HC-KAR

NC: 2026:KHC:60647
WP No. 28223 of 2026

CNR: KAHC010604542026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 28223 OF 2026 (GM-FC)

BETWEEN:

1.

2.

Digitally signed by SUVARNAT
Location: HIGH COURT OF KARNATAKA

...PETITIONERS

(BY SRI. KAPIL DIXIT, ADVOCATE)

AND:

…RESPONDENT

(BY SMT.AISHWARYA R., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI, OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, QUASHING/MODIFYING THE ORDER DATED 20.08.2026 PASSED BY THE HONBLE II ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, IN I.A. NO. 10 IN MC NO. 5699/2021, INSOFAR AS IT GRANTS OVERNIGHT CUSTODY OF PETITIONER NO.2 TO THE RESPONDENT AS ANNEXURE-D.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 08.10.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CAV ORDER

The present writ petition is filed aggrieved by the order passed on IA.No.10 in MC.No.5699/2021 dated 20.08.2026 by the II Additional Principal Judge, Family Court, Bengaluru, whereby the family court had granted overnight custody of the child to the father, the mother is before this court.

2. Both the parties are referred to as mother and father for the sake of convenience.

3. The mother had filed MC seeking divorce, in that father filed an application seeking parenting time with the child. The family court initially had granted parenting time on every 1st and 3rd Saturday of every month from 11:00 a.m. to 02:00 p.m in IA.No.2. Mother had filed IA No.9 to modify the order. It is the case that the father by taking the minor child for overnight custody, he is emotionally manipulating by asking questions against the mother. The father is making the minor child physically exhausted and mentally fatigued. The father is gifting sharp objects, paan masala, causing distress to the mother. Accordingly, seeks to change the place of parenting time to the visitation room, Family Court, Bangalore. The family court had dismissed I.A.No.9 observing that the child is now developing bond with the father, under such circumstances directing the child to be produced before the visitation room, as the child is aged more than 5 years is not advisable and accordingly dismissed the application. Then father has filed IA.No.10 seeking custody of the child from Friday evening to

Sunday evening on festivals and public holidays without presence of the mother. The family court by order impugned had permitted the father to take the child on Friday after 06:00 p.m. from the natural residence of child along with necessary clothes etc., and drop the child back by next Sunday 06:00 p.m on 1st and 3rd Saturday and Sunday. While passing the order, the family court observed that, after reviewing the material on record and considering the child's age of about 12 years and the respondent's prayer, in the light of settled law, the family court deemed it appropriate to pass the order.

4. Learned counsel appearing for the petitioner/mother submits that after the father obtained an order for daytime parenting time, he has on several occasions, misused it to instigate the child against the mother, to encourage the child to disrespect her, and to encourage the child to leave home, making it stressful for the mother to protect the child from such instigation. He has misused it by making remarks about the mother in the presence of the child and by representing to the child that the mother demands money from him. The conduct of the father and his family members towards the child,

particularly during unsupervised overnight custody, is likely to adversely affect the child's behavior, mental health, and academic performance. The unhealthy habits attributed to the father have already affected the child's health, and unsupervised overnight custody would aggravate this without any corresponding safeguard. The father is habituated to alcohol and tobacco, and exposing the child to this environment during unsupervised overnight custody, beyond the reach of protective adult supervision, poses a direct risk to the child's physical and moral well-being. The father has informed the child that an unrelated adult resides with him, and it is submitted that such an arrangement in a household without any other suitable caregiver poses a risk to the child's safety, and that the welfare principle enshrined with this Court to guard against the same. It is stated that the overnight parenting time granted to the father is not in the interest of the child and that it has to be modified.

5. Learned counsel appearing for the respondent/father submits that the boy is enjoying the father's company, there are no disturbances, and the mother, only with the intention to

see the father, will not be able to exercise parenting time, has filed this application. It is submitted that the trial court has rightly considered and dismissed the application, and there is no reason to interfere.

6. Having heard the learned counsel on either side, perused the entire material on record. When the matter came up before this court on 17.09.2026, this Court had permitted the father to pick up the child on 18.09.2026 at 06:00 p.m., the father shall drop the child back on 20.09.2026 at 06:00 p.m. and the matter was directed to be listed on 22.09.2026 at 05:30 p.m. in the chambers so that the Court will interact with the child and both parents and understand the inconvenience to the parents. Then, on 22.09.2026, this court passed an order observing that the court had interacted with the father, mother, and child in chambers. It is submitted by the father that the parenting time with the child went very well. According to the mother, the child was not very comfortable with the father overnight because the child had not seen the father for 5 years. Then, at the request of the counsel, the matter was adjourned on 2 to 3 occasions to obtain specific instructions from the

mother. Then, on 08.10.2026, the learned counsel representing the mother argued the matter and submitted that granting overnight custody to the father is not in the interest of the child. This Court, time and again is coming across cases, in every order of parenting time with the child, the custodial parent always has one or the other objection. In matters concerning the child, the welfare of the child is undoubtedly the paramount consideration. However, the principle of welfare cannot be invoked as a convenient justification for disregarding an order already passed after judicial consideration. When overnight parenting time is granted, the court has considered that the child's welfare would be served by spending meaningful time with the parent with whom the child does not ordinarily reside. Such an arrangement is not merely intended to facilitate a meeting between the parent and child. It enables the child to experience everyday aspects of family life, including spending evenings together, sharing meals, following daily routines, and developing a sense of belonging in both parental homes. In the case of ***Yashita Sahu Vs. State of Rajasthan***[1], the Hon'ble Supreme Court emphasized the importance of the

[1] 2020 3 SCC 67

child receiving the affection, care and companionship of both parents. The Court recognised that matrimonial differences should not deprive a child of the relationship with either party. In the case of ***Eby Cherian Vs. Jerema John***[2], the Apex Court considered the importance of a predictable arrangement for overnight custody. The Court observed that compelling a parent to file repeated applications to obtain overnight access creates unnecessary conflict and diminishes the time available to maintain the parent-child relationship. A structured arrangement was therefore ordered in the interest of the child's welfare. In cases of this nature, when the mother raises genuine concerns regarding the child's health, safety, or emotional well-being, those concerns can be considered by the court. Objections that are unsupported by relevant material or that merely reflect the mother's personal unwillingness to permit overnight parenting time cannot be considered by the court. It is important to distinguish between a child's genuine discomfort and an objection raised by a parent in the child's name. In this case, the boy is aged about 12 years old, if the father is permitted to have overnight parenting time with the

[2] 2025 INSC 709

child, the child will develop a relationship and bonding with the father. If this is not provided and only limited hours of parenting time are permitted, it will never allow them to develop a genuine bond between the father and the child.

7. In those circumstances, this Court do not find any reasons to interfere with the order passed by the Family Court. It is needless to mention that if there are any changed circumstances or any genuine discomfort based on material, the mother can always bring the same to the notice of the court by way of an appropriate application and the family court would consider the same in accordance with law. Accordingly, this court do not find any reasons to interfere with the well-considered order passed by the family court. Hence, this court is passing the following:

ORDER

i. Accordingly, the writ petition is ***dismissed***.

ii. Pending IAs., in this petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

TS/List No.: 1 Sl No.: 4
*AK