

Ruhi Agrawal & Anr Vs Nimish S. Agrawal

Court: Supreme Court Of India

Date of Decision: Jan. 22, 2025

Hon'ble Judges: Vikram Nath, J; Prasanna B. Varale, J

Bench: Division Bench

Advocate: Gagan Gupta, Ananta Prasad Mishra, Anitha Shenoy, Sanchit Guru, Parth Shekhar, Shubham Singh, Himanshu Shekhar

Final Decision: Allowed

Judgement

Vikram Nath, J

1. This petition arises from an order of the Chhattisgarh High Court, dated, 11.05.2022, granting certain, specified visitation rights to the respondent

“father in his appeal against dismissal of his petition seeking custody of the child before the Family Court, Durg.

2. Petitioner no.1 and respondent were married on 16.01.2007 and out of this wedlock, petitioner no. 2 “daughter was born on 12.01.2012. The

primary subject of contention is the custody and welfare of their minor child, aged about thirteen years. During the separation between the parties

since 2016, the child has resided with the petitioner no. 1, who has been the primary caregiver and custodian. The petitioner no. 1 claims to have

provided a stable, nurturing environment conducive to the child’s emotional, educational, and overall well-being. On the other hand, the respondent

has consistently maintained that he has the intention and willingness to actively contributed to the child’s upbringing and seeks a greater role in

shaping the child’s life.

3. The Family Court granted sole custody of the child to petitioner no. 1 and the respondent was awarded limited visitation rights “restricted to one

and a half hours on the first Sunday of every month and certain holidays.

4. Aggrieved by the limited visitation rights, the respondent appealed to the High Court, seeking joint custody or an extended visitation schedule. The

High Court, after a comprehensive review of the evidence, agreed to retain sole custody with petitioner no. 1 but expanded the respondent’s

visitation rights. It allowed longer meeting hours, physical meetings on a fortnight basis, shared vacation time, and regular video calls to promote a

meaningful bond between the father and the child.

5. To implement this balance, the High Court set forth the following revised visitation arrangement:

i. The father or grandparents would be able to engage with the child on a suitable video conferencing platform for one hour every Saturday and Sunday and 5- 10

minutes on other days.

ii. Both the father and the mother in order to facilitate the video conferencing in between shall procure smart phones which would facilitate the inter-se video calling.

iii. Since both the parties are living in the same district, it is directed that on a fortnight basis on the working Saturday the child would be produced before the Family

Court, Durg at about 10:30 AM to 11:00 A.M. by the wife. Wherefrom the child may be taken by the husband for the entire day and shall be returned in between 4:30

PM to 5:00 pm before the family Court to enable the mother to get back the custody.

iv. During the long holiday/vacation covering more than two weeks, the child would be allowed to be in the company of the father/grandparents for a period of 7 days

and in doing so in order to facilitate the same, the curriculum of the School/holidays shall be placed before the Family Court, Durg so that the custody of the child can

be decided to be given at prior point of time for a limited period to the father. The period would be fixed by the Family Court after hearing both father and mother.

v. During the festivals - Dussehra, Diwali and Holi, the father may join the company of the child at an independent venue for a limited period of time, 1 to 2 hours for a

day and the child would be brought by the person of confidence of mother. The husband would intimate place or venue through the intervention of the family Court

well before time.

6. Petitioner no. 1 has challenged this modified arrangement before this Court, citing concerns about the child's safety and emotional stability.

7. This Court in its order dated 02.06.2022, while issuing notice, had directed as follows:

"Insofar as unnumbered clauses 1 to 3 and 5 are concerned, we are not inclined to interfere with the same at this stage.

So far as unnumbered clause 4 is concerned, for the time being, it is kept in abeyance and modified that during the vacation, the child would be entitled to be in the

company of father/grand parents, initially for a period of one day from 9.00 a.m. to 9.00 p.m.

Needless to say that insofar as the rest of the directions are concerned, the petitioner No. 1 shall strictly comply with the same.

8. The petition has been preferred on the grounds that the extended visitation schedule disrupts the child's routine and could negatively impact her

academic performance and extracurricular activities. The petitioner also highlights the respondent's alleged history of abusive behavior, criminal

charges, and past incidents of conflict during visitation, asserting that these factors make the expanded schedule inappropriate and unsafe for the child.

