

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14472 OF 2024

Sonam Yash Sale

...Petitioner

Versus

Yash Sanjay Sale

...Respondent

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Mr. Surve Kshitij Hemant, for the Petitioner.

Ms. Gulestan Dubash, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 21 MARCH 2025

P.C.:

1. Heard Mr. Surve, learned Counsel appearing for the Petitioner and Mr. Gulestan Dubash, learned Counsel appearing for the Respondent.

2. By the present Writ Petition filed under Article 227 of the Constitution of India the challenge is to the Order dated 24th July 2024 passed by the learned Judge, Family Court, Solapur below Exhibit - 6 in Petition No. D-24 of 2023 ("impugned Order"). The operative part of the impugned Order is in Paragraph No.6 which reads as under :-

"6. It is to be noted that prior to this the petitioner and respondent had settled the terms and conditions amicably and produced on record at Ex. 17 and 29. Considering the willingness of both parties following terms are fixed for the interim custody and access of minor girls.

- (1) *Every day video call access of an hour.*
- (2) *On all Sunday since the evening of Saturday till the evening of Sunday.*
- (3) *On the half vacation of Diwali, Christmas and Summer holidays. Period should be decided by the petitioner and respondent considering the days of holidays.*
- (4) *Petitioner and respondent can attend the School Annual and sports functions of daughter in her School and Parents, Teachers meeting as and when parents present is essential and called by the School.*
- (5) *Birthday of daughters and husband and wife should be celebrate together along with their respective family members.*
- (6) *At any other occasion on any School event or the other festivals or any auspicious day the petitioner and respondent should amicably decide the visit terms and by submitting pursis before the Court prior to their access.*
- (7) *Petitioner can avail access of minor daughter however, considering the age of minor daughter Rishna the respondent shall give the access of minor daughter when she will drop and pick up her elder daughter.*
- (8) *Whenever the elder daughter came in the house of petitioner his mother should remain present in the house to look after her. The respondent mother shall drop the elder daughter Krishna at the entrance of Oasis Mall in the evening on Saturday and pick up from the same place in the evening of Sunday.*
- (9) *Both petitioner and respondent may avail access of the daughters as and when require with the permission of the Court.”*

3. At the outset, Mr. Surve, learned Counsel appearing for the Petitioner, states that the only objection is to the Clause (2) of

Paragraph No.6 of the impugned Order. He submits that the Petitioner has no objection to other Clauses of the impugned Order.

4. As per the said Clause (2) of Paragraph No.6 of the impugned Order, overnight access of daughter is given to the Respondent i.e. father on all Sundays, i.e. the evening of Saturday till the evening of Sunday.

5. Mr. Surve, learned Counsel for the Petitioner states that the daughter who is about 7 years and 8 months, is not ready for the overnight access. On instructions of the Petitioner, he submits that on every Sunday the elder daughter can go in the morning and till evening the access can be given to the Respondent - father. He also states that without prejudice to his other contentions granting the overnight access on every Sunday will also affect the study of the elder daughter.

6. On the other hand, Ms. Gulestan Dubash, learned Counsel appearing for the Respondent, states that in fact during Diwali Vacation the elder daughter had stayed with the Respondent - father for 6 days and therefore there is no basis in the said contention.

7. Thus, it is clear that, the apprehension expressed by Mr. Surve, learned Counsel that the elder daughter is not ready to have overnight access, is without any basis. The elder daughter has stayed with the Respondent - father for 6 days during the Diwali Vacation. It is well established that for proper growth and development of the child the

love and affection of both the parents is necessary. Accordingly, there is no substance in the contention that the overnight access be given to the father. However, there is some substance in the contention that if the overnight access is granted on all Sundays, then study of the daughter is affected.

8. Accordingly, Clause (2) of Paragraph No.(6) of the impugned Order dated 24th July 2024 is modified as follows :-

“The overnight access of the elder daughter will be given once in 15 days between 06:00 pm of Saturday till 06:00 pm of Sunday.”

9. Accordingly, except the above modification, no interference in the impugned Order dated 24th July 2024 passed by the learned Judge, Family Court, Solapur below Exhibit - 6 in Petition No. D-24 of 2023 is warranted. The Writ Petition is dismissed, subject to above modification.

[MADHAV J. JAMDAR, J.]