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**IN THE HIGH COURT OF MADHYA PRADESH**  
**AT INDORE**  
**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 4<sup>th</sup> OF JULY, 2022**

**MISCELLANEOUS PETITION No. 2353 of 2022**

**Between:-**

**DR. SMT. SONIA SAHU W/O SUJAY SAHU , AGED ABOUT 51 YEARS,  
OCCUPATION: DOCTOR 204, SIDDHI VINAYAK GRAND, 2ND  
FLOOR, NEAR VIDYA NAGAR, SAPNA SANGEETA TALKIES ROAD  
(MADHYA PRADESH)**

**.....PETITIONER**

**(BY SMT. ARCHANA KHER, ADVOCATE)**

**AND**

**SUJAY SAHU S/O LATE SHRI DILIP KUMAR SAHU , AGED ABOUT  
53 YEARS, OCCUPATION: CONSULTANCY F-58, SENIOR CITIZEN  
COMPLEX, SECTOR P-4, GREATER NOIDA (UTTAR PRADESH)**

**.....RESPONDENT**

**(BY MS. ANANTITA DAS, ADVOCATE )**

.....  
*This petition coming on for order this day, the court passed the  
following:*

**ORDER**

This petition has been filed by the petitioner under Article 227 of the Constitution of India, against the order dated 13.5.2022 (Annexure P/1) passed by the XI Additional Principal Judge, Family Court, Indore in Guardian Case No.183/2018, whereby the

petitioner/wife's application filed for grant of temporary custody of her children has been rejected.

**02.** In brief, the facts of the case are that admittedly the marriage of the petitioner with the respondent was solemnized in the year 2007 and out of the said wedlock, they also have two children, a minor daughter Mira, aged 10 years, and a son Pravir, aged 14 years. It is also not disputed that there are certain differences between the parties in their marriage and in the month of December 2017 the respondent/husband took the children from the petitioner's custody temporarily to meet them with their grandmother, as the respondent is a resident of Greater Noida in U.P., and thereafter he never returned the children. A writ petition for Habeas Corpus was also filed by the petitioner which was registered as W.P.No.11027/2018, but the same was dismissed by this Court vide order dated 27.6.2018, holding that the custody of the children with their father cannot be termed as illegal and the petitioner was directed to take recourse of the Guardians and Wards Act before the competent Court. The present proceedings have arisen out of the same Family Court's order wherein the application for temporary custody of the children was filed by the petitioner only for the period from 16.5.2022 to 16.6.2022 for her daughter Mira, and from 30.7.2022 to 10.8.2022 for her son Pravir.

**03.** Counsel for the petitioner has submitted that the learned

Judge of the Family Court had erred in relying upon the order passed by this Court in the aforesaid W.P. No.11027/2018, wherein this Court had declined the custody considering that the children are residing happily with their father. It is further submitted that even in the aforesaid order, this Court has clearly mentioned that the said order shall not come in the way of the parties and the trial court shall decide the matter based upon the evidence and based upon the other factors, in accordance with law. It is further submitted that the petitioner is not seeking permanent custody of the children, as her son is already studying in a boarding school where as her daughter is studying in Noida and only seeking their company temporarily during their summer vacations.

**04.** In support of her submissions, Mrs. Kher, counsel for the petitioner has also relied upon the Child Access and Custody Guidelines issued by this Court which also include visitation rights in respect of the children, and it is submitted that the said guidelines ought to have been followed by the court concerned..

**05.** On the other hand, Ms. Anantita Das, learned counsel appearing for the respondent has vehemently opposed the prayer and it is submitted the petition itself is not maintainable, as there is no illegality committed by the learned Judge of the Family Court and thus, to exercise the supervisory jurisdiction of this Court under Article 227 of the Constitution of India is not called for, as

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there is no error apparent on the face of the record. It is also submitted that the children are already living happily with their father and are not at all interested in coming to Indore to meet their mother, as the petitioner herself was misbehaving with them while they were in her custody. It is further submitted that even otherwise, not only the Family Court but even this Court has also had a conversation with the children regarding their willingness to reside with their mother, in which, they have declined. It is further submitted that even the application filed in a case arising out the Protection of Woman from Domestic Violence Act, 2005, the visitation rights have been limited to the petitioner meeting with her children in Gymkhana Club, Greater Noida (U.P.) on her own expenses and even the Family Court has allowed the petitioner to visit her children after giving prior notice to meet them in Gymkhana Club, Greater Noida in the day time. Thus, it is submitted that the Courts have already disallowed the claim of the petitioner even to give her temporary custody of the children. Thus, it is submitted that the petition deserves to be dismissed.

