

26.09.2024
Item No.7, DL
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 1504 of 2024

**Smt. Narayani Barai Mondal
-Vs-
Sri Litan Mondal**

Mr. Bratin Kumar Dey,
Mr. Joydeep Das.
.....for the petitioner.

Mr. Amarendra Nath Ray,
Mr. N.C. Dey.
.....for the opposite party

Affidavit of service filed on behalf of the petitioner be
kept with the record.

It is really shocking that the 1st Court of the learned
Additional District Judge, Bangaon, District- 24-Parganas
(North), without appreciating the gravity of the situation, has
refused the prayer of the mother, the petitioner herein, to
have temporary custody of her minor daughter.

The parties have two children, one daughter and one
son. The daughter, aged about 14 years, is in the custody of
the father, the opposite party herein and the son, aged about
11 years is in the custody of the mother.

The mother has initiated the connected proceeding
under the Guardian and Wards Act, 1890 for the custody of
the daughter.

The said proceeding being Misc. Case No.9 of 2021 is
pending before the Court of the learned Additional District
Judge, Fast Track Court-I, Bongaon, District : 24-Parganas
(North).

The subsequent events which prompted the mother to file an application for temporary custody of the said daughter are thus; the father, who is a school teacher, during the subsistence of the marriage between the parties, had contracted the second marriage and on the unnatural death of the said lady, a criminal case being Bagdah Police Station Case No. 883 of 2023 dated November 01, 2023 under Section 302/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961 has been initiated against him, besides there is serious allegation against the father of molestation of a minor student of his school.

In this backdrop, the mother had applied for temporary custody and the learned Trial Judge, by the order impugned dated January 04, 2024 has dismissed the said application but has granted the mother limited access to her daughter at the house of the father in the presence of the District Child Protection Officer, District : 24-Parganas (North).

Learned Advocate for the mother submits that the child is not at all safe in the custody of the father and his client is seriously anxious about her safety and security. He further submits that the anguish of the mother, in view of the character of the father, cannot be brushed aside.

Learned Advocate for the opposite party submits that his client has been falsely implicated in the criminal cases pending against him.

He further submits the learned Trial Judge has passed the impugned order upon interacting with the child, who unequivocally has expressed her unwillingness to meet the

mother, therefore, according to him; the learned Trial Judge, considering the wish of the child, has rightly rejected the prayer of the petitioner.

Heard learned counsel for the parties, perused the materials-on-record.

In the facts and circumstances as discussed above, the father can hardly be considered a proper custodian of the minor girl.

In view of the age of the minor, she cannot be expected to form an intelligent preference as envisaged under Section 17(3) of the said Act of 1890, which the Court may consider.

The prevailing circumstances demand immediate access of the mother to her daughter. The mother, therefore, is permitted to take access to her daughter **on every Saturday and Sunday from 10 A.M. to 6 P.M** at her residence.

The District Child Protection Officer, District-24 Parganas (North), if necessary, by police help, shall take the child from the custody of the father and shall hand her over to the custody of the mother in terms of the abovementioned schedule and after the meeting of the mother and daughter, shall return the said daughter to the custody of her father.

The father is directed to ensure smooth access of the mother to her daughter in the manner and for the period mentioned above.

The said District Child Protection Officer shall file a compliance report before this Court on the adjourned date.

Let the matter appear in the Supplementary List on **November 22, 2024 at 2 P.M.** under the same heading.

The Department is directed to communicate this order to the said District Child Protection Officer through the District Magistrate, District-24-Parganas (North).

The Learned Registrar (Judicial) of this Court shall immediately communicate this order to the Court below.

Parties to act on the server copy of this order duly downloaded from the official *website* of the Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)