



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 826 OF 2024

Juber Gafur Shaikh ... **Petitioner**
Age 33 years, Occu: Service,
R/o Village Hasta Tq. Kannad
Dist. Aurangabad

VERSUS

1. The State of Maharashtra
2. Seema Juber Shaikh ... **Respondents**
Age 32 years, Occu: Household,
R/o Plot No.25-26, Lane No.1,
Ganesh Colony, Aurangabad

Mr. Nilesh N. Bhagwat, Advocate for the Petitioner,
Mrs. A. S. Deshmukh, APP for Respondent No.1 State
Mr. Amol B. Chalak, Advocate for Respondent No.2

: Y. G. KHOBRAGADE, J.

: 17th January, 2025

JUDGMENT :-

1. **Rule.** Rule made returnable forthwith and heard finally with consent of both the sides.
2. By the present Petition, the Petitioner/husband invoked jurisdiction of this Court under Article 227 of the Constitution of India r/w section 482 of the Criminal Procedure Code and takes exception to the order dated 17.01.2024 passed by the learned

Additional Sessions Judge, Aurangabad in PWDVA Appeal No.170 of 2022 arising out of Judgment and order dated 14.02.2024 passed by the learned Judicial Magistrate First Class, Aurangabad in PWDVA No. 516 of 2021.

3. Having regard to the rival submissions canvassed on behalf of both side, I have gone through the petition paper-book. It is not in dispute that, on 15.01.2017 marriage of present petitioner and respondent no.2 solemnized as per customs and rites prevailing in their society. It is also not in dispute that, out of wedlock, the Petitioner and Respondent No.2 are blessed with a male child namely Nehan. The Respondent No.2 wife filed a proceeding bearing PWDVA No. 516 of 2021 before the learned JMFC, Aurangabad alleging about raising domestic violence against her as well as causing ill-treatment, physically and mentally at the hands of the present petitioner on pity issues. The Petitioner is working with the Police Department since past more than six years. According to respondent/wife, she cohabited with the present Petitioner at Ganesh Colony, Aurangabad but she did not notice about change in behaviour of the Petitioner. The Petitioner/husband started giving her ill-treatment and always mercilessly beats her. The petitioner has developed extra marital

relation with other woman. The petitioner also issued her life threat. The petitioner also issued threat to perform second marriage. Lastly, on 02.04.2021, she was beaten mercilessly and driven out of her matrimonial house, therefore, she started residing at her parental house. However, again on 14.01.2022, the Petitioner visited at her parental house and assaulted her, her brother and father. Therefore, respondent no.2/wife filed a proceeding under the Protection of Women from Domestic Violence Act.

4. The Respondent No.2 stated that, the petitioner/her husband is working in Police Department and drawing salary about Rs.45000/- to 50000/- per month. Besides, this, her husband having landed property at Hasta Tq. Kannad, District Aurangabad and drawing annual income of Rs.10 to 15 lakhs. Therefore, the Respondent/wife prayed for protection order and monetary relief, including maintenance.

5. On 14.10.2022, the learned JMFC, Aurangabad, Court No.3 passed an order and granted interim maintenance of Rs.3,000/- each in respect of respondent no.2 and her minor child. Being dissatisfied with the said order, the respondent no.2 filed Appeal

bearing PWDVA Appeal No. 170 of 2022 under Section 29 of the Protection of Women from Domestic Violence Act, 2005(DV Act) before the Appellate Court. On 17.01.2024, the learned Appellate Court passed the impugned order and enhanced amount of interim maintenance to Rs.10,000/- in respect of Respondent No.2- wife and Rs.5000/- in respect of her minor child Nehan s/o Zuber Shaikh Gafoor from the date of application under section 12 of the D.V. Act till its disposal.

6. The learned counsel appearing for the petitioner canvassed in vehemence that, the petitioner is drawing net salary of Rs.25,543/- only, after monetary deduction. Besides this, the petitioner has purchased a plot in the name of his wife Respondent No.2 by availing loan facility and the petitioner paying monthly EMI of Rs.15,000/-. Therefore, if aspect of the matter is considered, in that event, only Rs.10,543/- remains with the petitioner. Therefore, the impugned order passed by the learned Appellate Court is exorbitant, hence, prayed for modification/quash and set aside the same. However, the Petitioner has not given any explanation as to how he survives in meager amount of Rs.10,543/- though he maintains a vehicle for attending his official duty.

7. Per contra, the learned counsel appearing for the Respondent No.2 wife supported findings recorded by the learned Appellate Court and prayed for dismissal of the petition. Now a days, prices of essential commodities are hiked, so also, the minor child is studying in Senior K.G. for which huge admission fees and tuition fees are required to be paid. The Respondent No.2 and her minor child also require to incur towards medical expenses. Therefore, the amount enhanced by the learned Appellate Court is just and proper, hence, prayed for dismissal of the petition.

8. Needless to say that interim maintenance can be decided on the basis of financial status of the parties. In *Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy*, AIR 2017 Supreme Court 2383, the Hon'ble Supreme Court considered the case of *Kulbhushan Kumar vs. Raj Kumari and Anr.* (1970) 3 SCC 129, wherein, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife.

9. In the case in hand, in paragraph No.9 of the impugned judgment, the learned Appellate Court recorded findings that as

per payslip for the month of March, 2023, the petitioner drawing gross salary of Rs.53,971/-, however, the said salary slip does now show monetary deductions. Whereas the Petitioner produced his salary slip for the month of July, 2022, which shows that, the Petitioner is drawing gross salary of Rs.51705/- and mandatory deduction shown including Profession Tax Rs.200, GIS Rs.360, stamp Revenue Re.1, DCPS Rs.3721. Thus, total mandatory deduction is shown to Rs.4282/-. Therefore, it appears that, after mandatory deduction, the petitioner's net salary is Rs.47423/- and if this amount is multiplied by 25%, it comes to Rs.11,855/-. The learned appellate Court granted interim maintenance at Rs.10000/- to Respondent No.2 wife, which does not appear excessive or exorbitant as per the ratio laid down in case of **Kalyan Dey Chowdhury**, cited supra.

10. The learned counsel appearing for the petitioner canvassed that, amount of 25% has required ascertain including maintenance of wife and minor child. However, on perusal of case of **Kalyan Dey Chowdhury**, cited supra. it does not suggest that the maintenance of wife and child would be 25% of husband's net salary. Since the minor child is studying in Senior KG and huge admission fees and tuition fees are required to be paid by

respondent no.2 wife as well as taking into consideration hike in prices of essential commodities, Medical expenses for the respondent No. 2 and her minor child, amount of interim maintenance granted by the learned Appellate Court does not appear to be excessive, exorbitant. Therefore, I find that, the petitioner has not made out no prima facie case to interfere with the findings recorded by the learned Appellate Court.

11. In view of the above, the present Criminal writ Petition is liable to be dismissed. Accordingly it is dismissed. Rule is discharged.

(Y. G. KHOBRAGADE, J.)

JPChavan