

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION
CR. REVISION APPLN. NO. 38 OF 2026

Sheetal Hemant Mane ...Applicant
VERSUS
Hemant Prakash Mane ...Respondent

Adv. Avesh Ghadge a/w Aditya Ghadge, for the applicant.
Adv. Vijay V. Patil and Aditya Rakatade, for the respondent no.1.
Mrs. S. N. Deshmukh, APP for the respondent-State.

Coram : RAJESH S. PATIL, J.

Date : SEPTEMBER 3, 2026.

P. C. :

“Behind every claim for custody lies not merely a contest between two parents, but the larger question of who can best secure the care, dignity, emotional well-being and future of the child.”

1. The Court cannot remain ignorant to the realities of life which confront a woman who, while striving to secure the future of her children, is simultaneously required to attend to the necessities of her own day-to-day existence. A recent incident reported from Beed district illustrates this reality, where a widowed mother, driven by the need to support the education of her daughter, participated in a three-kilometre race wearing a saree and running barefoot, with the prize money of

Rs.3,000/- becoming a means to contribute towards her children's educational needs. Such instances are a reminder that the struggle of a mother to raise and educate her children is not always reflected merely in figures placed before the Court; behind those figures often lies a continuing endeavour to balance limited means against the ever-growing necessities of food, shelter, education and a dignified existence. It is in this backdrop that the present case is required to be appreciated.

2. The present Criminal Revision Application is filed by the Applicant, who is the wife of Respondent No.1, challenging the impugned judgment passed by the learned Sessions Judge in a Criminal Appeal filed under the Domestic Violence Act, whereby the Sessions Court set aside the order passed by the learned Judicial Magistrate First Class, by which interim custody of the two minor children, viz : daughter (12 years) and the son (6 years) , was granted to the father till the final disposal of the proceedings, and the Applicant-wife was granted visitation rights.

3. The Applicant has filed a DV complaint under Section 12, seeking reliefs under Sections 18 to 23 of the Domestic Violence Act. In the said DV proceedings, an interim application has been moved by the Applicant-wife seeking custody of her two children, namely,

the elder daughter aged 12 years and the younger son aged 6 years. The said application was allowed by the learned Judicial Magistrate First Class after he had interviewed both the children.

4. Being dissatisfied, the Respondent-husband challenged the order of the learned Judicial Magistrate First Class before the Sessions Court, and the Sessions Court, without interacting with the children, came to a finding that the order passed by the learned Judicial Magistrate was perverse, as the Applicant-wife did not have an income source and the allegation of the Applicant-wife about an extra-marital affair of the husband with a lady would not affect an interim application for custody of the minor children.

5. It is the case of the Applicant-wife that this is an interim application for custody. She has recently joined service of a company called “Royal Fruits Company” and gets salary of Rs.13,000/- per month. So also, her parents and her two married brothers are staying together, and both the brothers have taken the responsibility of her, as also her two children emotionally and financially.

6. The children of both her brothers are around the same age as

her children. Therefore, they all would be enjoying each other's company, as the Applicant is, staying with her brothers and parents.

7. Both her children were studying in Jayawant International School, which was a CBSE Board school at village Vatar. However, after the Applicant and Respondent No.1 started staying separately, Respondent No.1-husband, who is always under the influence of liquor and also has an extra-marital affair, removed both the children from that school and put them in a State Board school known as Tarangan English School at village Wing.

8. It is also alleged that Respondent No.1, under the influence of liquor, used to occasionally physically abuse the Applicant. He was also not able to pay the school fees of the school where both the children had been admitted by him against her wishes. That fact has been admitted by him in his reply.

9. So also, he himself, on a stamp paper, has admitted and acknowledged that he has an extra-marital affair. With this kind of situation, it cannot be said that both the children would be in a healthy environment.

10. The ages of the children are such that the daughter, being just

at the age of puberty, will require more company of her mother, and the son, being only 6 years old, would also require the company of his mother. Therefore, this Court should consider this fact and the view taken in judgment delivered by the learned Single Judge of this Court in **Mukhtar vs. Habibah & ors**, reported in **2024 SCC OnLine Bom 2888**, and the judgment delivered in **Abhishek Chavan vs. Dr. Gauri Chavan** on **21st July 2023** in **Writ Petition No.2048 of 2023**.

11. In response to the argument made on behalf of the Applicant-wife, the learned counsel appearing for Respondent No.1-husband submitted that the issue about Respondent No.1 having an extra-marital affair and regularly being under the influence of liquor are all allegations, which are denied by him. He submitted that both the children are happily staying with him and their grandparents, who are taking care of them with love and affection. The present school of the children is just roughly 100 to 150 metres away from his residence.

