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IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL WRIT PETITION NO. 322 OF 2026

ISHWARYA DAMODAR KAKULE

...PETITIONER

~ VERSUS ~

PARAM S. ZANZAL

...RESPONDENTS

APPEARANCES:

For the Petitioner.

Ms. Vijeta Poulekar and Ms. Caroline Collasso.

For the Respondent.

Ms. Ashwini Agni, Mr. Aadarsh Kothari (Through V.C.) and Ms. R. Bhatkar.

CORAM : AMIT S. JAMSANDEKAR, J.

RESERVED ON : 07th August 2026.

PRONOUNCED ON : 18th August 2026

ORDER

1. By the present petition, a mother of a four-year-old child is seeking an order and direction that her application for interim custody of her 4-year-old son be heard expeditiously. The interim application has been made by the Petitioner in Case No. DVA/23/2026 pending before the Judicial Magistrate, First Class B

Court (**JMFC**) at Mapusa, Goa. In the alternative, the Petitioner seeks daily visitation and weekend custody of the child.

2. It is submitted that the Petitioner has not been given custody of the child for almost 8 months.
3. The prayers are made by the Petitioner in the peculiar situation. The DVA proceedings are filed by the Petitioner on 13/05/2026. Prior thereto, admittedly, there were settlement talks between the Petitioner and the Respondent. A meeting was held on 23/05/2026 to amicably resolve the disputes between the Petitioner and the Respondent. Pursuant thereto, on 23/05/2026, gold was exchanged, and the terms were agreed upon. However, it is submitted on behalf of the Petitioner that in the first week of June 2026, the settlement failed after the change of the Respondent's lawyer.
4. Thereafter, the Petitioner filed the custody petition on 15/06/2026. On 23/06/2026, the Respondent appeared in the proceedings. However, the Respondent did not file a reply in the proceedings before the learned JMFC. According to the Petitioner, the delay is being caused due to non-filing of the reply. It is submitted that just

because the matter was adjourned and kept on 03/09/2026, there was no reason for the Respondent not to file a reply.

5. The Petitioner has not met the child for more than 8 months, and the Respondent has not granted the Petitioner access to meet the child. It is submitted that she has occasionally seen him and met him for a while outside his school. After filing of the petition, on 06/08/2026, the Respondent has filed his reply in the DVA proceedings. However, till date he has not filed any reply to the interim application filed by the Petitioner. According to the Petitioner, non-filing of a reply to the interim application is causing delay.
6. It is submitted on behalf of the Petitioner that the Respondent has intentionally not given access to the child. The child is systematically being kept away from the Petitioner by abusing the process of law. The Respondent has thrown away the Petitioner out of the matrimonial house.
7. In support of the submission, the learned counsel for the Petitioner has relied upon the following judgments:- (i) ***Dr. Ambula Manoj v. Ambula Bhavana and Anr.***, Criminal Petition No. 4966 of 2009 (Andhra Pradesh High Court, decided on August 26, 2009); (ii) ***Anju Sharma v. State of***

Haryana and Ors., 2024 *Supreme(P&H)* 543; **(iii)Caarmen Mergulahao Vs. Alexander Mergulaho** (*Civil Revision Application No: 43/1997-High Court of Bombay at Goa*), **(iv)Gaurav Nagpal Vs. Sumedha Nagpal**, (2009)1 SCC 42; **(v) Mast. Atharva & Anr. Vs. State of Uttar Pradesh & Ors.**, 2020 SCC OnLine ALL 2033; **(vi) Neelu Talotra Vs. State of Punjab & Ors.**, *Criminal Writ Petition 7646/2024*; 2024 *Supreme (P&H)* 1210 **(vii) Panchal Zalakben Vs. State of Gujrat**, R/ *Special Criminal Application No. 12669 of 2021 (High Court of Gujarat)*. **(viii) Rajni Vs. Sunit Chhabra**, 2012 SCC ONLine P & H 3310; **(ix) Rosy Jacob Vs. Jacob Chakramakkal** (1973) 1 SCC 840; **(x) Roxann Sharma Vs. Arun Sharma**, (2015) 8 SCC 318.; **(xi) Senthil Kumar Vs. Sunitha**, 2010 SCC OnLine Mad 5990; **(xii) Karuppannan Vs. Sudhamathi**, 1993 SCC OnLine Mad 175, **Kaliappa Goundan Vs. Valliammal**, 1949 SCC OnLine Mad 10 and **(xiii) Veena Agarwal Vs. Prahlad Das Agarwal**, 1975 SCC OnLine, MP 59.

8. On the contrary, it is submitted on behalf of the Respondent that this Court cannot get into any aspect of the matter which is covered by the DVA proceedings and the interim application pending before the learned JMFC. It is submitted that this Court should not exercise any

jurisdiction. It is further submitted that the Petitioner has not made out any ground for expediting the pending application before the JMFC and no priority should be given to the Petitioner when other matters are already pending before the learned JMFC. It is submitted that there are so many other matters where hearing is expedited and the learned JMFC is burdened with urgent and regular pending work in other matters. Therefore, this matter should not be expedited.

