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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 192 OF 2021**

Preeti D. Musavi

... Applicant

V/s.

Mohammed Mahmood Musavi
and ors.

... Respondents

Mr. Chirag Chanan a/w. Ms Ridhi Jhaveri i/b Dewani Associates for
the Applicant.

Mr. Tapan Thatte i/b Mr. Shantanu Adkar for the Respondent Nos.
1 and 2.

Mrs. M.R. Tidke, APP for the Respondent/State.

**CORAM : N.R. BORKAR, J.
DATE : 22 JULY 2022.**

P.C.

1. This application takes an exception to the order dated 29 September 2020 passed by the Additional Sessions Judge, Pune in Criminal Appeal No. 189 of 2020 and the order dated 10 September 2020 passed by the learned Judicial Magistrate (First Class), Pune below Exhibit-32 in Criminal Miscellaneous Application No. 1070 of 2018.

2. The Applicant and Respondent No.1 got married on 26 November 2012. On 12 October 2014, the Applicant gave birth to

twin daughters namely Aliyah and Adaalia. According to the Applicant, she was subjected to cruelty and was compelled to leave matrimonial house on 4 February 2018 with her twin daughters. On 25 October 2018, the Applicant filed the application under the provisions of Protection of Women From Domestic Violence Act, 2005 (for short “the Act”) for various reliefs. In the said proceedings, Respondent Nos.1 and 2 filed an application at Exhibit-32 under Section 21 of the Act, *inter alia* praying that Respondent No.1 be granted overnight custody of the daughters from Friday to Sunday every week. The learned Magistrate by order impugned granted overnight custody to Respondent No.1 from Saturday to Sunday every week. The learned Additional Sessions Judge dismissed the appeal filed by the present Applicant against the order of learned Magistrate.

3. I have heard the learned counsel for the parties. The learned counsel for the Applicant submits that the learned Magistrate erred in granting overnight custody to Respondent no.1. It is submitted that Respondent No.1 is short tempered and is in habit of taking medicinal drugs for body building. It is submitted that the order impugned thus needs to be set aside. On the other hand, the learned Counsel for Respondent Nos.1 and 2 supported the order impugned.

4. During the pendency of present petition, the Respondent No.1 was arrested for the offences punishable under Sections 8(c) and 22 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 as he was found in possession of 10 grams of Cocaine. Considering this fact, in my view, the order impugned granting overnight custody to the Respondent Nos.1 and 2 cannot be allowed to stand and it is quashed.

5. On 3 March 2022, this court passed the following order:

“1. The parties were referred to a Mediator, however, it is informed that the mediation has failed.

2. It appears that in the interregnum, the respondent No.1 was arrested in connection with an NDPS case and was subsequently released on bail.

3. In view of the aforesaid, learned counsel for the applicant states that instead of overnight access to the respondent No.1 of the children, presently for a few months, the respondent No.1 can meet the children in the applicant's house on a Sunday between 3:00 to 7:00 p.m. or 4:00 to 8:00 p.m.

4. The said arrangement is acceptable for the time being by the respondent No.1.

5. Accordingly, the applicant to permit the respondent No.1 to meet the children at her residence on every Sunday either between 3:00 to 7:00 p.m. or 4:00 to 8:00 p.m.

6. Stand over to 24th March 2022.

7. All concerned to act on the authenticated copy of this order.”

6. Considering the facts and circumstances, the above said order dated 3 March 2022 shall remain in operation till decision of main proceedings filed by the Applicant. The learned counsel for Respondent No.1 submits that during visits of Respondent No.1, due to presence of the Applicant he is not able to freely interact with his daughters. It is submitted that instated of Applicant let there be some other family member present during his visits. The request is reasonable. The Applicant shall as far as possible allow the Respondent No.1 to meet their daughters in presence of some other family member.

7. Criminal Application is disposed of in the above terms.

(N.R. BORKAR, J.)