



*FAO-2617-2025 (O&M) and  
FAO-2558-2025 (O&M)*

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

**119**

**FAO-2617-2025 (O&M)  
Reserved on: 03.11.2025  
Pronounced on : 26.11.2025**

**Mansi Makkar**

**... Appellant**

**V/S**

**Ankur Shahi and others**

**... Respondents**

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**FAO-2558-2025 (O&M)**

**Ankur Shahi**

**... Appellant**

**V/S**

**Mansi Makkar**

**... Respondent**

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL  
HON'BLE MRS. JUSTICE RAMESH KUMARI**

Present: Mr. Arpandeeep Narula, Advocate  
for the appellant in FAO-2617-2025 and  
for the respondent in FAO-2558-2025  
along with Mansi Makkar.

Mr. Arjun Veer Sharma, Advocate  
for the appellant in FAO-2558-2025 and  
for the respondent in FAO-2617-2025  
along with Ankur Shahi.

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**RAMESH KUMARI, J.**

1. FAO No. 2617 of 2025 (filed by Mansi Makkar) (hereinafter referred to as wife) and FAO No. 2558 of 2025 (filed by Ankur Shahi and others) (hereinafter referred to as husband and in-laws) are filed by the wife and



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husband respectively, against order dated 01.03.2025 in GW/50/2024 decided by the Family Court, Panchkula, vide which petition under Section 7/25 of the Guardians and Ward Act, 1980 (hereinafter referred as 'GWA') filed by husband and his parents against the wife seeking custody of their minor son was dismissed, however, visitation rights have been granted to the husband and in-laws of wife to the effect that:-

*“However considering the fact that the husband is the father and petitioners No.2 and 3 are the grandparents, they are permitted to meet the minor child every week i.e. from Friday evening till Sunday evening. Further, for this purpose they will have to contact the respondent on telephone, who as per her convenience and that of the minor child will facilitate the same and the husband-father shall pick the child from the house of the respondent on Friday evening and drop the child at the house of the respondent on Sunday evening. It is expected that the respondent shall also cooperate in the aforesaid arrangement.”*

#### **BACKGROUND OF LITIGATION BETWEEN HUSBAND AND WIFE**

- 2(a) Wife filed CRWP-7332-2022 (O&M) impleading State of Punjab and her husband and in-laws as party. The prayer in the said CRWP (Annexure A-1) filed under Article 226/227 of the Constitution of India was for issuance of Writ of Habeas Corpus directing respondents No.1 to 3 to produce her minor child who was less than 2 years (at the time of filing petition) from the illegal detention of respondents No.4 to 6 (husband and in-laws) and allow him to join the company of petitioner.



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- 2(b) In the said CRWP she levelled allegation that on 23.07.2022, family members of her husband quarreled with her and gave her beatings and threw her out of matrimonial home while her son who was less than 2 years of age and dependent on mother's feed was retained.
- 2(c) Single Bench of this Court allowed the said CRWP vide order dated 07.11.2022 and the local Police was directed to ensure the custody of minor son is handed over by husband and in-laws to the wife immediately in the presence of District Programme Officer, Department of Social Security, Women and Child Development, Administrative Complex, Malikpur Chowk, Pathankot-145025 or any officer authorised by him and the Civil Surgeon, Civil Hospital, Shahpur Road, Pathankot-145001 or any doctor authorised by him.

It was also directed that affidavit regarding compliance dated 07.11.2022 shall be furnished by the local Police to Single Bench of this Court within one week of handing over the custody of minor child to petitioner.

Wife was directed to grant unfettered access to husband and in-laws subject to convenience of both the parties keeping in view the welfare of child.

It was also observed that aggrieved party would be at liberty to approach appropriate Civil Court if so advised seeking custody of the child and if such an application was moved, the said Court would proceed to decide the same within a period of three months of filing of such an application uninfluenced by observation made in the said order dated 07.11.2022 which had been made only to decide the said CRWP.



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2(d) Husband filed SLP (Criminal) Diary No.35828/2022 against order dated 07.11.2022 before Hon'ble Apex Court which was dismissed vide order dated 09.11.2022.

3. On 8.12.2024 husband and in-laws filed GW/50/2024 under Section 7/25 of the GWA before learned Family Court, seeking custody of minor child.

**THE PLEADED CASE OF THE HUSBAND AND IN-LAWS**

3(a) The husband and in-laws pleaded before the Family Court in petition that marriage of husband was solemnized with wife on 04.12.2017. They were blessed with male child on 20.08.2020, who is in custody of wife.

In the year 2017-18, husband was working at Noida and wife was working at Gurugram and were residing together at Noida. In 2019, wife started working in TSYS company where husband was already working.

In August 2020, husband and wife moved to Pathankot to the house of parents of husband who had retired from Punjab Irrigation Department and were getting pension.

In March 2021, the wife started pressurizing the husband to shift to Noida and they came to Noida alongwith the minor son and resided there till July 2021.

During that period, the wife neither took care of the minor son nor provided proper diet and mother's feed due to which the minor son suffered infection of eye and became weak and the husband got him treated at a hospital in Noida.

The husband has also levelled allegation that the mental condition of the wife was not good. She used to slap herself in anger and lock herself in



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bathroom for hours. The husband got her treated from various doctors but there was no change in her behaviour.

In July 2021, the husband returned to Pathankot alongwith the wife and the minor son.

On 23.07.2022, the wife left her matrimonial home and left the minor son with the husband and in-laws and filed a dowry case at Panchkula on 26.07.2022.

On 29.07.2022, a Habeas Corpus writ petition was filed (as noted in para No.2 of this order).

On 01.08.2022, the wife came to Ludhiana to snatch the minor son, where the husband was staying at his relative's house and attacked him with an iron object.

