



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 11095 of 2026

Bhobani Sahoo & Another **Petitioners**

Represented by Adv.—
Mr. Dolagibinda Mohapatra, Advocate
-Versus-

Babuna @ Kunjabihari Sahoo & Another **Opposite Parties**

Represented by Adv._

CORAM:

HON'BLE MR. JUSTICE MRUGANKA SEKHAR SAHOO

ORDER

07.05.2026

(Hybrid mode)

Order No.

- 03.**
1. Heard Mr. D. Mohapatra, learned counsel for the petitioners.
 2. The petitioners in the writ petition are the maternal grandparents of a minor child, aged about 3 years. He is before this Court being aggrieved by the order passed by the learned Judge, Family Court, Jagatsinghpur dated 02.02.2026 in I.A. No.12 of 2025 arising out of G.P. No.02 of 2025. The said G.P. No.02 of 2025 has been filed by the petitioners herein, the maternal grandfather of the minor child against the father of the child and the Child Welfare Committee as the opposite parties.
 3. The petition is under Section 12 of the Guardians and Wards Act, 1890 is pending adjudication. The interim order passed in the I.A. is reproduced herein:-

“The petitioners being maternal grand-parents of the minor child namely Sai Paramjit Sahoo filed the Interlocutory Application U/s. 12 of the Guardianship and Wards Act, 1890 seeking his custody.



2. The case of the petitioners is that they have filed the original Guardianship petition seeking custody and guardianship of the minor child whose mother late Smt. Bebina Sahoo was brutally murdered at her matrimonial home due to persistent dowry related cruelty inflicted by the opposite party and his family members. It is further stated that the opposite party is the principal accused in Balikuda P.S. Case No.427 U/s. 103/80/85/3(5) of the BNSS, 2023 r/w section.4 of the D.P Act and is on conditional bail granted by the Hon'ble Court. It is further stated that at the time of arrest of the opposite party, the Child Welfare Committee, Jagatsinghpur vide its order dtd.28.11.2024 entrusted the custody of the minor to the petitioners in exercise of powers U/s.29 of the Juvenile Justice (Care and Protection of Children) Act, 2015. It is also stated that the minor child has been residing with the petitioners who are providing him love, care, education, health facilities and a safe family environment and the child has developed emotional attachment with the petitioners. It is further stated that despite being on bail, the opposite party has been violating bail conditions, intimidating the petitioners and attempting to take forcibly the minor child into his custody. It is also stated that unless, the court granted interim protection in favour of the petitioners pending disposal of the main guardianship petition, the welfare and best interest of the minor shall be seriously endangered. Hence, this petition.

3. No written objection filed from the side of the opposite party No. 1, but only orally objected.

4. The opposite party No.3 filed objection. It is stated in the objection that the minor child was rescued by the Child Helpline, Jagatsinghpur and produced before the CWC where the child was sent to Child Home (Sisu Asram, Jagatsinghpur). It is further stated that after release from custody, the opposite party claimed his guardianship before the CWC and undertook to take all care and responsibility of the child and after verifying all the documents and recording his statement, CWC came to a conclusion to hand over the child to his natural father guardian on certain documents. It is specifically stated that when the natural father of the minor child has received his child, then CWC has no authority to bring back the child from his natural



father and produce before this court. Hence, he prayed to reject the petition.

5. *Heard the learned counsel for respective parties.*

6. *Section. 12 of the Guardians and Wards Act, 1890 read as under:-*

“The court may direct that the person, if any, having the custody of the minor, shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody' and protection of the person or property of the minor as it thinks proper.”

7. *On perusal of the record, it is seen that the petitioners are the maternal grandparents of the minor child namely Sai Paramjit Sahoo. Their daughter namely Bebina Sahoo was married to the opposite party and after prolonged harassment on 3.10.2024 she was murdered in her matrimonial home by the opposite party- and his elder brother and sister-in-law. Thereafter, the opposite party was taken to custody and the said minor child was rescued by CWC, Jagatsinghpur and entrusted to the petitioners vide order dtd.28.11.2024. Thereafter after release of the opposite party from custody he prayed to CWC, Jagatsinghpur to hand over the said minor child to his custody as he is the natural guardian of the said child and after verification of the documents, the said child was handed over to the opposite party vide order dtd. 13.9.2025 and now the said child is the custody of the opposite party. On perusal of the record, it is seen that this court vide order dtd.5.1.2026 was directed the opposite party to appear before this court with the said minor child and on 20.1.2026 as per direction, the opposite party appeared this court with the minor child.*

8. *The petitioner being the father of the child has claimed himself to be his natural guardian and on that basis, he has prayed to hand over the minor child to his custody. The law is well settled that, while determining the question as to who should be given custody of a minor child, the paramount consideration is the welfare of the child and not the rights of the parents under any statutory provision. This court also observed during appearance of the minor child with his father. The child showed the love and comfort with his father and there*



is also no immediate threat or evidence of ill-treatment. Further the child also refused to accompany with the petitioner and wanted to stay with the opposite party i.e. his father. It is not in dispute that, he is a mentally retarded child and needs a very special care. It is also not in dispute that, the child was staying with his parents after his birth. An important point was raised by the learned counsel for the petitioners that, the child is now depriving from love, care, education and health facilities. As per the settled principle of law that only on this ground the custody of the child cannot be given to the petitioners as because due weightage to the moral and ethical values have also to be given in comparison to the physical comforts. It is further settled that the welfare of the child includes not only the physical safety but also emotional attachment and happiness. Hence, considering the welfare of the minor child, this court deems it fit that the minor child should continue to stay with the petitioner No. 1 i.e. his natural father until further order. But, at the same time, the petitioners must have a visitation right of the child. The C.W.C, Jagatsinghpur is directed to visit the house of the opposite party No.1 in every two months and to submit the report before this court. Hence, it is ordered.

ORDER

The I.A. filed by the petitioners is dismissed on contest. But at the same time, the opposite party No. 1 is directed if the petitioners visit to his house to see the minor child, he shall cooperate them and shall not raise any objection during their meet with the said minor child."

4. To challenge the said order, it is submitted by the learned counsel for the petitioners that the father of the child is accused in Balikuda P.S. Case No.427 under Sections 103/80/85/3(5) of the BNSS, 2023 read with Section 4 of the D.P. Act.

It is submitted that custody could not have been allowed to continue with the father.

The learned counsel for the petitioners is apprised of the law that custody cannot be denied to the father of a child merely



because, he is accused in some case and the petitioners have to avail the outcome of their Guardianship Application. Learned counsel seeks and has adjournment.

5. List for 'Fresh Admission' in the week commencing from 13th July, 2026.

(Mruganka Sekhar Sahoo)
Judge.

Narayan

Signature Not Verified

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