

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

CRIMINAL APPLICATION NO. 896 OF 2019

Jitendra Wani ...Applicant
Versus
The State Of Maharashtra And Anr. ...Respondents

**WITH
CRIMINAL REVISION APPLICATION. NO. 215 OF 2020**

Jitendra Wani ...Applicant
Versus
The State Of Maharashtra And Anr. ...Respondents

**WITH
CRIMINAL WRIT PETITION NO. 2315 OF 2021**

Jitendra Wani ...Petitioner
Versus
The State Of Maharashtra And Anr. ...Respondents

**WITH
CONTEMPT PETITION NO. 426 OF 2022**

Vishaya Jitendra Wani ...Petitioner
Versus
Jitendra Wani ...Respondent

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Mr. Zaid A. Qureshi, Advocate for the Applicant/Petitioner.

Mr. S.R. Page a/w Mr. Kantilal Kanojia, Ms. Jyoti A. Kanojia, Ms. Ruchi Umrotkar, Ms. Iesha Jaifalkar, Advocate for Respondent No.2.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
**DATE : 11th JULY, 2023 &
12th JULY, 2023**

PER COURT:

1. Criminal Application No.896 of 2019 is preferred by the applicant challenging order dated 19.03.2019 passed by learned Additional Sessions Judge in POCSO Case No.287 of 2018 directing the applicant to vacate the house for preventing the abuse of process of law.
2. The marriage between the applicant and respondent No.2 was performed on 05.05.2005. The respondent No.2 was divorcee having a male issue namely Kaivalya out of her first wedlock. The applicant is also married person. His first wife has passed away. During the subsistence of first marriage, he had adopted the male child from the "Missionaries of Charity" namely Sanket. There were differences between the applicant and Respondent No.2.
3. On 08.04.2017, the First Information Report (for short 'FIR') was registered by Respondent No.2 vide C.R. No.43 of 2017 for offences punishable under Sections 377 & 109 of Indian Penal Code (for short "IPC") and Sections 6, 10 & 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). It was alleged that the son of Respondent No.2 was sexually abused by the son of the applicant and the applicant had supported the acts of his son.

4. Pursuant to registration of FIR, the applicant and his son preferred application for anticipatory bail before the Court of Sessions. Vide order dated 26.04.2017, the application preferred by the applicant was allowed by the learned Additional Sessions Judge, whereas the application of applicant's son Sanket was rejected. Applicant was directed to remain present before investigation officer on every Monday and Friday and as and when called by Investigating Officer. It was also directed that, applicant shall not involve in any other criminal activity and shall not leave India without prior permission of the Court. Breach of any condition will be a ground for cancellation of bail. The applicant's son preferred an application for anticipatory bail before this Court which was allowed vide order dated 13.06.2017. He was directed to report Police Station and cooperate with investigation. State filed Misc. Application No.420 of 2017 before Sessions court in Anticipatory Bail Application No.546 of 2017 for cancellation of anticipatory bail granted to applicant on the ground that he has violated condition of anticipatory bail. After granting anticipatory bail, the original complainant filed four complaints against accused about repeated threatening complainant and victim for withdrawing FIR. The complainant lodged NC complaints against the accused. It was also alleged that accused has installed CCTV in

the entire room. The learned Sessions Judge by order dated 23.08.2017 observed that besides present C.R. there matrimonial matter to which both the parties are giving colour of criminal case. The application was rejected with direction to applicant herein to uninstall the CCTV camera at Bedroom of Flat No.4, West View, Colaba, Mumbai. Subsequently, the Respondent No.2 preferred application for cancellation of bail granted to applicant and his son. Vide order dated 19.03.2019, the application for cancellation of bail was rejected. However, the applicant was directed to separate his residence from the complainant and victim within a period of four months from the date of order till conclusion of trial. The said order dated 19.03.2019 is subject matter of challenge in Criminal Application No.896 of 2019 to the extent of direction to separate residence from complainant and victim. During the pendency of this application, this Court by order dated 05.07.2019 stayed the order dated 19.03.2019 to the extent of Clause No.2 i.e. directing the applicant to separate his residence.

5. Learned Advocate for applicant submitted that, Clause No.2 of the impugned order dated 19.03.2019 is contrary to law. The learned Special Judge has rejected the application for cancellation of bail preferred by Respondent No.2 and there was no reason for

directing the applicant to separate his residence from the complainant. False complaints were filed by Respondent No.2. The order is contrary to law and deserves to be set aside.