Husband filed a complaint to Ludhiana police. The husband produced the medical records in Habeas Corpus petition before the High Court in which the doctor found low mood, disturbed sleep, death wishes, frequent anger outbursts and self harm behaviour, aggression, poor self control, low IP Rein (illegible), depression to be sub-typed, adjustment disorder, border line personality, bipolar disorder and the doctors advised that the patient should be admitted in a psychiatry facility and sharp, dangerous and poisonous substances to be kept away from her. The wife appeared before the High Court and told that she did not receive any treatment and the High Court took cognizance and directed the Senior Superintendent of Police, Pathankot for investigation and all the reports were found correct and the wife produced the Mental Health Act 2017 before the High Court.



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Due to her mental condition, the wife used to give death threats and tried to commit suicide and threatened the husband and in-laws to implicate them in a false case and once she drank toilet cleaner as she could not clear her IELTS exam.

On 12.07.2021, the husband and the wife alongwith the minor son went to Lansdowne, Uttarakhand for two days and when they were coming to Nainital in car, the wife started screaming and tried to jump out from the car though the minor son was in her lap and the husband controlled the vehicle and then took her to the nearest doctor.

On 11.11.2022, the husband and in-laws gave custody of the minor son to the wife at police station, Sujampur, District Pathankot, Punjab.

On 12.11.2022, the husband shifted to Panchkula and sent e-mails to the wife for meeting the child and husband received summons of petition under Domestic Violence Act.

On 22.11.2022, the husband filed a miscellaneous application before the High Court for meeting the child but the wife refused to compromise in the Mediation Center and it was decided by the High Court that daily time should be fixed to meet the child and an agreement took place between the wife and the husband where it was decided that the husband and in-laws would meet the minor child for 3 hours daily between 01.00 p.m. to 06.00 p.m. Final order was passed by the High Court on 24.01.2023

One day, husband dropped the minor son at wife's house and asked the wife if she could take the minor son to the Mickey Mouse ride as the minor son insisted but the wife started shouting loudly outside her house



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and he returned back and the wife gave a complaint at 112 but the husband told that he did not engage in any fight.

On 03.04.2023, the wife send an E-mail to husband that she has to join her office on 17.04.2023 at Noida. The husband asked the wife that since she would be in the office, the minor son can stay with them during her absence but she refused.

The husband observed several times that when the minor son stays with the wife, he gets serious injuries.

On 13.04.2023, the husband and in-laws filed another miscellaneous application in the Habeas Corpus case before the High Court which was dismissed vide order dated 20.04.2023 and then they filed Letter Patent Appeal before the High Court.

On 20.05.2023, the wife left from Panchkula to Noida alongwith the minor son without informing the husband and in-laws and send an e-mail after reaching there. On 29.05.2023, she provided her Noida address to the husband.

On 12.06.2023, the husband and in-laws shifted to Noida and rented a house.

The wife told the husband that if he withdrew the LPA, she would handover the minor son during her office hours. The husband and in-laws withdrew the LPA on 02.08.2023.

When the wife was asked to handover the minor son during office hours to the husband, she started fighting and told that nothing had been decided in writing and she would not hand over child for more than three hours.



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The husband and in-laws used to bring the minor son to their home for three hours every day. The husband requested the wife to visit schools for the future of minor son but the wife refused.

The husband is willing to do everything for the minor son as he has always been concerned about the minor son as when the child used to visit the husband and in-laws everyday, they spent quality time with him and celebrated his birthday every week.

On several occasions, the minor son told the husband and in-laws that his mother beats him. One day the husband and in-laws noticed finger marks on his face and when they asked the wife, she became angry and told that she would not give the minor son for meeting.

The husband noticed that the child had severe rashes and redness and took him to the hospital and the doctor told that it was due to lack of hygiene and prescribed medicines and the husband told the wife but she refused to give medication.

On 17.10.2023, the husband noticed that there was no improvement in the condition of the child and took him to a pediatrician who prescribed medicines and emphasized for maintaining proper hygiene of the child.

Whenever the husband brought the minor child, he often noticed marks on his body and the child repeatedly used to say that his mother beats him and pulls his hair.

On 01.11.2023, the husband gave complaint to police chowki Sector 63A, Baholpur, Noida but they refused to accept it. Husband went to the office of Police Commissioner who marked the complaint to SHO, Police



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Station, Sector-63, Noida and told the husband and in-laws to seek help from Child Welfare Committee.

On 06.11.2023, the husband gave a written complaint to Child Welfare Committee and then went to the police station for legal action but in vain. The husband was called to police station, Bahalolpur, Sector-63A, Noida but the incharge humiliated him and created a false report in collusion with the wife and submitted it to the Police Commissioner and closed the case and fabricated a false case under Section 107/116 Cr.P.C. which was dismissed by the court of the Assistant Police Commissioner.

On 07.02.2024, the husband went to police station Sector-39, Noida and obtained a copy of Diary Entry No. 68 Ankur Shahi and Ors. Vs Mansi Makkar registered on 22.11.2023.

On 12.12.2023, the husband picked up the minor son from the house of the wife and noticed a deep wound behind the right ear of the child with bleeding and took him to hospital and asked the wife and she told that the minor son got injured at school and after treatment, he went to drop the minor son at the house of wife and asked her the reason for not getting minor son treated but she became angry. The minor son sustained injury due to the wife's lack of attention. The wife did not take care to treat him and when the husband came to pick up the minor son, wife did not inform him about the said injury.

On 09.02.2024, the Child Welfare Committee summoned the husband and the wife and their documents were reviewed by the committee and the case was kept under consideration for further proceedings.



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On 10.02.2024, the husband sent a message to the wife for picking up the child but the wife told that if he wanted to meet the minor son, it would only be in the presence of the wife or another person and she blocked mobile number of the husband.

The husband and in-laws went to police station, Sector-63, Noida and showed the orders of the High Court which had granted unfettered access to meet the child. The Police sent a female police officer with the husband and in-laws but the wife refused to hand over the child.

The wife was called on 12.02.2024 to police station but she flatly refused.

The husband and in-laws went to the house of the wife but she did not open the gate and the husband called the police at 112 for assistance. The Police called the wife and she informed that she was out of station and would return in two weeks.

On 13.02.2024, the husband gave a complaint to Police Commissioner, Noida and Station In-Charge of Sector-63, Noida though E-mail but no action was taken.

