

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5451 OF 2025

Delnaz Eric Anklesaria

Nee Delnaz Jamshed Katgara**Petitioner**

Versus

Eric Jimmy Anklesaria**Respondent**

Mr. Rohan Cama a/w Mr. Aseem Naphade, Mr. Rushi Narvekar,
Mr. Anuj Desai and Mr. Shlok Parekh i/b. M/s. AVP Partners,
for the Petitioner.

Mr. Vikramaditya Deshmukh a/w Ms. Priya Chaubey, Mrs.
Mrunalini Deshmukh and Ms. Ravleen Sabharwal i/b. Ms.
Sapana Rachure, for the Respondent.

CORAM : MANJUSHA DESHPANDE, J.

DATED : 11th JULY, 2025

ORDER :

1) The Petitioner assails the order dated 28.03.2025, passed
by the Family Court at Bandra, Mumbai, below Exhibit 1, in
Petition No. D-145 of 2024.

2) This Petition arises from the Custody Petition filed by the
Respondent, being Petition No. D-145 of 2024, under the

provisions of the Guardians and Wards Act, 1890. The Custody Petition is pending final adjudication, before the Family Court at Bandra.

3) The order passed by the Judge, 4th Family Court at Bandra, granting visitation rights to the Petitioner is challenged by the Petitioner. Being aggrieved by the order, granting visitation rights on every working Saturday between 3:00 p.m. and 5:00 p.m. at the Children's Complex, Bandra Family Court. In the event of a non-working Saturday, the Respondent-Father is directed to bring the child on the preceding Friday of that week between 4:00 p.m. and 5:00 p.m. at the same place, i.e., Children's Complex, Bandra Family Court, for the visitation by the Petitioner. This arrangement was directed to be continued until further orders. Being aggrieved by the order, the Petitioner has approached this Court.

4) According to the learned Counsel Shri. Rohan Cama, the impugned order dated 28.03.2025, passed below Exhibit 1, needs interference by this Court by exercising its powers under Article 227 of the Constitution of India, by granting interim custody of the child to the Petitioner. According to him, the

Petitioner, who is Respondent in the Custody Petition filed by the father, had filed an Application, before the Family Court at Bandra for custody of the minor son, which was marked as Exhibit 12 with following the prayers :

“(a) Till the hearing and final disposal of this Petition, this Hon’ble Court be pleased to grant physical custody of the minor child Master Hoshnair Eric Anklesaria to the Respondent mother;

(b) This Hon’ble Court be pleased to direct the Petitioner to immediately hand over custody of the minor child Master Hoshnair Eric Anklesaria to the Respondent mother;

(c) Till the hearing and final disposal of the Petition, this Hon’ble Court be pleased to pass an order restraining the Petitioner and his family from interfering with the Respondent’s custody and care of the minor child;

(d) This Hon’ble Court be pleased to restrain the Petitioner from taking the minor son out of the jurisdiction of this Hon’ble Court without the permission of this Hon’ble Court;

(e) This Hon’ble Court be pleased to direct the Petitioner to deposit the passport of the minor son in this Hon’ble Court;

(f) Interim and ad interim relief in terms of prayer clause c, d & e;

(g) For any further relief this Hon’ble Court deems fit and proper in the interest of justice.”

5) The Petitioner had prayed for physical custody of the minor child during the pendency of the Custody Petition between the parties.

6) According to the learned Counsel for the Petitioner, the custody of the minor child, who is four years old, is required to be granted in favour of the Petitioner, more particularly, since he is diagnosed with Autism Spectrum Disorder (**ASD**) and Attention Deficit Hyperactivity Disorder (**ADHD**), the child needs emotional stability, sound and safe environment, which only a mother can provide.

7) According to him, the mother is the only person who can best take care of child, who is four years old. The child is too young to be separated from the mother.

8) The impugned has been passed by the Judge of the Family Court in flagrant violation of well-established legal principle that, custody decision must be guided solely by the best interest and welfare of minor child, and that should be the sole consideration.

9) It is alleged by him that, the Respondent has a history of sexual misconduct and psychiatric instability. Considering the

offence registered against the Respondent, he is not a fit person for custody of the minor child of four years.