6. Learned Advocate for Respondent No.2 submitted that the order dated 19.03.2019 was passed by the Court, considering the fact that there was harassment at the instance of the applicant, his son, Respondent No.2 and her son. The son of Respondent No.2 is suffering from Autism Spectrum disorder. The accused were causing immense harm and trauma to the victim. There was violation of conditions of bail.

7. As stated above, the interim stay has been granted by this Court to Clause No.2 of order dated 19.03.2019, which is in operation till today. It means the applicant, his son, Respondent No.2 and her son are occupying the said premises. It is pertinent to note that the learned Sessions Judge had rejected the application for cancellation of bail and thus the imposition of such condition which amounts to injunction or grant of relief of under the provisions of Domestic Violence Act was not called upon. In these circumstances, the order dated 19.03.2019 is required to be set aside to the extent of Clause No.2 of the operative part of the said order. At this stage learned Advocate for applicant and respondent

No.2 submitted that both the parties are using common lavatory. Learned Advocate for Respondent No.2 submitted that the applicant could make provision of another toilet for their use in the same premises. Learned Advocate for applicant on instructions submitted that the applicant is willing to make provision of another toilet in the premises extending towards hall. Both the parties had agreed for this arrangement. Statement of learned Advocate for applicant is accepted. The applicant shall make requisite arrangement as stated above.

8. Apparently, there are difference between the applicant and Respondent No.2 (wife). The husband has preferred Criminal Revision Application No.215 of 2020 challenging the order dated 09.12.2020 in Appeal No.797 of 2019 and order dated 30.09.2019 passed by the learned Magistrate. The Respondent No.2 has initiated the proceedings under the Protection of Women from Domestic Violence Act (herein after referred to as “DV Act”) before the Court of learned Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai which is registered as CC No.7/DV/2017. During pendency of the said proceedings, the Respondent No.2 preferred interim application seeking maintenance on 13.12.2017. It was prayed that the maintenance be granted to

Respondent No.2 and her son. The said application was allowed by the learned Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai vide order dated 30.09.2019. The applicant was directed to pay interim maintenance of Rs.11,000/- per month to Respondent No.2 and Rs.6,000/- to her son from the date of the application i.e. 13.12.2017 till final adjudication of matter. The applicant or nobody else on their behalf are hereby restrained from doing any act of violence against the person and property of Respondent No.2 till final adjudication of the matter. The order dated 30.09.2019 was challenged by the applicant before the Court of Sessions vide Criminal Appeal No.797 of 2019. Vide order dated 09.12.2020, the appeal preferred by applicant was dismissed. The applicant was directed to deposit the interim maintenance amount with arrears as directed by the trial Court as per the order dated 30.09.2019.

9. The orders dated 30.09.2019 and 09.12.2020 are subject matter of challenge in Criminal Revision Application No.215 of 2020.

10. During the pendency of this application, the applicant was directed to deposit certain amount towards arrears of maintenance from time to time and the amount has been apparently deposited pursuant to the orders passed by this Court.

11. Learned Advocate for the applicant at the outset submitted that the he is not challenging the order granting interim maintenance to his wife vide order dated 30.09.2019. However, he has objection for order directing payment of maintenance to the son of Respondent No.2. It is submitted that whatever amount deposited by him so far and paid to the Respondent No.2, appropriates the maintenance granted by the Courts below and there are no arrears qua maintenance to Respondent No.2. However, the trial Court and the Court of Sessions have erroneously granted maintenance to the son of Respondent No.2 in the sum of Rs.6,000/- per month. It is submitted that, at the time when the application for cancellation of interim maintenance was preferred, the son was aged around 17 years and today his age is around 23 years. The Respondent No.2 had sought divorce from her first husband. She did not seek any maintenance to her son from his biological father. The applicant is not liable to pay the maintenance to the step-son. He is more than 18 years old. Hence, order granting interim maintenance to step-son may be set aside. The Respondent No.2 has filed affidavit-in-reply. Learned Advocate for Respondent No.2 submitted that, the Courts below has rightly passed orders granting interim maintenance. Thus the applicant is not challenging the order granting interim maintenance

to Respondent No.2. It is responsibility of the applicant being father to maintain the step-son. After performance of marriage with Respondent No.2, it is his responsibility to look after the son of Respondent No.2. The son of Respondent No.2 is autistic child and suffering from depression. Although the son of Respondent No.2 had attained majority, he is special child and requires to be maintained.