The Child Welfare Committee called the wife to appear with the minor son on 19.02.2024 but she did not appear.

The husband went to the minor son's school and he was informed that the wife had withdrawn the child from the school and the husband asked if the school had informed the wife about the injury sustained by the minor son on 12.12.2023 but the school refused to provide any information.

On 27.02.2024, the husband sent legal notice to the school and also notified the Basic Education Officer of Noida. The school informed that



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the child was on leave from the school when the injury occurred and was under mother's care and provided a letter from the wife and video of the statement of the wife given to the school.

On 16.03.2024, the husband emailed the wife asking about whereabouts as husband and in-laws wanted to meet the child and the wife told that she had permanently shifted to Panchkula and would not allow the husband and in-laws to meet the minor son until they obtained further court orders for visitation.

On 19.03.2024, the Child Welfare Committee submitted the investigation report.

The behaviour of the wife has changed significantly since the birth of the minor son and is not doing her duties as mother and is not at all concerned about the welfare, physical and mental development, education and bright future of the child and inflicts cruelty upon him and has never provided stability to the minor son rather removed him from the Pathankot school and then from Panchkula and then from Noida.

The husband and in-laws also alleged that wife is a modern woman who remains busy with her lifestyle, parties and nightclubs and often returned late at night under the influence of alcohol. The husband holds a B. Tech degree and is employed in an American company. The husband is allowed him to work from home and receives a good salary and can provide all facilities to the minor child. His parents retired from Punjab Irrigation Department and get pension. Husband and in-laws are fully dedicated to the bright future of the minor child and prayed for grant of custody of the minor child to them.



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**THE PLEADED CASE OF THE WIFE**

4. The wife in written reply admitted the marriage and birth of child and the factum that the child is living with her.

The wife contested the petition by raising preliminary objections regarding maintainability, locus standi and cause of action.

The wife alleged that she was turned out of matrimonial home. The parents of the wife had spent about Rs.35 lacs on marriage and gave sufficient jewellery, car etc as per the demand of the husband and in-laws. They kept all her belongings in their custody.

The wife further alleged that on the first night i.e. 05.12.2017, the husband came in a drunkard condition and started quarrelling with her that her parents have not fulfilled their demand of dowry and slapped her. The wife told him that her parents have already given all the things but he did not pay any heed.

On 06.12.2017, the wife talked to the mother of the husband but she also started abusing her.

On 07.12.2017, the wife and the husband moved to Noida, but the husband did not mend his ways and taunted and humiliated her.

After one month of marriage, the in-laws also moved to Noida and started interfering in their life.

The husband refused to spend anything on household articles, rather told the wife to contribute her half salary if she wanted to live with him and used to take her salary and did not give single penny to her.



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Her in-laws started harassing her on demand of dowry and she told her mother who told them that they have already spent huge amount on marriage but the husband and in-laws did not pay any heed.

The wife had to travel from Noida to Gurgaon and spent three hours in travelling and requested the husband to take accommodation at Gurgaon or nearby but he refused and physically assaulted her.

On 14.08.2018, the husband under the influence of liquor, beat the wife mercilessly and she called her maternal uncle who took her and got her treated. The husband came there and felt sorry and the wife joined her matrimonial home but thereafter, he again started harassing and humiliating her and she remained under depression.

The husband always taunted the wife either to divorce him or to finish her life by suicide and made her life hell and under forced circumstances, she poured harpic and the husband took her to hospital and asked her to save him from criminal proceedings and assured that he would treat her nicely and the wife gave a false statement in the hospital.

The behaviour of the husband and in-laws was normal for some days but thereafter, they again started harassing and humiliating her.

On 25.11.2019, the brother of the wife came to India and went to meet the husband but husband beat him.

In July 2020, the wife was left alone at the house as the husband went to Pathankot to bring his parents to Noida and assured that he would come within three days but he neither informed her nor returned rather stayed for six days. The wife fell ill but there was no one to take care of her.



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When the husband and in-laws came to Noida, the husband snatched her entire salary. The husband gave beatings to her when she was pregnant.

The wife was blessed with male child on 20.08.2020. All the expenses of his birth were borne by her. Due to Covid-19, her parents could not come. After some days, her parents came to Noida but the husband started quarreling and insulted them on the demand of gold and forced her parents to leave the house.

The husband did not pay any attention to the minor child and used to beat him and did not allow her to take the minor child. On *Chola* ceremony of the minor child at Pathankot, the parents of the wife gave gold items etc. but the demand of the husband and in-laws increased and they again started demanding more dowry and the wife came to her parental home and informed her parents. Her father tried to convince the husband to treat her nicely but he started quarreling with him but later on the husband and in-laws came and felt sorry and took the wife with them and on reaching her matrimonial home, the husband and in-laws gave beatings to her and she saved her life by locking herself in the bathroom.

Thereafter, the wife and the husband came to Noida and in the second wave of Covid-19, the husband started pressurizing her to go to Pathankot and when she refused, he slapped her.

The wife used to work from home and was made to do all the house hold work.

On 22.07.2022, the company of the wife called her back to the job and she requested the husband to return to Noida but he started quarreling with her and gave her beatings.



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On 23.07.2022, the sister of the husband came and gave slaps to her and thereafter, she was turned out of the matrimonial house. She was not allowed to take her minor child and belongings. When the wife reached her parental house at Panchkula, she tried to settle the matter but the husband and in-laws refused and threatened them. The wife lodged an FIR No. 503 under Sections 323, 406, 498-A, 506 IPC against the husband and also filed a writ of Habeas Corpus before the High Court (as noted in para No.2 of this order).

The wife is doing job at TSYS at Noida and is getting salary of Rs.2 lacs per month while the husband was earlier doing job at Cognizant Company and was getting Rs.2 lacs per month but now he is not doing any job and is dependent upon his parents.

The wife requested the husband to maintain her but he flatly refused and so she filed a petition under Protection of Women from Domestic Violence Act, 2005.

The minor child is admitted in Sky World School, Sector-21, Panchkula and the wife is bearing all his expenses and her mother also retired and is getting pension. The husband used to take the child with him for three hours in a day and used to provoke him to go against wife.

