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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.(MAT.) 35/2024 & CRL.M.A. 28181/2024**
RAJESH KUMARPetitioner
Through: Mr. Abhay Bhati, Advocate.
versus
BABY ROSHNI MINOR THROUGH MOTHER LEGAL
GUARDIAN KANAK LATA BAR & ANRRespondents.
Through: None.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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18.09.2024

CRL.M.A. 28183/2024

Exemption allowed, subject to just exceptions.

The application stands disposed-of.

CRL.M.A. 28182/2024 (for condonation of delay)

Mr. Abhay Bhati, learned counsel appearing for the petitioner submits, that the present application seeking condonation of 43 days' delay in *filing* the revision petition was filed by inadvertent error since there is no delay in filing the petition.

2. The application is accordingly disposed-of as infructuous.

CRL.REV.P.(MAT.) 35/2024

3. By way of the present petition filed under section 438 read with section 442 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner impugns judgment dated 27.05.2024 passed made by the learned Judge, Family Court, Saket District Courts, New Delhi in proceedings under section 125 of the Code of Criminal Procedure 1973 ("Cr.P.C."), directing the petitioner to pay the sum of Rs.5000/- per month towards maintenance of his minor daughter (who is about 8



years of age) from the date of filing of the petition till 31.12.2022; and to pay Rs.6000/- per month with effect from 01.01.2023 till 31.12.2027.

4. The impugned judgement further directs that the maintenance so awarded shall be enhanced by Rs.1000/- after every 4 years till the time that the daughter is legally entitled to receive maintenance from her father; and that the petitioner shall clear the arrears of maintenance within 3 months from the date of the order in equal instalments; and shall pay the monthly maintenance before the 10th date of each English calendar month.
5. Mr. Bhati submits that the principal contention of the petitioner is that the maintenance awarded is excessive. Learned counsel submits that the petitioner is employed as a driver in a private household and therefore earns only about Rs.15,000/- per month as salary. It is explained that since the petitioner was in a live-in relationship with the mother of the minor but was not married to her, no petition has been filed by the mother seeking maintenance.
6. Counsel states that the impugned judgment is erroneous since, while calculating the maintenance to be awarded, the learned Family Court has also taken into account certain credit entries appearing in the petitioner's bank account through 'voucher transfers' over the period 04.08.2019 upto 13.05.2024, which entries however do not reflect the petitioner's salary. It is argued that it can be seen from the account that those entries are not regular receipts into the petitioner's account; and therefore ought not to have been considered while awarding monthly maintenance to the daughter.



7. A perusal of the impugned judgment however shows, that the learned Family Court has proceeded on the basis of the income affidavit tendered by the petitioner himself, based on which learned Family Court has opined this follows :

“8.4 A perusal of the record shows that on 12.03.2019 (i.e. the date on which the respondent had entered appearance), he had disclosed his income as Rs. 7000/- per month and relying upon the same, interim maintenance at the rate of Rs. 2500/- per month had been awarded to the petitioner. However, in his affidavit tendered in evidence (Ex. R-1), the respondent has stated that he is working as a driver and earning Rs. 15,000/- per month. The above affidavit of the respondent is dated 12.10.2023. The manner in which the salary of the respondent has increased from Rs. 7,000/- per month in the year 2019 to Rs. 15,000/- per month in the year 2023 has nowhere been divulged. It is hard to ram down the throat that the salary of the respondent would have become more than double in a span of 4 years. Thus, it is clear that the stand taken by the respondent on 12.03.2019 that his income was Rs. 7000/- per month only was incorrect. Assuming that there has been an increase by 10% each year in salary of the respondent to make it Rs. 15,000/- per month in the year 2023, the average salary of the respondent for the period 2019-2022 comes to Rs.12,500/- per month.

“8.5 In his cross examination, the respondent (RW-1) has stated that he is working with a private person and not employed with any company and that his salary is paid in cash to him. However, a perusal of his bank statement (Ex. RW-1/1) shows that there are certain credit entries through 'voucher transfers' in his account i.e. Rs. 7000.21/- dated 04.08.2019, Rs. 2500/- dated 09.04.2021, Rs. 3500/- dated 22.04.2021, Rs. 4000/- dated 22.05.2021, Rs. 10,000/- dated 22.06.2021, Rs. 5000/- dated 12.07.2021, Rs. 4000/- dated 27.09.2021. Rs. 5500/- dated 24.10.2021, Rs. 10,500/- dated 22.11.2021, Rs. 7000/- dated 16.02.2022, Rs. 1000/- dated 11.03.2022, Rs. 10,000/- dated 01.05.2022, Rs. 2500/- dated 25.07.2022, Rs. 5000/- dated



06.12.2022, Rs. 8000/- dated 16.02.2023, Rs. 10,000/- dated 07.04.2023, Rs.1700/- dated 08.04.2023, Rs. 1000/- dated 09.04.2023, Rs. 1000/- dated 11.05.2023 and Rs. 4000/- dated 13.05.2023. On being confronted with the said entries, the respondent (RW-1) expressed his inability to disclose the source thereof. The counsel for the petitioner has argued that since the respondent has stated in his cross-examination that his salary is paid in cash to him by his employer, the credit entries through voucher transfers in his account show his additional Income being derived by him from some part time job apart from his driving job. Since the income of a person is within his special knowledge, it was incumbent upon the respondent to divulge the source of various credit entries in his bank account. For failure of the respondent to explain them, it can be inferred that he is also deriving income from some undisclosed source. However, it is evident that the above credit entries are not on regular basis. Further, the amounts of the said entries also vary. Average of the credit entries comes to approximately Rs. 2244/ per month.

“8.6 Thus, the total monthly income of the respondent from salary and additional income from undisclosed sources can safely be assessed as Rs. 15,000/- per month during the period 2019 to 2022 and Rs. 17,500/- per month with effect from January, 2023, which means that he is possessed of sufficient means. As per the respondent's own case, he had started paying maintenance to the petitioner only after the interim order dated 12.03.2019 had been passed by the Court. Considering the same, Issue no.1 is decided in favour of the petitioner.”

(emphasis supplied)

8. Furthermore, it is seen that the petitioner has not disputed his relationship with the daughter before the learned Family Court; nor has the petitioner disputed his liability to maintain his daughter, whereby the only question before the learned Family Court was as regards the quantum of maintenance to be awarded.



9. In the circumstances, the learned Family Court has proceeded to award Rs.5000/- per month as maintenance from the date of filing of the petition till 31.12.2022; and to pay Rs.6000/- per month with effect from 01.01.2023 to 31.12.2027, with the further direction that the amount of maintenance shall stand enhanced by Rs.1000/- every 04 years till the time the daughter remains entitled to receive maintenance from her father.
10. Upon a perusal of the impugned judgement, this court is of the view that the judgement proceeds on a reasoned and rational basis; that the petitioner's salary has been taken based on the *income affidavit filed by the petitioner himself* before that court; and the petitioner has also been unable to explain why the credit entries appearing in his account through 'voucher transfers' should not be considered as his earnings, which have therefore also been considered as part of the petitioner's income.
11. In the circumstances, this court is unable to discern anything remiss with the correctness, legality or propriety of judgment dated 27.05.2024 passed by the learned Family Court, which would warrant interference in the judgement in exercise of the revisional jurisdiction of this court.
12. The revision petition is accordingly dismissed *in-limine*.
13. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 18, 2024

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