



\$~40

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

+ **MAT.APP.(F.C.) 385/2024 & CM APPL. 35656/2024-Stay**

CM APPL. 67093/2024-Stay

RAHUL KANSAL

.....Appellant

Through: Mr. Akash Swami, Mr. Akhilesh
Tejpa, Mr. Devika Mathur and Mr. Sumit Swami,
Advs.

Versus

KOMAL MITTAL

.....Respondent

Through: Mr. Aashish K. Singh, Advocate

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

22.11.2024

%

1. The present appeal under Section 19 of the Family Courts Act, 1984 seeks to assail the order dated 01.06.2024 passed by the learned Family Court-02, Shahdara District, Karkardooma Courts, Delhi in G.P. No. 46/2024. Vide the impugned order, the learned Family Court has directed the appellant to handover the custody of the minor child to the respondent mother.
2. Learned counsel for the appellant submits that while issuing the aforesaid directions, the learned Family Court has failed to appreciate that the child was abandoned by the respondent soon after birth and was therefore brought up by the appellant with the help of his mother.



Consequently, uprooting the child suddenly at this stage when he is already two years old would affect his emotional growth and well being. He further submits that even though the appellant had sought to explain this position to the learned Family Court and did not agree to hand-over the custody of the minor child to the respondent, he has been sent to Civil Imprisonment at Tihar Jail, New Delhi by the learned Family Court on 14.11.2024 since when he is lodged in jail. He submits that the appellant is not averse to an amicable resolution of this issue and therefore prays that he be directed to be released from Jail immediately, so that suitable directions can be passed in his presence for custody and overnight visitation qua the minor child.

3. Having heard learned counsel for the parties as also the submissions of the appellant's mother, who is present in the Court, we find that the parties appear to be willing to explore the possibility of an amicable arrangement whereby though the custody of the minor child can be handed to the respondent/mother, simultaneously, the appellant can be given sufficient visitation rights including overnight visitation. The appellant's mother assures the Court that the appellant would be willing to accept such an arrangement.
4. In the light of the aforesaid, we are of the view that since the appellant is still in custody since 14.11.2024, no meaningful orders can be passed regarding visitation arrangements and custody of the child. Considering that the minor child is only aged 2 years, we direct that the appellant be forthwith released from custody with directions to him to remain present in Court at 4 PM on 27.11.2024 alongwith his mother as also the minor child. Needless to state, the respondent



would also remain present in Court at the same time on 27.11.2024.

5. A copy of this order forthwith be forwarded to the Jail Superintendent, Tihar Jail, New Delhi where the appellant is stated to be in custody. Copies of this order be also given *dasti* to the parties under the signatures of the Court Master.

REKHA PALLI, J

SAURABH BANERJEE, J

NOVEMBER 22, 2024/acm