10) In view of the unsuitability of the father as a primary care giver, the Family Court ought to have granted interim custody in favour of the present Petitioner. He has taken me through the impugned order. The Judge of Family Court, in the impugned order, has observed that, during the course of arguments, the learned Counsel for the Respondent-Mother stated that, the Petitioner has been denying her access and visitation right to the minor child.

11) It is, therefore, observed by the Family Court that, considering the nature and sensitivity of the matter, the Court is of the opinion that, it is just and necessary to consider the interim request of the Respondent-Mother for visitation rights, pending the final adjudication of the Application.

12) It is further observed that, the Children's Complex, Bandra Family Court, would be the best neutral place for visitation of the child, which would prevent either party from exerting undue influence and control over the interaction, thereby preserving the integrity of visitation process. Hence, an

order was passed granting only visitation rights to the Petitioner.

13) According to him, he has prayed for the grant of physical custody of the minor child, which the Court ought to have granted. The Family Court has shown utter disregard to the settled principle that, a child below five years requires the attention and care of the mother. The custody of a minor child below five years is always required to be maintained with the mother unless it is demonstrated before the Court that, mother is an unfit person to take care of the child.

14) In the present case, the Petitioner does not suffer from any disqualification so as to disentitle her from custody of the minor child.

15) According to him, Section 12 of the Guardians and Wards Act, 1890, empowers the Court to make such an order for the temporary custody and protection of the person or property of the minor as it thinks fit. Section 12 empowers the Court to make an interlocutory order for the production and protection of the person and property of a minor child.

16) Mr. Cama further submits that, considering his Application and the prayers made therein for physical custody of the minor child, the Family Court was not justified in passing an order only to the extent of granting visitation rights to the Petitioner. He further urges that, considering the disqualification of the Respondent in view of the complaint registered against him, in which he has been granted bail, more particularly, as he has been alleged to have committed offences under Sections 354 and 419 of the Indian Penal Code, 1860 (**IPC**), along with Section 12 of the Protection of Children from Sexual Offences Act, 2012 (**POCSO**), it would be appropriate to hand over custody of the minor child to the Petitioner. He also relies on the observations made by this Court in Bail Application No. 1181 of 2021 filed by the Respondent herein, in which certain observations regarding the mental health of the Respondent have been made.

17) In support of his submissions, he relies on judgments of the High Courts and the Hon'ble Supreme Court, as well as certain chats and photographs. He has placed reliance on the following judgments:

[i] *Namita Mahendra Thanai V/s. State of Maharashtra & Others*¹ and

[ii] *Roxann Sharma V/s. Arun Sharma*²

More particularly, he has placed reliance on the observations made by the Hon'ble Supreme Court that, father's suitability to custody is not relevant where the child, whose custody is in dispute, is below five years, since the mother is *per se* best suited to care for the infant during his tender age.

18) The above judgments are relied by him in support of his submission that, even though the Application for interim custody is pending before the Family Court, this Court, in exercise of its power, is empowered to pass an order in the interest of the child by granting interim custody of the minor child to the Petitioner during the pendency of Interim Application for custody.

19) Per contra, the learned Counsel Shri. Vikramaditya Deshmukh has strenuously argued that, the relief granted to the Petitioner, vide order dated 28.03.2025 passed below Exhibit 1, is, in fact, not passed on Interim Application filed by

1 2020 SCC OnLine Bom 56

2 (2015) 8 SCC 318

the Petitioner. Exhibit 1 is his Petition for custody filed before the Family Court.

20) The Petitioner has filed an Application to hand over custody in the pending Custody Petition. The Application of the Petitioner was filed on 25.03.2025, praying for the grant of physical custody untill the disposal of the Petition, whereas the impugned order is passed on 28.03.2025, below Exhibit 1, i.e., in the main Custody Petition.

21) According to him, the Application filed by the Petitioner has not yet been decided by the Family Court at Bandra. Therefore, the Petitioner does not have any cause of action to approach this Court by challenging the order, which is passed on Exhibit 1. The order passed is merely a stopgap arrangement until further orders of the Court. According to him, there exist no grounds for the Petitioner to challenge the order. He has also drawn my attention to the order dated 28.11.2024, passed on Exhibit 8, whereby the present Petitioner has been restrained from disturbing the peaceful custody of the child and has been further directed not to take custody of the child by illegal means untill further orders.