The husband and in-laws have procured false reports against her only to get the custody of the minor child but the High Court has also held that the husband and in-laws have failed to prove that the wife is ill rather she is doing job in Multi-National company.

The husband and in-laws are creating hurdles in upbringing of the minor child and provoking him against the wife by taking undue benefit of their



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visiting hours but being mother, she is fully attached with the child and is taking proper care of the child. She prayed for dismissal of the petition.

**ISSUES AS FRAMED BY LEARNED TRIAL COURT**

5. For adjudication of custody matter between the parties, learned trial Court framed following three issues:-
  1. Whether the petitioner is entitled to the custody of minor child as prayed for? OPP.
  2. Whether the petition is not maintainable in the present form? OPR
  3. Relief.
6. Both the parties led evidence in support of their respective case and after hearing the arguments, learned Family Court decided both issues against the petitioners and dismissed the petition and granted visitation rights as noted above in para No.2.

**HUSBAND AND WIFE EDUCATED, INTELLIGENT AND WORKING IN I.T. SECTOR**

7. It is conceded during the course of arguments that both husband and wife are working in IT sector and both work from home. Presently both are living in Panchkula. During the proceedings of hearing of both these appeals, this Court interacted with husband and wife, both the parties seem intelligent, well educated, earning well and protective parents towards minor son.

**ARGUMENTS OF LEARNED COUNSEL FOR WIFE**

- 8(a). Mr. Arpandeeep Narula, Advocate for the wife contended that since the child has to go to school daily and has to do homework, it is not possible to afford weekly visiting rights to the husband and in-laws and the same



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is not even in the welfare of the child and it will affect his study, mental and physical well-being .

- 8(b) The Family Court by allowing the minor child to stay in the house of husband and in-laws from Friday evening to Sunday evening has virtually granted custody of minor son to the husband and in-laws during those days and that in such arrangement, the child cannot adjust for full week because he has to live in two different environments.
- 8(c) The husband is tutoring the child against wife and maternal grandmother and minor son uses abusive language towards his mother and maternal grandparents when he returns from husband's house.
- 8(d) The child associates his mother with discipline and study and since on weekends, the child is to remain with husband, he associates his father and paternal grandparents with enjoyment and leisure time.
- 8(e) The wife is doing her level best to provide all the necessities and comfort to her child, but the husband and in-laws in order to create evidence against the wife, are coining stories of mental and physical stress and alleged injuries to the child by time and again taking child to doctors and psychiatrist.
- 8(f) The husband is also bent upon to declare the wife as mentally sick and depressed by creating false evidence and concocting the documents against her. All the medical record is fabricated by the husband only to get the custody of child. The wife never got any treatment from PW-10 Dr. Saket Tiwari, and the husband and father's name of the patient is not mentioned in the record produced by PW10 neither he can identify the patient.



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8(g) The wife always take care of emotional, mental and physical well-being of the child. The husband is bent upon to spoil the life of the child for the simple reason that his attitude towards his wife is hostile and the best interest of the child is if the child is allowed to stay permanently with the wife and the child is allowed to meet her husband and in-laws once in a fortnight and may be during his school vacation.

Learned counsel for the wife vehemently prayed for modification in the impugned order by reducing the visitation time of minor child with the husband and in-laws.

**ARGUMENTS OF LEARNED COUNSEL FOR THE HUSBAND AND IN-LAWS**

9(a). Mr. Arjun Veer Sharma, Advocate for the husband and in-laws contended that they are ready to swap the days of custody of the minor child and have no objection if the minor child is allowed to stay with them from Sunday evening to Friday evening and allowed to stay with wife from Friday evening to Sunday evening.

9(b) The wife had levelled false allegations against the husband regarding demand of dowry and physical beating.

9(c) Minor son is very happy with husband and in-laws of wife. In support of his contention, Mr. Arjun Veer Sharma, Advocate relied upon photographs Annexures P-229 to P-237. **In one of these photographs, child is outside the door of the house and mother is to take him, but the child is under distress and cries when he is separated from the father as is reflected from photographs Annexure P-238 to P-254.**



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- 9(d) The child is suffering from anxiety and behavioral issues and for this purpose, the husband has to take the child to Dr. Rajeev Trehan for psycho analysis and in support of his contention, learned counsel for the husband and in-laws has also referred to Annexure P-21. The behavior of child changed and he shows less signs of mental stress and anxiety when he was engaged in dance classes on 03.10.2025.
- 9(e). The wife is unfit to be primary caregiver as she suffers from anxiety, depression, behavioral issues and suicidal tendencies. In support of his contention, learned counsel for the husband and in-laws placed reliance upon the testimony of PW-10 Dr. Saket Tiwari, Consultant Psychiatrist, District MMG Hospital, Ghaziabad, examined before Family Court. Learned counsel for the petitioner-husband contended that PW-10 Dr. Saket Tiwari, treated Mansi on 04.10.2021 and she disclosed to this doctor that she was suffering from low mood, disturbed sleep, death wishes, frequent anger, outburst and self harm behaviour. PW-10 also stated that she disclosed that she caused self harm by ingesting harpic and she also disclosed that she caused self harm by beating herself many times. After that, she was prescribed medicines for elevating her mood and good sleep. PW-10 further stated that again on 16.06.2021, he attended patient and proved prescription slip Ex.P10/2 and identified his signatures on Ex.P10/A. As per his further testimony, on 16.06.2021 patient told him that she has got no improvement and further stated that her aggressive behavior has increased and she is not able to take proper care of herself and further states that she remained sad continuously. PW-10 deposed that after examining patient, he noticed that patient might



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be suffering from depression or adjustment disorder. He advised the patient to get admitted in hospital but she refused. He further advised her that till she do not get herself admitted in hospital, she requires 24X7 observation of any person (family member). She was also given a counseling session by him and also increased the dose of medicine. The said doctor is practicing since October, 2017 in Hospital District MMG, Ghaziabad and OPD entry of the register was also seen and proved on record by him. Relying upon the abovesaid testimony of PW-10 Dr. Saket Tiwari, learned counsel for the husband and in-laws contended that wife is unable to take care of herself and she cannot be primary caregiver and guardian of the child and it is not for the welfare of the child, if he continues in the custody of wife, who is suffering from psychiatric issues.

