

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL WRIT PETITION NO. 241/2022**

Arun Nagorao Pawar,  
aged about 38 years, Occ. Service,  
R/o. Madhav Nagar, Nemade Wada,  
Shegaon Road, Telhara, Dist. Akola.

... **PETITIONER**

**VERSUS**

1. Sau. Durga Arun Pawar, aged about 33 years, Occ. Household,
2. Arnav Arun Pawar, aged about 2 years, Occ. Nil,

respondent Nos. 2 is minor  
through his natural guardian  
mother i.e. respondent No. 1.

R/o. C/o. Ashok Narayan  
Solanke, Anjangaon Road, Akot,  
Tq. Akot, Dist. Akola.

3. State of Maharashtra through  
AGP Akot.

... **RESPONDENTS**

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Mr. Rahul Kurekar, Advocate for petitioner.  
Mr. A. B. Mirza, Advocate for respondent Nos. 1 & 2.  
Mr. S. M. Ukey, A.P.P. for respondent No.3/State.

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CORAM : VINAY JOSHI, J.  
DATE OF JUDGMENT : 20.07.2022.

**ORAL JUDGMENT :**

**RULE.** Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. The petitioner/husband has challenged the order dated 19<sup>th</sup> March, 2022 passed by the Additional Sessions Judge of vacating the stay. The respondent No.1/wife has applied for grant of maintenance in the proceeding filed under the provisions of Protection of Women from the Domestic Violence Act, 2005 ('D. V. Act'). The learned Magistrate has granted maintenance @ Rs. 7,000/- for wife and children. Being aggrieved, the petitioner/husband filed criminal appeal No. 2/2022, in which he also applied for grant of stay, which was granted ex-parte vide order dated 7<sup>th</sup> January, 2022. The respondent No.1/wife applied to the Appellate Court for vacating stay. It was vacated ex-parte.

4. In-fact, while considering the aspect of grant to interim stay, the Appellate Court should have considered the purport of grant of maintenance and passed the suitable orders, probably conditional one. Anyhow, the impugned order about vacating stay is ex-parte and has

not considered the case on prima facie basis. In pursuance of order passed in this petition, the petitioner/husband has already deposited Rs. 1,25,000/- in the Trial Court. In the circumstances, it is desirable that the Appellate Court should consider the aspect of grant of stay on its own merits after hearing both sides. In view of that, petition stands allowed.

5. The impugned order vacating stay dated 19<sup>th</sup> March, 2022 passed at Exh.11 and earlier order of 7<sup>th</sup> January, 2022 of grant of stay are set aside. The Appellate Court shall hear stay application at Exh. 7 afresh and after hearing both sides, shall pass suitable orders in accordance with law. Respondent No.1/wife shall file her reply to the stay application on the next date of the proceeding. It is made clear that if the respondents remain absent for hearing Exh. 7, the Appellate Court is at liberty to pass appropriate orders in accordance with law.

6. Petition stands disposed of in above terms.

**(VINAY JOSHI, J.)**

*Gohane*

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signed by  
JITENDRA  
BHARAT  
GOHANE  
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