

Act VIII 8 of 2018.
R-2/18

Order No.42 05.12.2024

Parties file hazira.

Case record is taken up for order in respect of the petition U/s 151 of CPC dt.04.05.2024 filed by the petitioner/father for permission to visit his minor son.

The brief fact remains that petitioner got married with Poonam Shaw in the year 2012 and out of the wedlock, male child Sidharth Shaw was born on 19.12.2013. Allegedly on 06.09.2017, the petitioner's wife Poonam Shaw committed suicide. After the unnatural death of Poonam Shaw, the family members of Poonam Shaw lodged a written complaint at Tangra PS over the unnatural death. It was alleged that mother-in-law of the petitioner took the custody of Sidharth Shaw from his school quite illegally during the custodial detention of the petitioner. That even after several requests on numerous occasion, the child was not returned. That child is being deprived of natural love and affection of his loving father. The proceeding U/s 25 of the Guardians & Wards Act was filed on 19.01.2018.

The instant petition dt.04.05.2024 seeks visitation by the father atleast twice a month.

Ld Advocate for the petitioner/father submitted that child is only 11 years and the father has been long deprived from seeing his only son. That it is the fundamental right of the father to get the company of his son and it is also the right of the child to receive love and affection from his father. It was also stated that Court should appreciate that a child needs the love and care of his natural guardian for his holistic growth of mental faculty.

It was also stated that there is no proposition of law that father will be deprived from meeting the child unless and until he exonerates himself from the criminal trial.

Objecting to the said application for visitation, Ld Advocate for the OPs submitted that instant proceeding was filed on 03.07.2019 but the father chose to seek visitation in the year 2024. That petitioner/father is shedding crocodile tears and his intention is quite malafide. That trial of the criminal proceeding U/s 306/498A/34 of IPC had commenced and unless the father is acquitted of the charge brought against him, it will not be proper to bring him in contact with the child. It was also stated that the child may have severe trauma if he is required to revisit the same place where his mother had died an unnatural death.

Upon considering the submission made, it appears to this Court that petitioner/father is the unnatural guardian of the child Sidharth Shaw. The other natural guardian being the mother is no more. The child is presently aged around 11 years and is residing with his maternal uncles and their family members.

Prior to taking up the hearing of this petition, this Court had directed the Ops to produce the child in my chamber and the Court had the opportunity to interact with the child. It was noted in the order dt.16.03.2024 as follows :

“Child appears to be studying in Class V Section B of E. M. Academy, at Picnic Garden. Child is also pursuing extra curricular activities and taking tuition. No abnormal behaviour or hostile attitude is exhibited by the child. However the child expresses that he

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is happy and well looked after in the house of the respondents and expressed reluctance to keep contact or communicate with the petitioner”.

In the case of **Gaytri Bajaj v. Jiten Bhalla** Hon’ble Court observed that **“In a matter relating to the custody of children the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Even the statutes, namely, the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956 make it clear that the welfare of the child is a predominant consideration. In a matter of this nature, particularly, when the father and mother are fighting their case without reference to the welfare of the child, a heavy duty is cast upon the court to exercise its discretion judiciously bearing *in mind the welfare of the child as the paramount consideration.*”**

Again in the case of **Gaurav Nagpal v. Sumedha Nagpal [(2009) 1 SCC 42]** It was observed that “ *when the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor.*” Hence what allegation the parties levelled at each other or the history of what they have to reveal about the other has no bearing save and except what concerns the welfare of the child.

The court exercises *parens patriae* jurisdiction in custody matters when the natural guardian wrangles. In different legal forum it has been articulated that a child is not a chattel or a ball to be shuttled or shunted from one parents to the other. The child Siddharth Shaw is not a witness in the criminal case pending against his father. Moreover, pendency of the criminal case is not bar for visitation between the father and the child. **The first and the paramount consideration is the welfare and interest of the child .**

In the case of **Yashita Sahu vs Stae of Rajasthan & Ors** in Criminal Appeal No.127 of 2020, Hon’ble Apex Court had observed that child is the victim in custody battles and in this fight of egos and increasing acrimonious battles more often than not parents who otherwise love their child present a picture as if the others spouse is a villain and he or she alone is entitled to the custody of the child. That court must therefore be very vary of what is said by each of the spouses.

In the instant case the child is aged around 11 years. He had reached an age of some discretion but not the age to assert his liking and disliking when he is oblivious of what constitutes his basic human rights. No doubt he is happy with his maternal uncles and well looked after but the same do not mean that the child does not require the love and affection of his father. We should not forget that mother of the child is no more and it is for his benefit that some sort of bridge is maintained between the child and the father. This court holds that preventing the visitation of the father will tantamount to violation of the basic human rights of the child. **Accordingly the Court holds that visitation between the father and the child should be encouraged.**

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Long years of acrimony between the petitioner and in-laws ever since the death of Poonam Shaw had polluted the young mind of the child Siddharth Shaw. It can be well appreciated that after such long acrimonious gap, the father cannot be imposed upon the child by the Court. Rather, subtle steps should be taken to repair the damage with a view to strengthen the bond between the father and the child. Physical visitation by force or taking the child for a few hours or days to the house of the petitioner/father may be counter productive.

Hence, the Court will insist upon telephonic conversation as well as video conferencing as a confidence measure. Based upon the result of such interaction, the Court decide upon the future course of the visitation.

Hence, it is, **Ordered**

The application for visitation dated 02-05-2022 as submitted by the respondent/mother Sruti Jaiswal stands allowed.

The OPs are directed to arrange for a **15 minutes** video conferencing / zoom call /whatsapp call / videographic access between the child Siddharth Shaw and his father Santosh Kr. Shaw every Sunday between 7.30 P.M. to 8.00 P.M. from this day to January, 2025. Any change in schedule owing to tuition or any other engagement to be informed before hand. If the scheduled visitation is likely to be deferred for any reason, the parties are directed to reschedule the same through their Ld Advocate.

Given the sensitivity of the matter, both Ld Advocates are requested to ensure that visitation between the child and father takes place as directed in this order.

The petitioner/father and the OPs are further directed to ensure that a congenial atmosphere is maintained during the said virtual interaction. The OPs are also advised to encourage the child to speak to his father.

To date (17.02.2025) for evidence.

Dict. & Corr. by me,

Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.

Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.