

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

10 CRIMINAL WRIT PETITION NO.1400 OF 2021

MAYABAI W/O. GOVARDHAN SHINDE
AND OTHERS

..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER ..RESPONDENTS

...
Advocate for Petitioners : Mr. M. L. Dharashive
APP for Respondent No.1: Mr. S. P. Sonpawale
...

**CORAM : N.R. BORKAR, J.
DATE : 06.12.2021**

PER COURT :-

This petition takes exception to the order dated 17.11.2021 passed by the learned Additional Sessions Judge, Gangakhed in Criminal Revision No. 15 of 2021 and the order dated 18.08.2021 passed by the learned Judicial Magistrate (F.C.) in Criminal Misc. Application No 285 of 2020.

2. I have heard the learned counsel for the petitioners and learned A.P.P for respondent State.

3. The respondent No.2 herein had filed an application under Section 97 of the Code of Criminal Procedure for issuance of search warrant. According to the respondent No.2, that on

30.11.2020 present petitioners came to his house and in his absence took away his 14th months daughter Renuka with them. It appears that the petitioners have not filed their reply to the said application. The learned Magistrate by order dated 18.08.2021 had issued the search warrant as sought.

4. The learned counsel for the petitioners submits that though the instruction were given to the Advocate representing petitioners before the learned Magistrate to file reply, however, he failed to do so. It is submitted that petitioner No.1 is maternal grand mother of child in question and therefore, search warrant ought not to have been issued. It is submitted that in such circumstances the matter needs to be remanded back to the learned Magistrate and opportunity needs to be granted to the petitioner to contest the application for issuance of search warrant.

5. It appears that the wife of the respondent No.2, died when the child in question was four months old. As on today, the said child is fourteen months old. Admittedly, the petitioners are maternal relatives of the wife of the respondent No.2. Petitioners have not stated as to how they got custody of the child in question. The learned Magistrate was, thus justified in

issuing search warrant. No interference is, thus called for in the order impugned. In the result, petition is dismissed.

(N. R. BORKAR)
JUDGE

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