

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1491 OF 2022

RAJESH SITARAM CHAVAN

VERSUS

PRATIBHA RAJESH CHAVAN AND ANOTHER

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Advocate for Petitioner : Mr. Dhage Vivek J.

Advocate for Respondents : Mr. Wani Girish V. Wani

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CORAM : KISHORE C. SANT, J.

DATE : 3rd MAY 2023.

Per Court :

1. This petition is filed seeking quashment of judgment and order 26.07.2022 passed by the learned Additional Sessions Judge, Jalgaon in Criminal Appeal No.62/2022. The order passed by the learned Judicial Magistrate, First Class, Jamner in P.W.D.VA. No.31/2021 was under challenge, wherein the petitioner/husband had filed an application seeking custody of the child namely Vedant.

2. The wife/respondent no.1 filed an application under the Domestic

Violence Act bearing PWDVA Application No.31/2021, seeking reliefs under Sections 18, 20, 22 of the said Act. The husband filed application below Exhibit-17 in the said proceeding, seeking custody of son. The wife filed an application below Exhibit-11 seeking interim maintenance. The said application was allowed. The petitioner is directed to pay Rs.2000/- per month to the wife and Rs.1000/- per month to son by order dated 02.05.2022.

3. In the said case, the husband/petitioner filed application seeking temporary custody of Vedant, who is seven years of age. The learned J.M.F.C. on going through the application and reply filed by the wife, rejected the said application holding that the welfare of the child is of paramount consideration and it is in the interest of child to be in the company of his mother. It is also held that the father is not in a position to maintain the child in good condition.

4. It is this order, which was confirmed by the learned Additional Sessions Judge by dismissing the appeal. It is observed that the petitioner/husband is not able to maintain himself and he is living with

the help of his parents. The Court had also interacted with the child and found that the child does not want to go with his father. It is further observed that in the house of the father, there is no one to look after the child as the mother of husband is old aged person and is also sick.

5. Considering the above, this Court noticed that a substantive application for custody of child is pending under the Guardians and Wards Act before the Competent Court. The question of custody of the child will be considered by the said Court. This Court therefore finds that this petition need not be considered in view of pendency of the substantive proceeding under the Guardians and Wards Act. However that application will take it's own time and till then temporary arrangement is required. From the same purpose, this Court had called both the parents and the child. It is admitted that the child is staying with the mother since November, 2021 and therefore he refused to go with the father even for temporary period. The age of child is hardly seven years and at this stage, the child cannot take decision on his own and therefore it is not always advisable to only go on the version of the

child. Child at his age, requires love and care of both the parents. When the child is in custody of mother, he would naturally answer the questions as tutored by the mother and therefore for this reason also, order need not be passed solely relying upon the answers given by the child. This Court in the interaction found that certainly father can take care of child for temporary period. There are grand parents in the house. Grand-father is retired Engineer and qualified person. This Court therefore finds that a case is made to dispose off the petition with following directions.

- (i) The Criminal Writ Petition is disposed off with direction that in the month of May, 2023, child namely Vedant, shall be handed over to his father for temporary custody for seven days starting from 15th May, 2023 till 22nd May, 2022. For this period, child will stay in the custody of his father. For the purpose of custody, father will go on 15th May, 2023, where child is residing presently, and the mother without any objection shall hand over the custody of the child to the petitioner.
- (ii) The petitioner/father on 23rd May, 2023 shall hand over the custody of the child to the respondent/mother.

(iii) It is made clear that this arrangement is only for the month of May, 2023, as the substantive petition under the Guardians and Wards Act for custody of the child is pending before the Competent Court.

[KISHORE C. SANT, J.]

Najeb.