9. Conversely, the respondent defends the High Court's ruling, asserting that the expanded visitation arrangement is in the child's best interest.

He claims that petitioner no. 1 has manipulated the child and influenced her views, limiting his ability to build a relationship. The respondent argues that

the revised schedule allows him to strengthen his bond with the child, which is essential for her overall development.

10. While the issue before us is still open, the respondent requested for an interim arrangement to be made in order to enable him to exercise certain

visitation rights, meet his daughter, and redevelop the bond that has strained over time.

11. We have heard the learned senior counsels appearing for both the parties and have carefully considered the submission made in light of the facts

of the case and the principle of welfare and best interest of the child, on the question of interim visitation rights to respondent during the pendency of

this petition before us.

12. The weeklong and overnight stays cannot be allowed in the interim, since the challenge of the petitioner no.1 before this Court is mainly on those

arrangements and thus the issue remains open for hearing before us.

13. We emphasize the need for both parents to cooperate and communicate effectively to ensure the smooth implementation of the visitation

arrangement. Mutual respect and collaboration are essential for the child's well-being.

14. Since both the parties have made severe allegation against each other to bring forth their individual concerns for the physical safety and mental

wellbeing of the child while in the company of the opposite parent, we will not go into the merits of these allegations as several cases are still pending

between the parties and we are yet to hear the petition on merits. But, keeping the safety and welfare of the child as paramount, we believe that these

submissions cannot be taken lightly. Petitioner no.1 has urged before us that she should be allowed to be present during the meetings to ensure the

child's safety, whereas the respondent has contested against such arrangement on the grounds that petitioner no.1 tends to control petitioner no.2

and thus does not allow the visits to go smoothly and without interruption.

15. Owing to the circumstances and the allegation in the present case, we do not deem it appropriate to allow petitioner no.1 to be present during the

visitation meetings that will take place during the pendency of this petition. But we understand the concerns of a mother of a teenage daughter,

especially one who has made serious allegations against her husband. Thus, as urged by petitioner no.1 that the safety of the child be ensured and as

suggested by the respondent, we deem it appropriate that a Court appointed Commissioner, who shall be a female, shall be present at all times during

the visitation meetings.

16. Such an arrangement strikes a fair balance between the child's need for stability, her safety and welfare, and the respondent's right to

meaningful involvement in the child's life. Both parents are reminded of their duty to prioritize the child's welfare and work collaboratively to

create a nurturing and supportive environment for the child.

17. After careful consideration of the submissions, we find no reason to not allow the abovementioned visitation rights to continue in the interim.

18. During the pendency of the petition before this Court, we deem it appropriate to allow the following visitation arrangements made by the High

Court to continue:

i. The father or grandparents would be able to engage with the child on a suitable video conferencing platform for one hour every Saturday and

Sunday and 5- 10 minutes on other days.

ii. Both the father and the mother in order to facilitate the video conferencing in between shall procure smart phones which would facilitate the inter-

se video calling.

iii. Since both the parties are living in the same district, it is directed that on a fortnight basis on the working Saturday the child would be produced

before the Family Court, Durg at about 10:30 AM to 11:00 A.M. by the wife. Wherefrom the child may be taken by the husband for the entire day

and shall be returned in between 4:30 PM to 5:00 pm before the family Court to enable the mother to get back the custody.

iv. During the vacation, the child would be entitled to be in the company of father/grandparents, initially for a period of one day from 9.00 a.m. to 9.00

p.m.

It is directed that the visitation rights mentioned in clause (iii) and (iv) above shall be exercised only in the presence of a court appointed

Commissioner, who shall be a female. The custody of the child shall be taken by the respondent in the morning and returned to the petitioner no.1 in

the evening, in the presence of the court appointed Commissioner. Further, the Commissioner shall be present at all times during the course of the

visitation meetings, which shall take place in a public place only.

19. Thus, we modify the interim visitation rights only to the above extent of requiring the presence of a female court Commissioner who shall be

appointed by the Family Court at Durg, Chhattisgarh within four weeks from the date of this order.

20. List the petition after two months.