



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1473 OF 2025

Sumaiyyabano Vasim Shah Alias
Sumiayya Mushir Shah

...Petitioner

Versus

Vasim Rafiq Shah

...Respondent

Mr. Savale Amit S., Advocate for the Petitioner.
Mr. Jadhav Yogesh Arun, Advocate for the Respondent

CORAM : ABHAY J. MANTRI, J.
DATE : DECEMBER 03, 2025

PER COURT :

1. The learned counsel for the petitioner, on instructions of his client, seeks leave to withdraw the present petition with liberty to file a fresh application before the learned Magistrate for seeking temporary custody of the children during each vacation period. He further submitted that the observations made in paragraph Nos. 10 to 13 of the order dated 14th May 2025, passed by the learned Magistrate, below Exh. 17 in Criminal Miscellaneous Application No.92 of 2024 and paragraph Nos. 11 and 12 of the judgment and order dated 27th June 2025 passed by the learned Additional Sessions Judge in Criminal Appeal (P.W.D.V) No.28 of 2025 shall not come in her way while considering such an application, as those observations are contrary to the law laid down by the Hon'ble Apex Court in the case of *Eby Cherian Vs. Jerema John*, reported in AIR Online 2025 SC 548.

2. In response, the learned counsel for the respondent/husband has given no objection to the withdrawal of the application and has also stated that he has no objection to the above-referred observations made in paragraph Nos.10 to 13 of the learned Magistrate's order and paragraph Nos.11 and 12 of the judgment and order passed by the learned Additional Sessions Judge not being treated as an impediment when the petitioner files a separate application before the learned Magistrate.

3. Having considered the above, leave is granted. In view thereof, the petitioner is granted liberty to file a fresh detailed application before the learned Magistrate for seeking temporary custody of the children during the vacations.

4. Needless to clarify that the observations made in paragraph Nos.10 to 13 of the judgment and order dated 14th May 2025 passed by the learned Judicial Magistrate First Class, in Criminal Miscellaneous Application No.92 of 2024, and paragraph Nos.11 and 12 of the judgment and order dated 27th June 2025 passed by the learned Additional Sessions Judge in Criminal Appeal (P.W.D.V.) No.28 of 2025 will not come in the way of the petitioner while considering the fresh application.

4. In view of the above, the petition is disposed of as withdrawn with the above observations.

(ABHAY J. MANTRI, J.)