge Family Court whereby application filed by the mother seeking permission to allow the minor children to go to France during the summer vacations in May, 2022 was dismissed.

18. Learned counsel submitted that the mother is a French national who has no family, assets, properties or interest of her own in India hence, there exists no reason for her to return to India if empowered with the passports of the two children.



19. The apprehension of the father is that within 15 days in United Kingdom, the mother could very well get the visas for children to travel to France. Previously, this Court vide order dated 14.10.2023 wherein a similar apprehension was raised, restrained the school of the children from releasing the passport of the children without express directions. Learned counsel canvassed that he is challenging the impugned order only to the extent that the passport of the children be not handed over to the mother, however, in case, she wishes to spent 15 days vacation with children in United Kingdom along with her parents to which he has no reservation.

20. During the arguments, learned counsel further submits that even otherwise the children have had various opportunities to meet and mingle with their maternal grandparents as even last year, they had come to India and stayed with the mother of the children for 2-3 months. Moreso, the maternal grandfather is still in India, residing with his daughter. The learned counsel also submitted that since after the disputes arose between the parties in the year 2019, the children have not travelled to France and two of the applications moved on behalf of the mother on the similar issue have been dismissed by this Court vide order dated 19.12.2019 in CM(M) 1786/2019 and by learned Judge Family Court vide order dated 23.03.2022.

Analysis & conclusion

21. It is not disputed that before the year 2019, the children had been going to France along with their parents or with mother but the visits to France were curtailed after the acrimonious relationship that developed between the parents of the children. It is also true that the passports of the children have never been handed over to the mother and it was either in the custody of the father or the Registry of this Court. The passports of the



children were handed over to the father by this Court at the time when they have to be admitted in boarding schools in United Kingdom.

22. In this background, the learned Trial Court has rightly concluded that considering the totality of facts and circumstances, the apprehension of the father that there is a flight risk and even a possibility that mother might not bring back the children to India within time cannot be totally brushed aside. Moreso, as per email of the brother sent to mother of the children, the family reunion is to take place only on 20.07.2024 and 21.07.2024 whereby few of the cousins of the petitioner will be there, but during the period i.e. from 05.07.2024 to 25.07.2024, the mother seeks to take the children to various places, to visit one of the maternal uncles and his family in Lyon and to meet great uncles, aunts and friends during their trip to France.

23. Importantly, the maternal grandfather of the children is in India as stated on behalf of the father, which gets strengthened from the submissions on behalf of the mother that the children will be staying with their grandmother and one of their uncles while living in Paris. Moreover, the mother has not disclosed and given any information about the dates and the places when the children will be visiting various relatives in France and the said places have also not been identified.

24. The major stress of the arguments of the mother was on the fact that the children are required to travel to France on the occasion of Family get together to mark the Centenary year of the purchase of the ancestral family home, which actually is only for two days but during the rest of the period for which the permission is being sought by the mother is to be utilized for visiting some relatives and places in France.



25. Having considered the entire circumstances and the various orders passed by this Court as well as the learned Judge Family Courts, Delhi, in peculiar facts & circumstances of the case, this Court is not inclined to consider the prayer of the mother to take children to France from 05.07.2024 till 25.07.2024. It is true that the mother had been granted permission to take minor children on various trips during their vacations earlier but, only within India as reflected in order dated 19.12.2019 of this Court passed in CM(M) 1786/2019. However, the mother will be at liberty to take the children for vacation for 15 days within United Kingdom after term break as directed in impugned order.

26. It is made clear that during this period of 15 days, the children can remain with the mother and the passports of the children shall remain as per previous arrangement being followed and not with mother. Moreover, if the father brings the children back from United Kingdom to India then in that case the custody of the passports shall be with the father. The parties to work out a schedule with respect to the vacation of children in United Kingdom on start of their summer vacation and the itinerary be placed before learned Judge, Family Court.

27. In terms of the above observations, the petitions along with pending applications are disposed of.

SHALINDER KAUR, J.

MAY 20, 2024/ss