

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

919 CRIMINAL WRIT PETITION NO.841 OF 2022

SAURABH JUGALKISHOR BIYANI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Ms. Madhaveshwari Mhase, i/b Lex Aquila.
APP for Respondent/State: Mr. P. G. Borade.
Advocate for Respondent No.2 : Mr. Rahul R. Sancheti.

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CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 15th September, 2022.

PER COURT:

. Heard finally with consent of both the sides.

2 Ms. Mhase, learned counsel for the petitioner invited my attention to the impugned order as well as the observations made by this Court while passing the order dated 11th August, 2022. She pointed out that when the application for adjournment was moved on behalf of the petitioner, it came to be allowed by imposing cost of Rs.500/-. She submitted that the order of interim maintenance came to be passed without giving an opportunity of filing say to the present petitioner. It has caused serious prejudice. The order of interim maintenance came to be passed in a very hurried manner. The

respondent is getting maintenance in other proceedings also and as such, there was no extreme urgency to pass such kind of orders. She submitted that it would be in the interest of justice if the impugned order is quashed with directions to the learned Magistrate to decide the application afresh by giving an opportunity to the petitioner to file his say and have hearing thereon and fresh decision.

3 Mr. Sancheti, learned counsel for respondent No.2 opposed to make such exercise. He submitted that the learned counsel for the petitioner has filed VP long back on 2nd May, 2022 and the Court has given sufficient time to file say. There was no hurriedness on the part of the Trial Court while passing the impugned order.

4 I have considered the submissions of both the sides. This Court has observed while passing in detail order on 11th August, 2022 about the affairs and the manner in which the order of interim maintenance came to be passed. It would be in the interest of justice of both the parties if the application for interim maintenance is decided afresh after giving an opportunity to the petitioner to file his say and put forth his case. If that exercise is done, it would serve the purpose. No injustice would be caused to either side.

5 With the above observations, the following order is
passed:

ORDER

- I. The criminal writ petition is hereby allowed.
- II. The impugned order passed by the learned Judicial Magistrate First Class, Umri in Criminal Miscellaneous Application No.5 of 2022 below Exhibit-5 dated 27th May, 2022, is hereby quashed and set aside.
- III. The learned Magistrate is requested to extend one opportunity to the present petitioner / husband to file his say. After filing the say, the learned Magistrate may extend the opportunity of hearing to both the sides and thereafter, decide the application for interim maintenance afresh. That exercise should be completed within a span of two months from the date of receipt of writ of this Court
- IV. The parties to appear before the learned Judicial Magistrate First Class, Umri on 26th September, 2022.
- V. In view of the above, the petition is disposed of.

[SHRIKANT D. KULKARNI, J.]