9(f) Learned counsel for the husband and in-laws also relied upon social inquiry report (Ex.P-18) in which it is noticed that the child needs supervision, security because the mother of the child is not giving him enough time and during inquiry it was found that the child has more affection for father and insists on going with father and on conversation with the child, he informed that his mother often scares him and when he commit any mischief, she beats him and for the appropriate development of child, he needs congenial atmosphere.

Learned counsel for the husband and in-laws also referred report Ex.P-21, which was submitted before the learned Judicial Magistrate Ist Class, Gautambudh Nagar by Child Welfare Committee, wherein committee interacted with mother and child and the child without any questioning and before any talk, voluntarily started saying that mother gave beatings



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to him and he expressed the same by tapping his cheek but before child could have said anything more, his mother and grandmother asked the child to keep quiet. In this report Ex.P-21, there was also reference of report Ex.P-18, as discussed above.

- 9(g) The child suffered injury in the school, but the wife did not immediately take him to the nearest hospital and rather took him to the hospital, which was far away from her house and not the hospital which was nearby. When the child was not provided proper medical treatment, he was given medical treatment by the husband as proved from prescription slip Ex.P3/1 dated 28.09.2023.
- 9(h) The wife has shifted child from one school to another time and again and the husband also had to shift his residence to meet the child. Because of the frequent shifting of the school of the child, the child suffers from anxiety and behavioral issues.
- 9(i) Since the child is now more than 5 years of age, father is natural guardian of the child, husband is entitled for custody of child.
- 9(j) Learned counsel for husband and in-laws also relied upon the paper-book prepared by NGO namely “Child Rights Foundation” describing with the title “Child Access & Custody Guidelines along with Parenting Plan, UN Convention on the Rights of the Child”, which is duly adopted by the Government of India on 11.12.1992, being signatory to the said convention on the rights of child, judgments of Hon’ble Apex Court in (i) *Dr. Ashish Ranjan Versus Dr. Anupama Tandon and another, Law Finder Doc Id # 229081*; (ii) *Gaurav Nagpal Versus Sumedha Nagpal, Law Finder Doc Id # 162826*; (iii) *Nil Ratan Kundu and another*



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*Versus Abhijit Kundu, Law Finder Doc Id # 145157;* (iv) *Hardeep Singh Versus Paramjeet Kaur, Law Finder Doc Id # 1713034;* (v) *Roxann Sharma Versus Arun Sharma, Law Finder Doc ID # 651535;* *and* (vi) *Neethu B. @ Neethu Baby Methew Versus Rajesh Kumar, Law Finder Doc Id # 2750880.*

#### DISCUSSION

10. The issues raised by the parties to both the appeals can be discussed under following heads:-

(i) **Can the custody of child be granted to husband since the child is presently more than five years?**

10(a) As noted earlier, the date of birth of the child is 20.08.2020 and the child celebrated his 5<sup>th</sup> birthday on 20.08.2025. Full time custody of the child cannot be given to the husband for the simple reason that child is now more than five years of age and the father is natural and legal guardian of the child. Simply because the child has crossed the age of 5 years, wife cannot be disqualified to the custody of the child. Reference can be made herein to the observation of Hon'ble Apex Court in *Roxann Sharma's* case cited (supra) at para 12

*“12. The HMG Act postulates that the custody of an infant or a tender aged child should be given to his/her mother unless the father discloses cogent reasons that are indicative of and presage the livelihood of the welfare and interest of the child being undermined or jeopardised if the custody retained by the mother. Section 6(a) of HMG Act, therefore, preserves the right of the father to be the guardian of the property of the minor child but not the guardian of his person whilst the child is less than five years old. It carves out the*



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*exception of interim custody, in contradistinction of guardianship, and then specifies that custody should be given to the mother so long as the child is below five years in age. We must immediately clarify that this Section or for that matter any other provision including those contained in the G&W Act, does not disqualify the mother to custody of the child even after the latter's crossing the age of five years.”*

(ii) **Whether wife is mentally and physically disabled to look after the child**

10(b). Learned counsel for the husband and in-laws has laid much stress on the testimony of PW-10 Dr. Saket Tiwari, Consultant Psychiatrist District MMG Hospital, Ghaziabad to prove that the wife is suffering from psychiatric issues and she got herself treated from him.

Cross-examination of PW-10, Dr. Saket Tiwari, is vital piece of evidence. During cross-examination, he stated that he does not know Mansi Makkar personally. He had not obtained the signature of Mansi Makkar on any document. He also admitted as correct that documents from Ex. P10/1 to Ex. P10/4, he cannot verify the identity of patient Mansi Makkar. He admitted as correct that in column of s/w/o at Point 'A' to 'A1', 'B' to 'B1', point 'C' to 'C1' point 'D' to 'D1' of Ex. P10/1 to Ex. P10/4, there is no where mentioned name of husband/father as well as address of alleged patient. PW10 Dr. Saket Tiwari, voluntarily added that they do not take any Aadhaar Card of the patient in OPD. He also admitted as correct that any patient can come to hospital and whether he/she disclose his/her wrong name, they do not inquire about the same. He also voluntarily stated that the OPD card is being prepared by OPD



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clerical staff. He further admitted as correct that Ex.P10/3 and Ex.P10/4 are photocopies and same were not prepared by him. Same were prepared by OPD staff. Another fact admitted by PW-10 Dr. Saket Tiwari, is that Ex.P10/3 and Ex.P10/4 were not attested and signed by him and voluntarily stated that same were attested and signed by Incharge of MRD. He also admitted as correct that the patient has not made any declaration/summary in written to him regarding the fact as disclosed by him in his chief examination from point 'E' to 'E1' and he voluntarily stated that he has mentioned the same as stated by patient or attendant. He had no record regarding payment slip of patient and he voluntarily stated that same is of Rs.1, which remained with clerical department of OPD.