**06.** In support her submissions, counsel for the respondent has relied upon the decision rendered by the Apex Court in the case of Nil Ratan Kundu & Another vs. Abhijit Kundu (Civil Appeal No.4960 of 2008) arising out of Special Leave Petition (Civil) No. 1243 of 2008. Relevant paragraphs 83, 84 and 85 are reads as

follows:-

“82. From the above observations and particularly the italicized portion, it is abundantly clear that in peculiar facts and circumstances of the case, this Court was satisfied that calling a minor girl and interviewing her several times had not only not served any useful purpose but had the effect of creating further depression and demoralization in her mind.

83. In the instant case, on overall considerations we are convinced that the Courts below were not right or justified in granting custody of minor Antariksh to Abhijit- respondent herein without applying relevant and well-settled principle of welfare of the child as paramount consideration. The trial Court ought to have ascertained the wishes of Antariksh as to with whom he wanted to stay.

84. We have called Antariksh in our chamber. To us, he appeared to be quite intelligent. When we asked him whether he wanted to go to his father and to stay with him, he unequivocally refused to go with him or to stay with him. He also stated that he was very happy with his maternal grandparents and would like to continue to stay with them. We are, therefore, of the considered view that it would not be proper on the facts and in the circumstances to give custody of Antariksh to his father-respondent herein.

85. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The application filed by the respondent Abhijit for custody of his son Antariksh is ordered to be dismissed. In view of the facts and circumstances of the case, however, there shall be no order as to costs.”

**07.** Heard the counsel for the parties and perused the record.

**08.** From the record, it is found that there does not appear to be any serious dispute between the petitioner and the respondent and either in the petition or in its reply no blatant and reckless allegations levelled against each other. The petitioner has also filed on record certain photographs of the petitioner with her children

taken recently, which also do not reflect that the children are having any ill will against their mother. From the petition, it is also found that the petitioner happens to be a well educated Doctor, as she is an M.D. Paediatrician; whereas her husband also appears to be doing reasonably well, as it is averred that he had earlier gone to Indonesia and thereafter he got a job in a Telecom Company in Abu Dhabi where also the petitioner had gone along with her son and from there they also went to Dubai.

**09.** So far as the application for temporary custody is concerned, this Court would like to refer to the Child Access and Custody Guidelines issued by the Registry of this Court only in the year 2014, which are also available in the High Court Web Site as well, wherein, detailed procedure and guidelines have been provided for the children above 36 months and older, which also refers to meeting of the parties on holidays and vacations etc.

**10.** In the impugned order, this Court finds that the learned Judge of the Family Court was rather carried away with the earlier orders passed by the Courts and the disinclination of the children to meet their mother, despite the fact that in W.P. No.11027/2018, this Court had in no uncertain terms observed that the said order, “*will not come in way of the parties and the trial court shall decide the matter based upon the evidence and based upon other factors, except the order passed by this Court, in accordance with law.*”

11. This Court is of the considered opinion that the petitioner who is not only a qualified paediatrician by profession but a mother also, has kept her children for nine months in her womb, is certainly entitled to have their temporary custody and to enjoy some time with them specially when there is no allegation of child abuse against her. Counsel for the respondent/husband has also submitted that there is no tutoring of the children on the part of the respondent husband and the children themselves are not interested in meeting the petitioner. This Court does not find any force in the said submissions, and is of the opinion that it is for the respondent/husband also to encourage the children to respect their mother, put some sense into them that because of her only that they are in this world.

12. As already observed, it is not a case where there are allegations regarding ill-treatment meted out by the petitioner towards the children and there is no allegation of any kind of abuse also. In such circumstances, this Court is of the considered opinion that the learned Judge of the Family Court had erred in not exercise its jurisdiction vested in him under the provisions of Guardians and Wards Act, 1890 and **the impugned order dated 13.05.2022, which cannot be sustained, is hereby set aside.**

This Court is of the opinion that so far as the petitioner's daughter Mira is concerned, since her School has already started, as

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informed by the counsel for the petitioner, she may be allowed to reside with her temporarily in the winter/summer or other vacations, on an appropriate application filed by the petitioner before the Family Court, who shall decide the application in accordance with the Child Access and Custody Guidelines issued by the Registry of this Court.

**13.** So far as the temporary custody of the petitioner's son Pravir is concerned, since his summer vacations have started from 30.7.2022 and would last up to 10.8.2022, the respondent/husband is directed to bring him himself or make proper arrangements for bringing him to Indore for a period of three days only as convenient to their son, so that he can spend some time with his mother/the petitioner and for his journey back to his place, the petitioner shall make the proper arrangements. In case of any difficulty, the parties are directed to approach the Family Court.

**14.** So far as the decision relied upon by the counsel for the respondent in the case of Nil Ratan Kundu & Another (supra) as also the other decisions are concerned, the same are not applicable in the facts and circumstances of the present case.

**15.** In view of the same, the writ petition stands **allowed**.

**(Subodh Abhyankar)**  
**JUDGE**

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