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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CR-1112-2025 (O&M)

Date of Decision: 21.02.2025

Jatinder Singh

... Petitioner

V/S

Amarjit Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.Sarju Puri, Advocate,
for the petitioner.

Mr. Gagandeep Singh Virk, Advocate
for the caveator-respondents.

SUVIR SEHGAL, J. (ORAL)

1. By way of instant revision petition filed under Article 227 of the Constitution of India, petitioner has approached this Court for setting aside the order dated 23.01.2025, Annexure P-1, passed by the Family Court, SBS Nagar, whereby on an application filed by the respondent-mother, interim custody of the minor daughter, has been handed over to her.

2. I have heard Mr. Sarju Puri, Advocate for the petitioner and Mr. Gagandep Singh Virk, Advocate for the caveator -respondent.



3. Undisputedly, the date of birth of the minor girl child is 31.05.2020 and the child is below five years of age. Section 6 of the Hindu Minority and Guardianship Act, 1956, (for short 'the Act') provides thus:-

“6. Natural guardians of a Hindu minor.—

The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section, the expression “father” and “mother” do not include a step-father and a step-mother.”

4. The statutory provision came up for interpretation before the Supreme Court in **Roxann Sharma Versus Arun Sharma, 2015 (8) SCC 318**, as well as Division Bench of this Court in **Mukul Chauhan Versus Neha Aggarwal, and others, 2019(4) RCR (Civil) 342**. It has been held that custody of a minor, who has not completed five years shall ordinarily



be with the mother. The word “ordinarily” in proviso to Section 6(a) of the Act ordains a presumption, although a rebuttable one, in favour of the mother. An onus is placed on the father, which he has not been able to discharge, to prove that it is not in the welfare of the child to be placed in the custody of the mother. This Court, therefore, does not find any reason to interfere with the order passed by the Family Court.

5. To be fair to the parties, the Court would address itself to the arguments raised by them. During the course of submissions, both the sides have indulged in mudslinging. While making a reference to the allegations levelled in the petition, Annexure P-2, filed for the custody of the child, counsel for the petitioner has contended that petitioner’s father-in-law (grandfather of the minor child) is a drunkard and is given to abusive behaviour. These allegations have been specifically denied by the respondent in the reply, Annexure P-3.

6. On the other hand, while referring to the reply, counsel for the respondent has stated that the petitioner is involved in three criminal cases and he has criminal antecedents. Countering him, counsel for the petitioner states that the cases are due to minor scuffles and are being blown out of proportion.

7. Having heard counsel for the parties, but without going into the allegations levelled by the parties against each other, this Court is of the view that the order passed by the Family Court does not warrant any interference.



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8. Counsel for the petitioner has submitted that the child, who is in a primary class, has to appear for examinations from 25th February to 28th February, and in case, the petitioner is forced to hand over the custody of the child, her examination may get disrupted. Considering the examination schedule of the petitioner, which has not been disputed by the respondent, it is directed that the petitioner will hand over the custody of the child to the respondent-mother before the Family Court on 03.03.2025 at 10:00 am. Order dated 23.01.2025, Annexure P-1, is modified to this limited extent.

9. At this stage, counsel for the petitioner submits that by the impugned order, petitioner has been given right to meet the child only once in a month. Liberty is granted to the petitioner to make an appropriate application to the Family Court for grant of more visitation rights. In case, any such application is moved, the same shall be decided as expeditiously as possible.

10. Petition is disposed of.

21.02.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>