12. The Applicant does not have an income source to take care of the educational and other expenses of the children. Hence, this

Revision Application needs to be rejected, as the Sessions Court, by a well-reasoned order, has reversed the order passed by the learned Magistrate.

13. Before this matter was argued today before me, I had interacted with the counsel appearing for both sides, the Applicant-wife and Respondent No.1-husband, and separately with the two children, the parents of Respondent No.1-husband and the two brothers of the Applicant. All my efforts to amicably resolve this issue was not fructified. However, while I interacted with both the children, who are aged 12 years and 6 years, I personally am of the opinion that both the children were tutored, by the Respondent No.1-husband.

14. As far as the brothers of the Applicant are concerned, they both agreed and orally gave an assurance/undertaking that they would take care of their sister, who is the Applicant herein, and also of her children. They do not require any kind of alimony or maintenance from Respondent No.1 for their sister or towards her children.

15. As far as the parents of Respondent No.1 are concerned, I

interacted with them and, according to me, they are helpless. As far as a healthy environment for the upbringing of the children is concerned, it is Respondent No.1 who has, on a stamp paper, admitted that he has an extra-marital affair.

16. Apart from that fact, there are NCs made by the Applicant before the police complaining about the manner in which Respondent No.1 has treated her, when she had caught Respondent No.1 red-handed with a lady. Therefore, there is no doubt that Respondent No.1 has an extra-marital affair with a lady.

17. As far as his drinking habit of Respondent No.-husband is concerned, the same has been denied by his counsel. In these circumstances, in my view, if the custody is given to Respondent No.1-husband, there is a likelihood that they would not be in a healthy environment.

18. As far as education is concerned, both the children were studying in a school which was a CBSE school earlier, and from last one year, they have been shifted to a State Board school. There is a document on record by way of a reply filed by Respondent No.1-husband, wherein he states that there were a few instances of

default in payment of school fees.

19. The fact again remains that the Applicant is the mother of both the children. The elder girl is aged 12 years and is about to attain her puberty age. The boy is as young as 6 years. Again, in my view, both the children will require their mother more than their father.

20. This Court, in the judgment of **Mukhtar (supra)**, in paragraph 13, has considered the aspect of better company and care.

Paragraph 13 of the said judgment reads as under:

“13. So far as better company and care is concerned, it is seen that almost every member in the family of the husband is occupied in the business. There is only grand-mother of the children who is in the house for whole day. In the house of the wife, she is always at home. She stays with her parents. There are other relatives in the family. So far as deprivation of the company is concerned, it needs to be noted that both the parties are staying in the same town. Distance between the houses of husband and wife is not more than 2 km. Thus, visitation by parent would not be much difficult. Husband can always meet children at convenient place. Husband and wife are related to each other even prior to marriage. One more factor needs to be considered is that there is one female child who is staying with mother. If all the siblings stay together it would help children in growing together. Being female child she requires care and attention of the mother. Under Muslim Law, custody of the children below 7 years is required to be with the wife.”

21. Similarly, in the judgment of **Abhishek Chavan (supra)**, the Court has held that while considering the issue of custody of a minor, the paramount consideration is the welfare of the minor.

22. Paragraph Nos.18, 19, 21 and 22 read as under:

“18. It is now well settled position in law that while considering the issue of custody of the minor, the paramount consideration is the welfare of the minor. Viewed from that aspect, considering the age and gender of the child and taking into consideration the facts of the case, in my view, at this stage, it is in the welfare of the child that the interim custody is granted to the mother. As indicated above the comfort of the child is one aspect of the welfare of the child. The word “Welfare” is to be understood in the widest sense taking within its fold the physical and mental well being, health, comfort and overall social and moral development of the child. All that is essential for a well balanced upbringing of the child amounts to welfare of the child.

19. It needs to be borne in mind that the girl child aged about 8 years would be undergoing hormonal changes and also physical changes and as such much care has to be taken during this phase of growth of the girl child and the paternal grand mother or the paternal aunt cannot be a substitute to the mother who is also a qualified doctor. During this phase of life, the girl child requires care and attention of a women who would be better equipped to understand the process of transformation which the girl child will undergo and as such, the mother at this stage is preferred against the father.

21. Apart from the allegations as regards the mood swings of the child and reluctance to meet the mother there is no reason which has been brought to fore so as to set aside the order of interim custody which has been handed over to the mother. The only serious allegations are about her adulterous relationship which at this stage are only allegations and is to be proved during the evidence. In that context if the Respondent can be provided with weekend overnight access and visitation rights, then it does not appeal to reason that the same person cannot be granted interim custody of the child.

