

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.5186 OF 2024

Mumtaj Ali Sultan Ahmed & Ors.	...Petitioners
<i>Versus</i>	
Shabnam Mumtaj Ali & Ors.	...Respondents

Mr. Amey Deshpande h/f. Mr. Khairnar, for the Petitioners.
Mr. M. N. Sandhyanshiv, for the Respondent Nos.1 to 4.
Mr. Dinesh Haldankar, APP, for the Respondent No.5-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 4th SEPTEMBER 2025

PC:-

1. Heard Mr. Deshpande, learned Counsel appearing for the Petitioners, Mr. Sandhyanshiv, learned Counsel appearing for the Respondent Nos.1 to 4 and learned APP appearing for the Respondent No.5-State.

2. The challenge in this Writ Petition is to the order dated 29th September 2023 passed by the learned Additional Chief Judicial Magistrate, Court No.6, Malegaon, Dist. Nashik below Exhibit-9 in P.W.D.V.A. No.211 of 2023 as also to the Judgment and Order dated 24th November 2023 passed by the learned Additional Sessions

Judge, Malegaon in Criminal Appeal No.54 of 2023. By the said order dated 29th September 2023, the Petitioner No.1-Father has been directed to handover the custody of the minor children i.e. Respondent Nos.2 and 3 to the Respondent No.1-Mother. The said order is confirmed by the learned Additional Sessions Judge, Malegaon by order dated 24th November 2023. In the Writ Petition, the challenge also is to the order dated 16th October 2023 passed by the learned Additional Chief Judicial Magistrate, Malegaon by which, the defence of the Petitioner has been struck off for non-compliance of the order dated 29th September 2023 passed by the learned Additional Chief Judicial Magistrate, Malegaon.

3. Mr. Sandhyanshiv, learned Counsel appearing for the Respondent Nos.1 to 4, on the instructions of the Respondent No.1-Mother states that she has no objection for keeping the custody of the Respondent Nos.2 and 3 i.e. minor children with the Petitioner No.1-Father, as the minor children have been admitted in the school at New Delhi and she stays at Malegaon, Nashik. Mr. Sandhyanshiv, learned Counsel further states that although, the children are aged 7 years and 8 years, the Respondent No.1-Mother has given consent to keep the custody with the Father as

the children have been admitted in the school at New Delhi and therefore, in the best interest of the children, she has decided not to seek the custody of the children. However, he states that frequent access of the children including phone access be given to the Respondent No.1-Mother.

4. As far as access of the minor children to the Respondent No.1-Mother is concerned, the following directions are passed:

(a) Every Sunday between 10:30 a.m. to 11:00 a.m., video call access of the children be given to the Respondent No.1-Mother.

(b) Every month access of children for two days shall be given at any convenient place decided by the Petitioner No.1 and the Respondent No.1. If the access is to be given at New Delhi or at any other place other than Malegaon, Nashik, then the Petitioner shall pay necessary travel and lodging and boarding charges to the Respondent No.1.

(c) During the school vacation overnight access of the children shall be given four times in a year at least for a period of four days on each occasion either at Malegaon, Nashik or any other convenient place jointly decided by the Petitioner No.1 and the Respondent No.1. If the overnight access is given at any other convenient place than Malegaon, Nashik then the Respondent No.1 shall bear the travelling and lodging and boarding charges of the Respondent No.1 as well as the children. If overnight access of the children is given at Malegaon, Nashik, then the Respondent No.1 shall bear the travelling expenses of the children.

5. On the condition that, the above directions concerning access are followed, the impugned order dated 29th September 2023 passed by the learned Additional Chief Judicial Magistrate, Court No.6, Malegaon below Exhibit-9 in PWDVA No.211 of 2023 as confirmed by the impugned order dated 24th November 2023 of the learned Additional Sessions Judge is modified by directing that

the custody of the children i.e. Respondent Nos.2 and 3 shall remain with the Petitioner No.1-Father.

6. It is further made clear that, on the condition that the above directions concerning access are complied with, the impugned order dated 16th October 2023 passed by the learned Additional Chief Judicial Magistrate, Court No.6, Malegaon is quashed and set aside.

7. The concerned learned Judicial Magistrate First Class, Malegaon, Nashik/Additional Chief Judicial Magistrate, Malegaon, Nashik is requested to dispose of said P.W.D.VA. No.211 of 2023 expeditiously.

8. Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]

SONALI
MILIND
PATIL
Digitally
signed by
SONALI
MILIND
PATIL
Date:
2025.09.04
19:18:38
+0530