12. It is not disputed that there are no arrears qua maintenance to wife (Respondent No.2.).

13. Since the applicant is not disputing and not objecting for grant of interim maintenance of Respondent No.2, the question of setting aside the order granting interim maintenance to Respondent No.2 does not arise. The applicant shall continue to pay interim maintenance to Respondent No.2 as directed by the learned Magistrate vide order dated 30.09.2019. The question then arises about interim maintenance granted to the son of Respondent No.2. Learned Sessions Judge in its order dated 09.12.2020, has observed that, son of Respondent No.2 who was minor is suffering from Syndrome. Respondent No.2 is legally wedded wife of applicant. The Step-son would come under purview of Section 3 of DV. Act as aggrieved person. It is pertinent to note that the applicant had

performed marriage with Respondent No.2. Although the son of Respondent No.2 was begotten in his first marriage. After the applicant has performed the marriage with Respondent No.2, they were staying together with son of Respondent No.2. The learned Sessions Judge while dismissing the appeal has analyzed the provisions of DV Act and held that the son of Respondent No.2 is also entitled for interim maintenance. It is relevant to note that the application for interim maintenance was preferred by Respondent No.2 on 13.12.2017 and at that time her son Kaivalya was aged around 17 years and today his age is around 23 years.

14. Learned counsel for Respondent No.2 could not point out any decision or law granting maintenance perpetually to the child even after he attains the majority. In these circumstances, the order dated 30.09.2019 is required to be modified to the extent that interim maintenance granted to the son of Respondent No.2 shall continue from the date of application i.e.13.12.2017 till the son of Respondent No.2 Kaivalya has attained the age of majority.

15. Criminal Writ Petition No.2315 of 2021 has been preferred challenging order dated 09.02.2021 passed by Special Court, POCSO rejecting Misc. Application No.677 of 2020 seeking permission to install CCTV Cameras by modifying order dated

23.08.2017. The State had filed Misc. Application No.420 of 2017 for cancellation of anticipatory bail on the ground that there is breach of conditions. The application was rejected vide order dated 23.08.2017 with direction that the accused No.2 shall uninstall the CCTV Camera at Bedroom of Flat No.4, West View, Fist Pasta Lane, Colaba, Mumbai.

16. Learned Advocate for Petitioner submitted that, considering the nature of dispute between both the sides and the allegations made against the Petitioner and his son at the instance of Respondent No.2, which had resulted in the case under the POCSO Act, it was necessary to install the C.C.T.V. The learned Special Judge has committed an error while passing the impugned order.

17. Learned counsel for Respondent No.2 submitted that, there is no infirmity in the order dated 09.02.2022. The learned Special Judge has assigned cogent reasons while passing the order. The applicant and his son are harassing to Respondent No.2 and her son. Installation of CCTV cameras permit Petitioner to intrude upon privacy of Respondent No.2.

18. Learned Special Judge while passing order dated 09.02.2021 has observed that there is matrimonial dispute between the parties. There are constant fights between them. If the order dated

23.08.2017 of which the applicant is seeking the modification is perused, the said order of removing CCTV camera was passed while considering the application for cancellation of anticipatory bail granted to Petitioner. The order of removal of CCTV Camera was not challenged before higher Court. In the order dated 23.08.2017, it is mentioned that, due to installation of CCTV Camera, the privacy of informant is infringed. The order of removal of CCTV camera was passed on 23.08.2017. It is in force since then. Considering the reasons assigned in order dated 23.08.2017 as well as order dated 09.02.2021, I do not find any reason to interfere in order dated 09.02.2021.

19. Contempt Petition No.426 of 2022 in Criminal Revision Application No.215 of 2020 for breach of order dated 07.01.2020 passed in Criminal Revision Application No.215 of 2020, non compliance of order dated 30.09.2019 passed in C.C. No.7/DV/2017 pending before 8th Metropolitan Magistrate, Esplanade, Mumbai. There are no arrears towards maintenance granted to wife (Petitioner in this Petition). Hence, this Petition can be disposed of.

20. Hence, the following order :

ORDER

- i) Criminal Application No.896 of 2019 is allowed and Clause 2 of order dated 19.03.2019 passed by Special Judge under POCSO Act, Greater Bombay on Exhibit-2 in POCSO Case No.287 of 2018 is set aside. Application is disposed of.
- ii. Criminal Revision Application No.215 of 2020 is disposed of in the terms of reasons mentioned in the order. The Revision applicant shall continue to pay interim maintenance to wife in compliance with order dated 30.09.2019 passed by learned Metropolitan Magistrate in CC No.7/DV/2017 subject to final decision in the said proceedings. Maintenance to be paid to son of Respondent No.2 as per order passed in this proceedings.
- iii. Criminal Writ Petition No.2315 of 2021 is rejected and disposed of.
- iv. Contempt Petition No.426 of 2022 is disposed of.

(PRAKASH D. NAIK, J.)