22. Before considering the decisions relied upon by the parties, it may be noted that the common thread that runs through all these decisions is that it is the welfare of the child which is of paramount consideration. In my opinion, in matters regarding custody of the child, each case is required to be decided on its own merits as little change in facts may make a sea of difference. Turning to the decision of the Apex Court in the case of Sheila B. Das Vs. P. R. Sugaree, in that case the Family Court had directed to the mother to hand over the custody of the child, who was at per-puberty stage, to the father which was upheld by the High Court. In that case an application came

to be filed by the mother of the child under section 7 and 25 of the Guardians and Ward Act which came to be dismissed as against which the SLP was filed before the Apex Court. In that case, the contention was that the minor girl was of tender age and the appellant there in who was also a doctor would be better equipped to take care of the child. The Apex Court reiterated the well settled principle that the paramount consideration in such cases was the interest and well-being of the minor child. The Apex Court in facts of that case observed that after obtaining the custody of the minor child the respondent does not appear to have neglected the minor and to look after her needs and the child will happy in the respondents company. The Apex court also considered that no allegation other than the fathers purported apathy toward the minor has been leveled against the respondent. In that facts of the case, the Apex court held that the interest of the minor child would be best served if she remains with the father with the sufficient access to the respondent mother. In my reading of the said decision, the child was given in the custody of the father as there was no allegations as against the father that he was ineligible to look after the minor child and as regards the girl child attaining age of puberty the respondent father there in had arranged for his elder sister to come and stay with her and to attend the minor child during her. In the facts of the present case, apart from the allegations of adultery which has been made there is no allegation that the respondent mother has been negligent in taking care of the child after the custody was handed over. In my opinion, the issue has to be decided in facts of each case and there cannot be in strait jacket formula as regards the custody of the child.”

23. In my view, the findings recorded in the above-referred judgments are squarely applicable to the present proceedings.

24. The Trial Court had interacted with both the children and was of the view that the custody of both the children should be given to the Applicant-wife, who is the mother of both the children. Similarly, I had also interacted with both the children, apart from the parents of both the children, the grandparents of both the

children and the two maternal uncles of both the children, and I am of the view that both the children were tutored. After considering all the facts, according to me, for their better future and looking into the aspect of a better environment, the custody of the children should be with the Applicant, who is the mother of both the children.

25. What assumes significance is that the wife is not before this Court seeking any maintenance or alimony for herself. Her claim, as urged, is confined to seeking the custody of the minor children. Her decision to take up employment, therefore, cannot be viewed as a circumstance operating to her prejudice. On the contrary, it reflects her endeavour to contribute, to the best of her ability, towards the upbringing, education and welfare of the children whose custody she seeks.

26. This Court has taken into consideration the overall circumstances in which the wife is seeking the custody of the minor children. The wife does not seek to secure custody as a means of obtaining financial support or any monetary advantage from the husband, she by not claiming maintenance or alimony for herself.

27. Hence, I am of the opinion that the learned Sessions Judge had passed an order without considering the law on the subject and, even on facts, there were mistakes. It is completely a perverse judgment; hence, it requires to be quashed and set aside.

28. In view of the same, this **Revision Application is allowed**, and the impugned judgment and order dated 7th April 2026 passed by the learned Additional Sessions Judge, Karad, in Criminal Appeal No.75 of 2025 is quashed and set aside, and the order dated 5th December 2025 passed by the learned 3rd Judicial Magistrate First Class, Karad, Taluka Karad, District Satara, is confirmed.

29. Respondent No.1 is hereby directed to hand over the custody of both the children, viz., Aaradhya and Rajvardhan, to the Applicant, who is the mother of both the children, on 9th September 2026 at 5:00 p.m. at the Karad Taluka Police Station, in the presence of the Officer-in-Charge of the said Police Station.

30. The Officer-in-Charge of Karad Taluka Police Station, after handing over the custody of the two children to the Applicant, shall file his report, which should be submitted to this Court by 11th September 2026.

31. The learned APP will convey this order immediately to the Officer-in-Charge of Karad Taluka Police Station.

32. At this stage, the learned counsel appearing for Respondent No.1-husband has sought visiting rights in respect of both the children.

33. The request made by the learned counsel appearing for Respondent No.1, in my view, is a fair request, and the same can be considered by this Court. Hence, Respondent No.1-husband is permitted to visit and meet both the children on every Sunday from 8:00 a.m. to 5:00 p.m. This arrangement will continue till the final disposal of PWDVA No.101 of 2025, which is pending before the learned Judicial Magistrate First Class, Karad, Taluka Karad, District Satara.

34. On all such visiting days, the respondent No. 1 will visit the place of residence of parents of applicant and will collect both the children from there and will leave them back at the same place at 5:00 p.m. on those visiting days.

35. All concerned to act on authenticated copy of this order.

(RAJESH S. PATIL, J.)