Since the OPD slips were prepared and issued by the OPD staff, it was imperative for the husband to examine the said staff to prove that the patient who came for treatment from PW10 Dr. Saket Tiwari, was Mansi Makkar of this case and no other Mansi Makkar especially when not even Aadhaar Card was obtained while issuing OPD slip. The record produced in the statement of PW-10 Dr. Saket Tiwari, became all the more suspicious for reason that the father's or husband's name or address of the patient is not mentioned in these slips, therefore, this medical record is of no help to the husband and in-laws that Mansi Makkar has suffered from any psychiatric issues like low mood, self harm, suicidal thoughts, aggression etc., making her unsuitable to take care of her minor son. During cross-examination, Mansi Makkar, wife admitted as correct that her husband had produced the record of depression before the Family



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Court and she voluntarily added that the record does not pertain to her because she never went to the said doctor. Therefore, the oral testimony of the husband in the absence of medical record cannot be considered trustworthy and the learned trial Court rightly held that husband failed to prove that the wife suffers from any medical issues. Meaning thereby, it cannot be held that wife is mentally and physically disabled to look after the child.

**Relevancy of reports Exs.P18 and P21 to determine custody issue of minor**

10(c). With the assistance of learned counsel for both the parties, we have gone through Ex.P18 the social investigation report for child in need of care and protection and report Ex.P-21 of Child Welfare Committee. These reports prove that only wife was subjected to strict scrutiny by Child Welfare Committee and the capability of the father to up bring the child and to be a primary caregiver was never discussed and determined. Child Welfare Committee noted that *“child needs care and protection as child’s mother is not giving time to her son”*. Regarding recommendations of Child Welfare Committee, in Ex.P-18, it is noted that *“during the onsite investigation, it was noticed that child is very attached to his father and he loves him very much. The child keeps insisting on staying with his father. When we talked to the child, he told us that his mother often scares him and beats him and when he acts naughty. For proper development of child, he needs harmonious environment”*. In Ex.P-21, inquiry report by Child Welfare Committee, findings of report Ex.P-18 above referred are stated and this report further throws light that the



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Committee interacted with the wife Mansi Makkar and it was also observed by the Committee that *“the committee conversed with child for a considerable time in a child friendly environment. Child told the committee that he likes to go to school and likes to go out with his father and he wants to live with his father. The child’s behaviour in front of committee was observed to be very playful, active and focused, but there was difficulty in controlling him. Apart from this, his mother was also seen having difficulty in controlling him during his presence before the committee.”*

The issue of mental health of wife i.e mother of the child, was also raised before Child Welfare Committee by the husband and from the contents of this report Ex.P-21, it is proved that wife was questioned at length by the Child Welfare Committee, whereas the applicant before the said committee i.e. the husband simply appeared before the committee on 04.03.2024 and produced the order (rendered in CRWP No.7332 of 2022, dated 07.11.2022) as well as settlement agreement signed by him and wife before the Mediation and Conciliation Centre of this Court and after detailed discussion with him, Committee informed him that his wife along with son have relocated at her native place Panchkula, Haryana and he can meet his son at Panchkula as per order of this Court. The committee gave special instructions to the wife to take proper care of her son and there should not be any negligence in his safety and protection. The husband was also directed by the Committee to make his necessary contribution in the upbringing of his son. This report proved that each and every issue raised by the husband was taken up by the Committee



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and the wife was confronted regarding giving less time to the child and not providing medical care. Since custody of the child was given to wife vide order dated 07.11.2022 passed in |CRWP-7332-2022 (O&M) by this Court and the child was allowed to spent 3 hours with father and 21 hours with mother. The child used to spent maximum time with mother. It is natural for the child to be resentful towards mother, who has to instruct the child for his behaviour and study and sometimes the activities of the child needs to be controlled to save him from any injury as the child is stated to be naughty in a report Ex.P-21. Therefore, these reports are not much relevant to determine the custody issue of minor child between estranged couple.

**Whether wife is negligent to be primary care giver of son?**

10(d).The contention of learned counsel for the husband and in-laws is that wife is unable to give much time to the child and the child was not provided timely medical intervention for injuries sustained by him during school time. Regarding this, cross-examination of wife before Family Court is material piece of evidence. RW-1 Mansi Makkar during cross-examination stated that in December, 2023, her son suffered injury while jumping on trampoline. At that time, the child was in her custody and he was playing in school playground. She also stated that he suffered injury during recess time and she noticed the same when school was over and she had gone to pick him from school. It was about 12 noon. There were minor scratches on the rear of his ear but she was unable to disclose when or on which ear and she further stated that on the said day, she remained with her son and did not go to office on that day. She also



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stated that when child suffered injury on the nose with iron pipe, she had worked from home and her timings remained flexible. On the said day, she did not get her son injected with tetanus and took her son in the evening at about 6-7 pm in the evening to the doctor. The prescription of the doctor was not produced by her at the time of her cross-examination and she stated that she cannot produce the same. She denied the suggestion that she had not intentionally got the child diagnosed from the doctor for the reason that she has no love and affection with the child and remained busy in the office work. She denied the suggestion that on 22.11.2023, her son suffered injury on the face. She admitted that her son was got checked by the husband from doctor and she added that on the said day, she handed over the child to husband, when he was laughing and enjoying with the husband for three hours and she does not know where the husband took him or the child suffered any injury. She also stated that when the child came in the evening (on the said day) he was not having any injury. She also admitted that she sent one video to Principal of the school regarding trampoline incident and she added that she received telephone of the Principal that in her absence, the father of the child has sent legal notice to the school and for this reason, she sent the video that at the time of incident, child was in her custody and in the said video, she told that when the child was playing on the trampoline, he suffered minor injury and injury is suffered when he was in her custody and school is not responsible for it. She also admitted writing letter Ex.P-14/2 regarding this to the school and on the next day of incident, her son attended the school. She denied the suggestion that on the next day her



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son did not attend the school because he suffered serious injuries. At another stage of her cross-examination, she admitted documents Ex.P-21 regarding injury on the right eye, which child suffered while running in November, 2024 when while running he stuck himself on the nob of door and the child suffered 2-3 stitches at that time and it was done at about 9:00 pm. They (Mansi Makkar and her family) took him to Civil hospital in Sector 6, Panchkula. She also admitted that one Ojas Hospital is near to her house and she stated that they always visit Civil Hospital, Sector 6, and further added that when something major happened then they visit Government Hospital, Sector 6, Panchkula. She also admitted that Ojas Hospital is 1 km from her house and she voluntarily added that they have not heard good about Ojas Hospital. She also stated that Civil Hospital, Sector 6, Panchkula is 9-10 km away from her house.

