

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

995 CRIMINAL WRIT PETITION NO.1152 OF 2021

ARCHANA SHAMKUMAR ADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for Petitioner : Mr. Menezes Joslyn A
APP for Respondent-State: Mr. R.D. Sanap
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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 12th OCTOBER, 2021**

PER COURT:-

1 In compliance with the order dated 08.10.2021, the minor girl **XXXX X XXXX XXXX XXXX** is brought before us at about 2.30 p.m. We have interacted with said **XXXX X XXXX** alone in our chamber. She has expressed her willingness to go alongwith mother and she is not at all willing to go alongwith her father.

2. In the order dated 08.10.2021 we have thoroughly discussed as to how the petitioner-natural mother of minor daughter **XXXX X XXXX** had to run from pillar to post for getting interim custody of her minor daughter **XXXX X XXXX** in the backdrop of registration of crime against father of **XXXX X XXXX**.

3. So far as the health issue of minor girl **XXXX X XXXX** is concerned, in terms of order dated 08.10.2021, she was referred to the hospital name and style as Varad Medical Foundation Institute of Child

Health, Aurangabad. Dr. S.M. Khandelwal has examined the girl and certified that she is in normal state of health at present. The said doctor has also opined that the girl needs to continue her antiepileptic drugs as advice. A report to that effect is submitted by the Superintendent of Vidhyadeep Anathalay/ Balgruha, Chawni, Aurangabad alongwith medical fitness certificate issued by Dr. S.M. Khandelwal. Even the Chairman of Child Welfare Committee, Aurangabad has submitted certain papers. However, the same may not be relevant for the present discussion and for the cause referred in the writ petition.

4. Learned counsel for the petitioner has brought to our notice that the proceedings in the form of D-004 of 2015 are still pending before the Family Court, Aurangabad wherein the petitioner has filed an application for modification in the order below Exh.1 and 152 dated 12.4.2019 and the said application is still pending. The petitioner also intends to file another application pointing out registration of crime against the father of **XXXX X XXXX** requesting the learned Judge of the Family Court to modify the earlier order.

5. In the instant matter, we are disappointed by the rude and unwarranted approach of the Child Welfare Committee, the Presiding Officer of the (POCSO) Court and also the learned Judge of the Family Court. Even though the father of minor child came to be arrested in connection with the crime, wherein the allegations have been made by his own minor daughter **XXXX X XXXX** pertaining to the sexual abuses

at his hands, even then no one has cared to pass any order taking into consideration the welfare of the child. The said girl is only 10/11 years of age. We have interacted with her in our chamber. We do not think that on account of certain tutoring she has made the allegations. However, we are not intending to observe anything about it since the said crime is still under investigation and it is for the criminal court to record findings on merits at the conclusion of trial.

6. In the circumstances, it would be just and appropriate if the interim custody of minor child **XXXX X XXXX XXXX XXXX** is given to the petitioner forthwith. Since the petition No. D-004 of 2015 is still pending before the Family Court at Aurangabad, the parties are at liberty to make appropriate submissions and it is for the learned Judge of the Family Court to pass final order keeping in mind the registration of crime against the father of the child so also after giving an opportunity of being heard to both the parties. Till then, we direct that the interim custody of the child **XXXX X XXXX XXXX XXXX** shall be given to the petitioner with immediate effect.

7. We also record our opinion that the explanation tendered by the learned Judge of the POCSO Court is not at all satisfactory.

8. Writ petition is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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