

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

**936 CRIMINAL WRIT PETITION NO.125 OF 2022
SHAIKH AMRIN SHAIKH MOBIN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. G. B. Kadlag
APP for Respondents-State: Ms. V. S. Choudhari

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CORAM : V. K. JADHAV AND

SANDIPKUMAR C. MORE, JJ.

DATED : 18th FEBRUARY, 2022.

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P. C. :

1. Mr. Ashok Baliram Shirke, Police Sub-inspector of Police Station Krantichowk City, Aurangabad has produced before us Shaikh Mobin Shaikh Salim (husband of the petitioner) along with two children i.e. Shaikh Hasan, age 4 years and Kum. Mahin, age 2 years. The petitioner-mother of the children is also present before us.

2. Husband Shaikh Mobin when we tried to interact with him, stated in open court before us that the petitioner-wife has committed mistakes and therefore, the children are with him. He has further asserted that the wife has executed an agreement to that effect.

3. The petitioner-wife present before us when interacted, submits before us that a signature was obtained by false representation and that her husband did not allow to meet her children for more than three months. Her daughter is only two years of age and elder son four years of age.

4. Learned counsel for the petitioner submits that without any recourse to the provisions of any law or without any orders of the court on the basis of one notarized agreement the custody of the children was given to husband of the petitioner. Learned counsel submits that the copy of the said agreement is placed on record marked as Exhibit-'C', page 17. Learned counsel submits that on 14/01/2022 the petitioner has filed complaint in the concerned police station alleging therein that her husband has unlawfully got executed the agreement of divorce and on the basis of the said agreement he has illegally kept the custody of the children with him. Since 04/11/2021 she was not allowed to meet her children.

5. We request the learned APP and the learned counsel Smt. B. B. Gunjal to interact with the petitioner and also her husband and find out for amicable solution. We direct that the husband along with the children shall be again produced before us at 2.30 p.m. today.

6. At 2.30 p.m. we have interacted with the petitioner and her husband also. We have also heard the learned counsel Smt. Gunjal, whom we have directed to mediate. We have heard the learned APP and learned counsel for the petitioner at length.

7. The husband of the petitioner namely Shaikh Mobin Shaikh Salim has stated before us that he is ready to give the children in the custody of the petitioner if the petitioner would not be claiming the maintenance for herself and her children. Learned counsel Ms. Gunjal on the basis of her interaction with both the parties and also on the basis of some audio recording available in the mobile handset of the petitioner, has brought to our notice that the husband of the petitioner used to keep the children in the lock room and proceed for doing his mason work.

8. The petitioner has informed to us that she will not claim any maintenance. Thus, we have made a query with her as to how she would maintain herself and her children. Thereupon she has informed to us that she runs a mess in Chistiya Colony, Aurangabad in a rented room. Thus, she is in the house for 24 X 7. She can take care of both the children.

9. Learned counsel for the petitioner and the learned APP for the State, while we have made a specific query about the legal position, according to them that the parties belong to the Sunni Panth and in view of the Clause 352 of the Mohammedan Law wherein it is stated that the mother is entitled to the custody of her male child until he has completed the age of 7 years and of her female child until she attains the puberty. The right to continuance though she is divorced by the father of the child unless she marries a second husband in which case the custody belongs to the father. Learned APP submits that the same is subject to the disqualification as enumerated in clause 354. However, so far as the petitioner-mother is concerned, *prima facie*, there is no evidence that she has incurred the said disqualification as detailed in clause 354 of the Mohammedan Law.

10. In the instant case, considering the age of the children i.e. 4 years that of son and 2 years that of daughter, namely Shaikh Hasan and Mahin respectively, we deem it appropriate to give the custody of the children to the petitioner-mother forthwith. Furthermore the husband of the petitioner (father of the children) has also not resisted for the same. However, the husband of the petitioner namely Shaikh Mobin Shaikh Salim would be at liberty to visit his children once in a week on every Sunday between 11.00 a.m. to

5.00 p.m. The husband of the petitioner is also at liberty to initiate an appropriate proceeding before appropriate forum for custody of the children if so desires. Accordingly, we pass the following order :

ORDER

- I) The custody of the children namely 1) Shaikh Hasan, age 4 years and 2) Mahin, age 2 years shall be handed over to the petitioner- Shaikh Amrini Shaikh Mobin forthwith.
- II) The husband of the petitioner will have a visitation right to visit his both the children once in a week i.e. on Sunday in between 11.00 a.m. and 5.00 p.m.
- III) The husband of the petitioner i.e. Shaikh Mobin Shaikh Salim is at liberty to initiate proceeding before appropriate forum for custody of the child, if so desires.
- IV) Rule of the habeas corpus is made absolute in the above terms.
- V) Criminal writ petition is disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-