The learned counsel for the husband and in-laws referred the prescription slip Ex.P3/3 to support his contention that husband took the child to the hospital and wife is negligent in providing timely and proper medical care.

With the able assistance of learned counsel for the husband and in-laws, we have gone through the contents of the prescription slip dated 28.09.2023, Ex.P3/1, which is of Shanti Gopal Hospital, pertaining to child diagnosed for rearer injury in perineal area and the prescription provided by the doctor is “candid powder” twice a day for 7 days and with a direction to “keep the area clean and dry”. Candid powder or ointment is provided by the doctors for common rashes. The allegation that the husband himself took the child to doctor for providing him



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proper medical care which was not provided by the wife cannot be accepted. Every person in childhood suffers from scratches, bruise while playing, running, jumping and it is a part and parcel of growing up.

Prescription slip Ex.P4/3 dated 17.10.2023 is about that child suffers rash in perineal area, also complained about abdomen pain, no fever, decrease in appetite, not gaining weight. The doctor prescribed to maintain hygiene and syrup *Beevon* was prescribed with few other medicines. Taking the child for minor rashes to the doctor, reveals that the husband is blowing the health condition out of proportion. Taking the child time and again to the medical practitioner for minor rashes and under the pretext that child has no appetite or not gaining weight is not beneficial for the overall well being of the child. There is nothing on record what was the ideal weight of the child of his age and what was the actual weight of the child at that time. In the absence of this record, it cannot be believed that the child was under-weight when he was taken to doctor, who issued prescription slip Ex.P4/3 dated 17.10.2023. There is tendency in the children to complain of abdominal pain when they are not willing to indulge in any particular task.

Certain other prescription slips are also relied upon by learned counsel for the husband and in-laws. Prescription slip dated 28.08.2025 reflects that *“five year old child shows strong emotional attachment to his father and signs of distress around the mother, who appears emotionally traumatized. For the child’s emotional well being and stability it is advisable, he remain in father’s care. This will support healthier development and reduce the impact of parental conflict”*. In prescription



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slip of 21.09.2025, when the child was taken for second session, there is also noting of the Doctor that *“the child displayed strong attachment to one caregiver and dislikes around the other. For emotional stability, continued care with the primary attachment figure is recommended. Caregivers are encouraged to participate in joint therapeutic activities to support emotional bonding and promote the child’s healthy development.”* Learned counsel for the husband also relied upon the prescription slip dated 28.09.2025, wherein the child underwent for third session before Dr. Rajeev Trehan, and wherein it is observed that *“third session focused on emotional well being. Session conducted with Father. Continued support provided for R’s emotional regulation and behavioral needs. Psycho education given to the father regarding child emotional development, co-regulation strategies, and the importance of a supportive home environment. He continues to display a negative attitude towards the mother, which was gently addressed during the sessions. Advised further session to monitor R’s progress and provide ongoing parental guidance and emotional support.”* The prescription slip dated 05.10.2025 reflects that *“the child is currently engaged in regular routine activities, including dance and art classes. No behavioral concerns were observed during the session. It is recommended that sessions continue as planned.”*

The child is taken to Dr. Rajeev Trehan, during the pendency of the present appeals by the husband. The wife did not get the opportunity to conduct cross examination upon Dr. Rajeev Trehan, and for this reason, these prescription slips are of no use to determine the mental and



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physical state of the child. The medical record produced by the husband before learned Family Court is just of minor rashes suffered by the child, which every child suffers as a part of growing up. If the minor rashes or bruises on the body of a child are blown out of proportion, the child is likely to develop fear of taking risk in life and can develop *kinesiophobia* (excessive and irrational fear of physical activity) and cannot be a decisive adult. The child cannot be kept in a cozy physical and comfort zone and every child as observed earlier suffers bruises and rashes while growing up so is the child in this case who is naughty and hyper active, as noted by the Child Welfare Committee, in report Ex.P-21 is bound to have minor rashes, falls, injuries while running and playing. On this score, the wife cannot be held negligent to provide medical care to the child or not being able to be a primary caregiver.

**Effect of change of schools on the child-**

10(e). Learned counsel for the husband and in-laws also blamed wife for repeatedly changing school of the child to deprive them of having access to the child. RW1 wife when subjected to cross examination stated that first she got her child admitted in Playway Little Champ School in November, 2022 and thereafter, in July, 2023 in Little Sun Play School, and after that in November, 2024 in Sky World, Sector 21, Panckula and the classes were started in April, 2024. She also stated that when she got her child admitted in said school, she did not take permission of the husband and never discussed it with him and she added that she has got the custody of the child by the order of High Court and has not claimed any maintenance for this reason, the consent was not obtained. She has



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not got recorded the name of the father of the child in any document and because she told the Principal that she got the custody through High Court and in the Identity Card receipt of the child, she got the father's name entered and the dealing hand informed that it is her choice to get father's name recorded.

