



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

CRIMINAL WRIT PETITION NO.854 OF 2025

Mr. Ganesh S/o. Baburao Kande,
Age-32 years, Occu-Private Service,
R/o. Maharudra Niwas, Mauli Nagar,
Jirewadi Road, Near Big Tower, Parli,
Tq. & Parli, Dist. Beed

...PETITIONER
[Ori. Respondent]

VERSUS

Neha W/o. Ganesh Kande,
@ Neha D/o. Niloba Mundhe,
Age-30 years, Occu-Household,
At present R/o. Ekta Nagar,
Near Gandhi Vidyalaya,
Basmath Road, Parbhani

...RESPONDENT
[Ori. Applicant]

Ms. Madhu R. More, Advocate for the petitioner
Mr. Pravin N. Kalani, Advocate for the respondent

CORAM : ABHAY J. MANTRI, J.

DATE : 02nd DECEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally by consent of the learned counsel for both parties.
2. By this petition, the petitioner is challenging the order dated 02-05-2025 passed by the learned Family Court, Parbhani, below Exh. 5 in Petition E-No.62/2024, thereby granted interim maintenance of Rs. 10,000/- per month till disposal of the petition.

3. The learned advocate for the petitioner submitted that the respondent is a B.Sc. Agri. and she has the capacity to work and earn money. Mere sitting idle would not entitle one to claim maintenance. However, the learned Judge, Family Court, has not considered the said facts and erred in awarding an interim maintenance amount of Rs. 10,000/- to the respondent. In fact, the respondent earns Rs. 20,000/- per month from Yoga classes. She further submits that the wife herself has refused to live with the petitioner. Therefore, she is not entitled to receive maintenance as per section 125(4) of the Cr. P. C. Therefore, she urged that the order is liable to be quashed and set aside. To buttress her submissions, she is relying on the judgment in Megha Khetrapal Vs Rajat Kapoor, 2025 SCC Online Del 1688. *She has drawn my attention to paras 47 and 50, and submitted that*, in view of the mandate therein, the impugned order is liable to be quashed and set aside.

4. On the other hand, the learned advocate for the respondent vehemently opposed the petition, contending that the order passed by the learned Judge, Family Court, is just and proper. He further submitted that the respondent has filed the salary slip of the petitioner before the learned Family Court, wherein the gross income of the petitioner is shown as Rs. 92,468/- and net income payable to him is Rs. 82,552/-. The said salary certificate is for the

year January 2025. Therefore, he submitted that the respondent is entitled to receive 25% of the petitioner's salary as maintenance. Consequently, he urged the dismissal of the petition.

5. In response, the learned advocate for the petitioner tendered across the bar a copy of the pay slip for February 2025, wherein the petitioner's gross salary is shown as Rs. 78,068/- and net salary is shown as Rs. 69,549/- and therefore, she submitted that the salary slip for January 2025 cannot be taken into consideration. Similarly, she tendered an affidavit disclosing the petitioner's assets and liabilities across the bar, and the same is taken on record.

6. Having heard the learned advocate for both parties, I have gone through the impugned order and record as well as the judgment relied upon by the learned advocate for the petitioner.

7. It is pertinent to note that in the affidavit disclosing assets and liabilities, the petitioner has mentioned his salary as Rs. 80,000/-. Therefore, there is no reason to disbelieve his salary. Though the learned advocate for the petitioner submitted that the respondent has an income source, she failed to point out from the record that the respondent is earning something. She has not produced any material before the court to demonstrate the same, except for an averment that she has a B.Sc. agri. However, assuming that the respondent is a B.Sc. Agri, the petitioner failed to produce

any document to show that she has income or that she is doing any job based on the said educational qualification.

8. Apart from this, it is pertinent to note that the petitioner does not dispute his relationship with the respondent, and he has not paid any maintenance to her since she is residing separately. It is a settled position of law that the husband is bound to pay the maintenance to his wife.

9. Besides, the order under challenge was passed by the learned Judge, Family Court, granting interim maintenance only, and the parties have to lead evidence in the matter to substantiate their claim. Therefore, I do not find substance in her contention in that regard at the preliminary stage, when, admittedly, the wife is residing separately, and the husband has an income of Rs. 80,000/- per month.

10. In the judgment of Megha Khetrapal (supra), the wife therein has a Master's Degree from Australia and was doing a job in Dubai and earning well from the said job. The prima facie evidence suggesting the petitioner's deliberate avoidance of employment was brought on record; therefore, the court observed that the wife is able-bodied and well-qualified and, consequently, is not entitled to grant interim maintenance. However, in the case at hand, the facts are distinguishable from the above case. The petitioner prima facie failed

to show that the respondent has an income source to live her life in accordance with the status of the husband. Hence, the observations made in the said judgment are hardly of any assistance to the petitioner in support of her contention.

11. It is pertinent to note that Section 125 of the Code of Criminal Procedure is a social welfare provision, which must be subjected to an extensive beneficial concern, and this understanding has been extended to maintenance. Similarly, it must be borne in mind that the right to maintenance under Section 125 of the Code of Criminal Procedure is not a benefit received by the wife and children but rather a legal and moral duty owed by the husband/father to maintain his wife. Undisputedly, the wife does not reside with the husband, and the husband does not pay her any maintenance. This itself is sufficient to grant her maintenance.

12. It is pertinent to note that it is the applicant-husband's obligation to maintain his wife. He cannot be permitted to plead that he is unable to maintain her due to financial constraints as long as he is capable of earning. Moreover, a judicial note can be taken that there has been a rise in the prices of essential commodities; therefore, the interim maintenance amount granted to the respondent appears to be too meagre to satisfy her daily needs.

13. Having considered the above, it seems that the learned advocate for the petitioner failed to point out how the impugned order is illegal or perverse to entertain in the writ jurisdiction. On the contrary, it seems that the order passed by the learned Judge, Family Court, is just and proper. No interference is required in the writ jurisdiction. Hence, the criminal writ petition being devoid of merits, stands dismissed with no cost. Rule stands discharged. Inform the order to the learned Court accordingly.

[ABHAY J. MANTRI, J.]

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