

Order below Exh. 89

in

Criminal Misc. Application No. 79/2022

- 1) Komalben W/O Milinbhai Patel D/O Bharatbhai Patel
- 2) Minor Niva Milinbhai Patel

...Applicant

versus

- 1) Milinbhai Hasmukhbhai Patel
- 2) Gitaben Hasmukhbhai Patel
- 3) Hasmukhbhai Chunilal Patel
- 4) Mikinkumar Hasmukhbhai Patel

...Respondents

1. This application has been filed by the respondent for physically visiting his daughter. Learned advocate J.J. Limdiwala vehemently argued that earlier vide Ex. 24, my predeceased judge has granted visiting rights in favour of respondent through online mode only till 15 minutes on first and third Sunday. Moreover, he relied upon Section 21 of the **Protection of Women from Domestic Violence Act, 2005** for the sake of argument I will reproduce Section 21.

2.1 Section 21 of the Domestic Violence Act is as follows:

21. Custody orders.—*Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent: 9 Provided that if the Magistrate is of the opinion that any visit of the respondent may be*

harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

Reliance has been placed upon the aforesaid underline part which states that only the aggrieved party as stated in Section 2A of this Act can file such kind of application. However, my predeceased judge has allowed this application for virtual meeting. But, this Court has no power without any lawful cause to modify aforesaid order.

2.2 Reliance also has been placed upon the provision of **Guardians and Wards Act, 1890**, wherein temporary or permanent custody of any children can be decided by the Hon'ble District Court only. As per the ratio laid down by the Hon'ble Court of record, this Court has very limited power for granting such kind of custody and that too only in favour of women only. This Court is sensitized towards the custody issue. This Court believes that for the reconciliation of the family, the visiting and custody rights are supposed to be granted, but such power has not been given to the Magistrates as per Section 21 read with Section 2A of the **Protection of Women from Domestic Violence Act, 2005**. Therefore, this Court is *Functus officio* for the custody order in favour of respondent. Accordingly, for want of jurisdiction to allow such kind of application following order is hereby passed.

: O R D E R :

1. Application of respondent for Physical Custody or Visiting Right is hereby dismissed for want of jurisdiction of this Court. However, it is clarified that earlier order of my predeceased Judge dtd. 07.08.2025 will continue till the end of this litigation.

Date : 03.02.2026
Dahod

(W. R. Malik)
Chief Judicial Magistrate,
Dahod.
UID No. GJ-01144

p.s Deepak Singh