9. In any case, it is submitted that the proceedings cannot be expedited only because the child is four years old. There are no grounds to expedite the hearing, and the DVA proceedings are without basis and frivolous. Further submission is that the child is in the sole custody of the father for more than eight months and he is taking care of the child since the birth of the child. It is also submitted that if the interim custody is given to the Petitioner now, then the sole custody application filed by the Respondent shall become infructuous. It is submitted that DVA proceedings are not maintainable solely in view of the fact that the Petitioner has not *prima facie* established that the Petitioner is an aggrieved person.
10. It is further submitted on behalf of the Respondent that the Petitioner is not mentally stable and is suffering from mental health issues.

Allegations are made by the Respondent in DVA proceedings filed by the Respondent. Even in the affidavit in reply in the present proceedings, allegations are made that the family members of the Petitioner have committed suicide and that fact was suppressed by the Petitioner from the Respondent. In view thereof, it is submitted that it is not safe to give the custody of the child to the Petitioner.

11. In view thereof, the submissions are made that the custody be given solely to the Respondent. In support, the Respondent has relied upon the following citations: **(i) *Selvaraj v. Revathi*, 2023 INSC 1054 (Supreme Court of India, decided on 6 December 2023).** **(ii) *Tejaswini Gaud Vs. Shekhar Jagdish Prasad Tewari*, AIR 2019, SC 2318.**
12. However, the Petitioner has denied all the allegations made by the Respondent and, particularly, that the Petitioner has mental issues.
13. I have heard Ms. Poulekar for the Petitioner and Ms. Agni for the Respondent and have considered the record.
14. At this stage, I am not getting into the rival allegations in respect of the matrimonial disputes. I am concerned in these proceedings only with the expedited hearing of the Petitioner's interim application and the grant of interim relief in respect of visitation rights, etc.

15. It is admitted that the child is 4 years old, and the Petitioner has not had custody of the child for almost 8 months. The Respondent has retained sole custody of the child. Admittedly, settlement talks between the parties have failed. The Petitioner is the biological mother of the child. It is not in the welfare of the child that he has had no access to his biological mother for so long, particularly when the child is only four years old. The child should have access to his mother and the rights ought to be decided by the learned JMFC at the earliest. I do not find any substance in the submissions made on behalf of the Respondent that no priority should be given to the application of the Petitioner. At this stage, I am also not commenting on the allegation in respect of the mental health of the Petitioner because there is nothing on record except mere allegations. Further, there is nothing on record to establish that the Petitioner has harmed the child in the past. Admittedly, the Petitioner is the medical practitioner. *Prima facie*, I am satisfied that the Petitioner is delaying the proceedings to retain sole custody of the child.

16. Considering these facts, I am inclined to pass the following order.

- i) The Respondent shall file his reply to the application
(case No: DVA/23/2026) or any interim application

therein within a period of one week from today.

Rejoinder, if any, shall be filed by the Petitioner within a period of one week thereafter. No further time shall be granted to the Petitioner or the Respondent to complete pleadings for the purpose of the interim application;

- ii) The Judicial Magistrate First Class, 'B' Court at Mapusa, Goa is ordered and directed to decide the interim application filed by the Petitioner seeking custody of her child in case No: DVA/23/2026 within a reasonable time;
- iii) No adjournment applications shall be made by the Petitioner or the Respondent;
- iv) The learned JMFC, after considering the record and submissions of the parties, shall pass appropriate orders on the interim application of the Petitioner;
- v) During the pendency of the hearing and final disposal of the interim application before the learned JMFC, the Respondent is ordered and directed to

give sole custody of the child to the Petitioner on every Thursday (beginning from 20.08.2026) at 4 p.m. until Monday at 10 a.m. On every Monday, the Respondent shall pick up the child from the residence of the Petitioner at 10 a.m. and drop the child back at the residence on every Thursday at 4 p.m.;

- vi) Liberty to apply to the Petitioner if the directions in (v) above are not followed or breached by the Respondent.

17. **The Petition is disposed of in the above terms.**

18. Costs in the cause to be decided by the learned JMFC while disposing of the interim application of the Petitioner.

[AMIT S. JAMSANDEKAR, J.]

ORDER CONTINUED

19. At this stage, the learned Advocate for Respondent seeks a stay of the order for a period of two weeks.

20. Considering that the Petitioner has not had custody of the child for the period of eight months, the request made by the learned counsel on behalf of the Respondent cannot be accepted.
21. Further, *prima facie*, I have arrived at a finding that the intention of the Respondent appears to be to retain custody of the child. The request made on behalf of the Respondent is, therefore, rejected.
22. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]