

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

**33 CRIMINAL WRIT PETITION NO.1788 OF 2019
KAPIL S/O SHIVRAJ PATIL AND ANR
VERSUS
ANITA W/O. KAPIL PATIL AND ANR**

Mr.R.D. Biradar, Advocate for the petitioners.
Mr.Prashant V. Gole h/f. Mr.VD. Gunale, Advocate for respondent No.1.
Mr.S.W. Munde, APP for the respondent/State.

**CORAM : KISHORE C. SANT, J.
DATED : 19.12.2022**

PC :-

01. This petition is challenging judgment and order dated 17.08.2019 passed by the learned Additional Sessions Judge, Udgir in Criminal Revision Application No.13 of 2019, thereby rejecting the Criminal Revision Application. The revision was filed against judgment and order passed by the learned Judicial Magistrate, First Class, Court No.4, Udgir dated 30.03.2019 in Cri.M.A. No.136 of 2019 directing to handover custody of minors to their mother. The application was filed under section 97 of the Cr.P.C. by respondent-mother. It is argued that elder child Rameshwar is 7 years and Hardik is 5 years of age. At the time of filing the application, they were aged 3 years and 1 year and 11 months respectively.

02. This Court does not find any illegality in the orders passed by the Courts below. As the Courts below have properly considered that it would be in the interest of child to be in the custody of mother. Their welfare will be looked after by the mother.

03. Learned Counsel for the petitioner placed reliance on the judgment in the case of **Purushottam Wamanrao Thakur and Anr. Vs. Warsha w/o. Narendra Thakur & Ors., 1993 (3) Bom.C.R.587**, wherein the Court has held that after five years, custody would be normally with the father and had rejected the application that was filed by the father. It is further submitted that the Courts below have passed the order without calling report from the police. This Court does not find any substance in this submission.

04. There cannot be fixed formula in the cases of custody of children is concerned. In this case, both the Courts below found that it would be in the interest of children to be in the custody of mother. This Court does not find any illegality or perversity in the findings recorded and the reasons assigned by the Courts below.

05. The criminal writ petition stands dismissed.

[KISHORE C. SANT, J.]