

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1238 OF 2022

Vinay Surendra Desai

... Petitioner

V/s.

Surendra Dahyabhai Desai & Ors.

... Respondents

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Mr. Kunal Bhanage with Mr. Akshay Pawar for the
petitioner.

Ms. Iisa Shaikh i/by Mr. S.R. Phanse for respondent
nos.1 and 2.

Ms. M.R. Tidke, AGP for respondent no.3/State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 19, 2023

P.C.:

1. The petitioner/son of respondent nos.1 and 2 is challenging the order of interim maintenance of Rs.10,000/- to the respondent no.1 and Rs.10,000/- to the respondent no.2. Respondent no.1 is father of the petitioner and respondent no.2 is mother of the petitioner. Proceedings bearing No.E-33 of 2020 was initiated by the respondents against the petitioner seeking relief of maintenance of Rs.50,000/- per month as per section 125 of the Criminal Procedure Code, 1973.

2. In the said petition, respondent nos.1 and 2 filed Interim Application No.24 of 2020. Learned Judge, Family Court No.4 by

the impugned order directed the petitioner to pay Rs.10,000/- each to respondent nos.1 and 2 and further directed to pay actual medical bills of both the respondents along with health insurance, medical policy till the disposal of the main petition.

3. The petitioner has, therefore, challenged the order by way of present writ petition.

4. According to the petitioner, he is not in service since 15th July 2019. All the expenses of the family are borne by the wife of the petitioner and, therefore, the liability to pay amount of Rs.10,000/- each to both the respondents along with other liabilities is unreasonable.

5. Per contra, according to the respondent nos.1 and 2 the petitioner was earning more than Rs.60,000/- per month and, therefore, it is not expected that he will sit quiet at home and do nothing. The Family Court based on entries in bank account and other material directed the petitioner to pay amount of Rs.20,000/-. It is well settled that the proceeding of interim maintenance need to be decided on the basis of affidavits filed by the parties and other prima facie material produced on record. Detail inquiry on the basis of the documents produced on record and other material produced by the parties need not to be considered threadbare.

6. On perusal of the impugned order, it appears that the Family Court has drawn inference based on earlier earning capacity of the petitioner along with entries in bank record. It is observed that the petitioner has himself resigned from the job.

7. On overall consideration of the reasons mentioned in the impugned order, the view of the Family Court is possible view. Considering the circumstances of the case, direction to pay Rs.10,000/- to the father and Rs.10,000/- to the mother is not unreasonable. However, the Family Court, while considering the main application, shall take into consideration the evidence adduced by both sides and pass appropriate order.

8. The petitioner shall pay 50% of the arrears of maintenance, if any, within four (4) weeks from today and the remaining 50% shall be paid within two (2) weeks thereafter.

9. In the facts of the present case, no interference is called for in the impugned order. However, Family Court No.4, Mumbai is directed to decide Petition No.33 of 2020 as expeditiously as possible, and preferably within six (6) months from today.

10. The writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)