

**FMA 520 of 2021**  
**with**  
**CAN 1 of 2020**  
**with**  
**CAN 2 of 2020**  
**(Tushar Kanti Das Vs. Kajal Saha)**

**Mr. Saptangsu Basu, Sr. Advocate**  
**Ms. Sohini Chakraborty**  
**Mr. Amritam Mandal**  
**Mr. Aditya Mondal**

**.....For the appellant**

**Mr. Srijib Chakraborty**  
**Mr. Subhasis Chakraborty**  
**Mr. Amit Chowdhury**  
**Ms. Sushmita Kumari Singh**

**.....For the intervenor – Julie Roy**

Affidavit has been filed by the intervenor Ms. Julie Roy, who is in the care of the minor child Ally Das, a 4½ year old girl. It appears that the minor Ally Das was born in the house of her mother on 6<sup>th</sup> August, 2017. Her mother committed suicide on 7<sup>th</sup> March, 2018. Appellant/father was arrested in connection with the criminal case registered over the suicide. Subsequently, he took out an application seeking custody of the minor, who, at that material time, was in the custody of her maternal grandmother, Kajal Saha. By the impugned judgment, the court below, upon considering the facts and circumstances of the case, directed the minor to remain in the custody of said Kajal Saha till she attained 15 years of age and was in a position to make a conscious decision with regard to her own custody.

During the pendency of the appeal, the said Kajal Saha also committed suicide. Under such circumstances, we were informed by Mr. Chakroborty, learned counsel, who was representing the deceased Kajal Saha that the child was put in the care of the intervenor Julie Roy, a neighbour and a distant relation of the mother of the child.

As the paramount duty of the Court is to ensure safety and well being of the minor, we directed Julie Roy to file an affidavit disclosing the circumstances in which the minor was put in her care and the steps taken by her with regard to the minor's well being. Pursuant thereto, the present affidavit has been filed. It is averred in the affidavit due to in the absence of any responsible member in the immediate family of the deceased Kajal Saha, Julie Roy, a family friend and distant relation, has taken over care and custody of the child. It has been further averred that the deponent Julie Roy has deep connection with the child since her birth and the child is comfortable in her care and custody. We are also informed the said Julie Roy has filed application for guardianship of the minor being Misc. Case No. 145 of 2021 before the learned District Judge, Howrah.

On the other hand, Mr. Basu, learned senior counsel appearing for the appellant/father, submits pending the said application, the custody of the child be handed over to him as he is the biological father. Julie Roy, the

deponent, is no way related to the child and the appellant/father is best suited to take care of the child under the present circumstances. He has also referred to a decision of the Apex Court in “**Tejaswini Gaud and ors. Vs. Shekhar Jagdish Prasad Tewari and others**” [SLP (Crl.) No. 1675 of 2019] dated 6<sup>th</sup> May, 2019.

No doubt, the appellant is the father of the minor Ally Das. However, since the child, who is presently 4½ years of age, was brought up at the residence of her matrimonial grandmother and after her death in the custody of Julie Roy, a close family friend and neighbour of the grandmother. It is contended on her behalf that she had day to day association with the growth and development of the child. Hence, it may be inferred that the child is accustomed to her company. A co-ordinate bench had earlier directed visitation right to the appellant between 11.00 a.m. to 2.00 p.m. on every alternate Saturday at the chamber of the learned advocate-on-record of the deceased grandmother. However, due to certain disputes, such visitation order was withdrawn. Situation has substantially changed as the grandmother who was in the custody of the child, no longer alive.

It is strongly contended that the child is well adjusted with the intervenor Julie Roy and immediate transfer of her custody to the father would be traumatic for the child. However, it must also be borne in mind that a

bond between the child and her natural father ought to be encouraged from tender age. Such bonding is not an assertion of right of the father but a step towards wholesome development of a minor *vis-a-vis* her natural parents.

In order to enable such a situation and ensure a balance development of the minor, we direct that the minor be handed over to the appellant at 9.00 a.m. on two consecutive Saturdays, i.e. 20<sup>th</sup> November, 2021 and 27<sup>th</sup> November, 2021 respectively from the residence of Julie Roy and the appellant shall hand back the minor to the said Julie Roy at her residence at 9.00 p.m. on those dates. The handing over and taking back of the child as aforesaid, shall be in the presence of the learned advocates-on-record of the appellant as well as the intervenor Julie Roy. It is expected that the parties shall act in terms of this order and the best interest of the child.

The Court further proposes to interview the child on the next date of hearing. Let the child be produced before the Court on **29<sup>th</sup> November, 2021** at **2.00 p.m.**

The appellant is at liberty to file affidavit-in-opposition to the affidavit filed by the intervenor Julie Roy in the meantime.

**(Bivas Pattanayak, J.)**

**(Joymalya Bagchi, J.)**