This part of her cross-examination reveal that the child's school from November, 2022 to February, 2024, were changed three times. When the lady shifted from Noida to Panchkula, it was necessary for her to change the school and the first school of the child was from November, 2022 to July, 2023, and then from July, 2023 to February, 2024, at that time, the child was too young. The child is studying in Sky World School Sector 21, Panchkula since February, 2024 and it cannot be said or concluded that the decision of the wife for change of school is not for the benefit of child. Parents experiment with the school and whatever school is found suitable for the child, the said school is opted for continuous study. Change of three schools by her means that that she must have paid fee time and again to the schools for the said admissions. No document worth the name is brought on record by the husband that he ever paid for the studies of the child or because of change of the school, personality of the child suffers. Rather the child suffers from anxiety and because he has to shift from one environment to another within 7 days i.e. from Sunday evening to Friday evening with mother and school and from Friday evening to Sunday evening with his father and apparently with paternal grandparents who celebrate his birthday every week and shower him with gifts.



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**Guidelines and Case Law cited by learned counsel for the husband and in-laws**

11. With the able assistance of learned counsel for both the parties, we have gone through the contents of the guidelines pertaining to the custody of the child along with parental plan as complied by NGO namely Child Rights Foundation and the Union Nations Convention on the Rights of the Child. We have also gone through the judgments produced on record.  
In **Dr. Ashish Ranjan's** case cited (supra), Hon'ble Apex Court found the mother guilty of contempt. In the said case, the custody of the minor child was given to the mother and the mother touted the child to make him hostile towards father and frustrated the visiting rights of father.  
In **Gaurav Nagpal's** case (supra), Hon'ble Supreme Court observed that paramount consideration is the welfare of child and not rights of parents under the statute.  
In **Nil Ratan Kundu's** case (supra), the Apex Court declined the custody of minor child aged about 6 years in favour of father by holding that although father is natural guardian but father facing a criminal trial and custody was given to maternal grand-parents as per the wishes of child and considering the welfare of child.  
In **Hardeep Singh's** case (supra), it was observed by Hon'ble Apex Court that wife cannot prevent the child from receiving any gift that may be given by the husband.  
In **Roxann Sharma's** case (supra) interim custody of the minor child below 5 years was given to the mother, who was highly qualified than



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husband and had regular income from salary and visitation rights were given to the father.

In *Neetu B. @ Neethu Baby Mathew's* case (supra), Hon'ble Supreme Court observed that welfare of the child is the paramount consideration and further observed as under:-

*“37. Before parting with the judgment, we find it relevant to remind both the parents of their primary responsibility towards child's nurturing, which can be achieved by effective communication and smooth execution of the above arrangement, while exhibiting mutual respect. The parties are advised not to let their bitter past experience impede the child's well-being, especially given the sensitive emotional state of the tender child. The petitioner is advised to encourage the child to accept and welcome both the parents in his life for a well-rounded development.”*

12. In the present case, the child is swinging like a pendulum between the wife and the husband because of the impugned order passed by Family Court as the child has to stay for 5 nights and 4 days with mother and 2 nights and 3 days with father and the father is showering him with gifts and celebrating his birthday every week as reflected from one of the photographs referred by learned counsel for the husband and in-laws. This fact is also not refuted by the wife that child is happy in the company of her husband on weekends as the child associates father with leisure and enjoyment, whereas the child associates discipline and study with mother with whom he stays during week days when he has to attend



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school and is required to study and foster discipline. It is always difficult for a child to part with company from the parent who provides him leisure and enjoyment. The child would normally be happier with parent, who pampers him rather than a parent who monitors his study and tries to bring him up as a disciplined well behaved child. However, for a balanced growth of child and to ensure that he turns out to be a good human being and values importance of discipline, some gentle nudging and strictness, at times, is also required. On the other hand excessive pampering can turn children into brats. Therefore, this arrangement is not for the welfare of the child, whereas, no document or evidence is produced on record which is of such a nature that dis-entitle the wife from keeping the custody of the child with whom the child is presently staying. Both the parents are working in IT Sector and excelling in their respective professional life. In such a situation, it is imperative for the welfare of the child that child is provided an element of stability. Therefore, we modify the impugned order of the Family Court and issue following directions pertaining to the custody and visitation rights of both the wife and the husband and in-laws with regard to the minor child:-

- (i) Minor child shall remain in the permanent custody of the wife.
- (ii) The husband and in-laws are allowed visitation rights with the child for 1 day every weekend.



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(iii) The husband and in-laws shall be allowed to spend time with the child for four hours either on Saturday or Sunday (once a week) as per the convenience of both the parents and child.

(iv) The husband and his parents shall keep the child for 7 days during school summer vacation of the child and those 7 days shall be mutually agreed upon by the wife and husband.

(v) During school winter vacation of the child, the husband and his parents shall keep the child for four days, which shall be mutually agreed upon by the wife and husband.

13. During the visitation rights of the husband and in-laws and summer and winter vacation, when husband and in-laws are allowed to take the child at their place, they shall not make any endeavour/effort to feed anything unparliamentary and uncivilized ideas in the mind of child regarding his mother and his maternal grandparents because feeding any violent idea or image in the mind of the child is likely to hinder his mental and emotional maturity. The husband and in-laws shall desist from celebrating the birthday of the child on every weekend and shall not handover expensive gifts to the child on each visit. However, they are at liberty to handover him gifts on special occasions like annual birthday and festivals.



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14. Hon'ble Supreme Court in *Neethu B. @ Neethu Baby Mathew's* case cited (supra) also reminded both the parents (of the said litigation) as follows:-

*37. Before parting with the judgment, we find it relevant to remind both the parents of their primary responsibility towards child's nurturing, which can be achieved by effective communication and smooth execution of the above arrangement, while exhibiting mutual respect. The parties are advised not to let their bitter past experience impede the child's well-being, especially given the sensitive emotional state of the tender child. The petitioner is advised to encourage the child to accept and welcome both the parents in his life for a well-rounded development."*

15. In the present case also considering that both the wife and husband had involved in bitter war of words with each others, we advise the parties to the present litigation to keep in mind the above said observation/advise of Hon'ble Supreme Court, while communicating with each other regarding arrangement of the visitation of minor child with husband and in-laws.
16. Accordingly, both the appeals are disposed of with modification of the order of learned trial Court to the above noted extent.

**(GURVINDER SINGH GILL)**  
**JUDGE**

**(RAMESH KUMARI)**  
**JUDGE**

**26.11.2025**

pooja saini

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No