

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 249/2022.

Mohammed Tanvir s/o Mohammed
Zameer, Age 26 years, Occupation -
Labour, resident of Aurangpura,
Balapur, Tq. Balapur,
District Akola.

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PETITIONER.

VERSUS

Ayesha Farheen w/o Mohammed
Tanvir, Age 23 years, Occupation
Household, c/o. Mohammed Saleem
S/o. Mohammed Sameer, resident
of Islampura, Balapur, Tq. Balapur,
District Akola.

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RESPONDENT.

Mr. U.J. Deshpande, Advocate for the Petitioner.
Mr.D. Ailani, Advocate h/f. Shri S.V. Sohoni, Advocate for
Respondent.

CORAM : VINAY JOSHI, J.

DATE : AUGUST 01, 2022.

ORAL JUDGMENT :

Considering the controversy involved in the matter and by consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. The petitioner – husband is challenging the order dated 17.02.2022 passed by the Additional Sessions Judge, Akola below Exh.5 in Criminal Appeal No.19/2022, by which a conditional stay was granted.

3. Initially the respondent – wife has filed an application in terms of Section 12 of the Protection of Women from Domestic Violence Act, seeking various reliefs. The learned Magistrate vide order dated 21.01.2022, has granted interim maintenance @ Rs.4000/- per month. The said order was challenged by the petitioner – husband in Criminal Appeal, wherein he also sought for stay to the interim order. While deciding said application, the

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Appellate Court has passed a conditional order of stay directing the petitioner – husband to pay 50% of the arrears within one month from the date of order. It also directed to deposit an amount of Rs.2000/- per month towards interim maintenance till disposal of the appeal. The said order is under challenge in this writ petition.

4. The learned Counsel for petitioner – husband firstly submitted that while passing the interim order the Magistrate has not followed the procedure laid down by the Supreme Court in case of **Rajnesh vrs. Neha and another – AIR 2021 SC 569**. Secondly it is submitted that the order of interim maintenance is quite excessive, as the petitioner – husband is a mere labourer.

5. It is to be noted that yet the proceeding filed under the provisions of D.V. Act is still pending wherein the Court is expected to take care of the compliance of the directions before adjudicating the matter finally. As regards to the quantum of interim maintenance is concerned, on the basis of prima facie facts, the quantum has been fixed. Pertinent to note that the Appellate Court has stayed the order with a condition to clear the arrears to the

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extent of 50%, and further directed the husband to pay only 50% of the maintenance i.e. Rs.2000/- per month. In other words the Appellate Court has reduced the amount to the extent of 50%, during pendency of appeal. The said amount is quite low and bear minimum requirement for survival, therefore, to that extent no modification is necessary.

6. However, as regards to the deposit of arrears of maintenance is concerned, it reveals that the arrears are from September 2019 i.e. for near about three years. Considering the huge mounting arrears, the said part of the order is modified by directing to deposit Rs.50,000/- before the trial Court within a period of one month from today instead of depositing 50% of the arrears.

7. With this modification only, Criminal Writ Petition is partly allowed and disposed of. Rule made absolute in aforesaid terms with no order as to cost.

JUDGE