

ORDER-SHEET FOR MAGISTRATE'S RECORDS

DISTRICTS- Nalbari (Assam)
Present : Dharendra Newar, AJS

IN THE COURT OF JMFC, NALBARI

DV 83/2022

Sl No	Date	Order	Signature
	03/01/24	Today was fixed for personal appearance of the parties/ NO on petition no 1852. Seen the petition no 1852/23 filed by the respondent under section 21 of the DV Act for granting temporary custody of the child namely Mehek Yasmin and also for granting visiting right to the respondent. The petitioner/ respondent stated in the petition to the tune that on 27-08-22 the aggrieved went out from the rented house along with the minor daughter and that since then the petitioner could not meet her daughter Mehek Yasmin. As per the petitioner/ respondent the aggrieved has not allowed the petitioner to meet his daughter even in the school premises. The petitioner also states that the aggrieved party did not pray for granting custody under section 21 of the	

DV Act and therefore the present petitioner/ respondent being the natural guardian/ father of the daughter prayed for granting interim custody of the child Mehek Yasmin.

The petitioner/respondent also states that the aggrieved person is living in a rented house at college road, Nalbari town along with the child but the aggrieved went out in the morning time for her work and he used to return from her place of job in the evening after 6 pm keeping the child alone in the room. On the other hand the petitioner/ respondent lives with his parents, brother and sisters and therefore the child will feel comfortable to stay with the petitioner. Hence the petitioner prays for passing custody order of Mehek Yasmin in his favour and also prays for granting the right to visit the child as and when the petitioner desires.

Both the aggrieved party and the respondent has appeared personally today in the court. The aggrieved party has also brought her daughter Mehek Yasmin to this court. I have heard the aggrieved party and the respondent. I have also interacted with the child namely Mehek Yasmin. The respondent reiterated his willingness of visiting right

to meet his child Mehek Yasmin. The aggrieved party also stated that she has no objection to the visiting right of the respondent to meet their child Mehek Yasmin however she did not agree to the custody of the child to the petitioner/ respondent. The child Mehek Yasmin though expressed her willingness to stay with her mother/ aggrieved person, however, she also showed her interest to meet her father/ the respondent.

Perused the case record and other materials available on record. The petitioner/ respondent being the father of the child Mehek Yasmin has prayed for interim custody of the child Mehek Yasmin. The petition is filed under section 21 of PWDV Act. In this regard I have been gone through Section 21 of PWDV Act which reads 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:*

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."

As such it appears that the temporary custody of any child under section 21 of the PWDV Act may be granted to the aggrieved person or the person making an application on her behalf. In the instant case in hand it is the respondent who is the petitioner seeking for interim custody of the child Mehek Yasmin. Moreover, while interacting with the child Mehek Yasmin, she also expressed her willingness to stay with her mother only. In such a situation, the prayer of the petitioner/ respondent seeking for interim custody of the child Mehek Yasmin is hereby rejected.

The petitioner has also prayed for visiting right to meet his daughter Mehek Yasmin. The petitioner/ respondent is admittedly the father of the child Mehek Yasmin. The child Mehek Yasmin, while interacting, showed her interest to meet and visit her father/ respondent. The aggrieved person also did not express any objection to the same as already mentioned above. There is nothing on record to suggest that granting visiting right to the petitioner/ respondent shall be harmful to the interest of the child. In

	such a situation, the court is not oblivious to the right of the father/petitioner to meet and visit his child. Therefore, under the facts and circumstances of the case, the father/petitioner is given the visiting right to the extent that the aggrieved party shall allow the petitioner to meet the child Mehek Yasmin at least once in a week preferably on Sunday or any other holiday at any place convenient to the child. During the visit, the petitioner/respondent will be at liberty to take the child to the nearby restaurant, sops etc on that particular day. At the same time the petitioner shall not be allowed to do any act against the wish and welfare of the minor child. Perused the CR. Let this matter be fixed for cross examination of the PWs on the next date. Aggrieved party is directed to be present on the next date along with her witnesses for cross examination. Fix ; 27.02.2024 for Cross of PWs.	
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