22) Exhibit 8 is the Application for interim custody of the minor child with a prayer to restrain the present Petitioner from removing the minor son out of the jurisdiction of the Hon'ble Court and out of the country without the order of the Family Court. He further submits that, the restraining order is still in existence, as yet, it has neither been assailed nor set aside. He, therefore, submits that, in view of the said order, this Court cannot pass any order as prayed by the Petitioner unless the same is quashed and set aside.

23) I have heard Mr. Cama and Mr. Deshmukh at length and have also gone through the documents placed on record.

24) So far as the impugned order is concerned, it is admittedly, passed on Exhibit 1, i.e., the main Petition for custody of the minor child.

25) After going through the order it is evident that, the Application for interim custody was filed by the Petitioner on 25.03.2025 and the order on Exhibit 1 was passed on 28.03.2025. It is clearly observed in the order that, on the Application filed by the Petitioner, after issuance of notice the Respondent had appeared and sought time to file his reply.

Therefore, the matter was adjourned for reply and fixed for hearing on 24.04.2025.

26) It can be seen from the order that, during the course of argument, the Petitioner's Counsel made a request that, she had been denied access and visitation to the minor child. Considering the nature and sensitivity of the matter, the Court took the view that, the child needs to meet his mother and cannot be allowed to be alienated from her.

27) As a precautionary measure, the Judge, Family Court has thought it fit to grant visitation rights to the Petitioner within the premises of Children's Complex in the Family Court at Bandra, in order to avoid any confrontation or conflict. Therefore, the Family Court ensured that, the interim visitation should be granted to the Petitioner-Mother within the secured environment of the Children's Complex in the Family Court at Bandra. The Judge of the Family Court, has not gone into the merits and demerits of the matter.

28) Though the parties have made various allegations against each other, none of these have been considered. It is merely an interim arrangement made by the Judge, Family Court untill

further orders. It is not in dispute that, the Family Court is seized of the Application of the Petitioner at Exhibit 12, which has not yet been heard and no orders have been passed on that Application.

29) I do not find any infirmity, perversity or unreasonableness for causing interference in the impugned order. There is no jurisdictional error, in the order impugned passed by the Judge, Family Court. Therefore, in my view, at this stage, considering that the Application for interim custody of the child is pending before the Family Court and there is an injunction order operating against the Petitioner, it would not be appropriate to interfere with the orders passed by the Family Court.

30) Therefore, no interference is called for. However, during the pendency of the Writ Petition, vide order dated 25.04.2025, a workable solution was agreed upon between the parties, granting access to the mother on 27.04.2025 between 11:00 a.m. and 2:00 p.m.

31) Thereafter, vide order dated 30.04.2025, with the consent of the parties, the access was again granted on 01.05.2025 and 04.05.2025 between 11:00 a.m. and 2:00 p.m.

32) On 07.05.2025, vide Minutes of Order recorded, with the consent of parties, pursuant to which, vacation access was granted to the Petitioner, the details of which are as follows :

[i] From 07.05.2025 to 10.05.2025, from 2:00 p.m. to 2:00 p.m.;

[ii] From 17.05.2025 to 22.05.2025, from 10:00 a.m. to 10:00 a.m. and

[iii] From 27.05.2025 to 29.05.2025, from 10:00 a.m. to 10:00 a.m.

33) Although I am not inclined to set aside the order passed by the Family Court dated 28.03.2025, by granting prayer of interim custody, however, it would be in the welfare of child and in the interest of justice to modify the access granted by the Family Court. In view of the access granted by this Court, from time to time though on concession being given by the Respondent, which seems to have worked out well.

34) More so, considering that the child is four years old and is suffering from ASD and ADHD, it would be appropriate to modify the order by granting access to the mother from Friday

6:00 p.m. to Sunday 6:00 p.m. on weekends, instead of the supervised access at the Children's Complex at Family Court, Bandra.

35) So far as the working days are concerned, the Petitioner shall have visitation rights on two days, i.e, Tuesday and Thursday, in the evening between 7:00 p.m. and 9:00 p.m.

36) The Petitioner shall ensure that, the child Master Hoshnair Eric Anklesaria, attends all his coaching classes and hobby classes, if they fall during the visitation of the Petitioner.

37) The Respondent shall drop the child at the residence of the Petitioner and also collect him after the access is over. This arrangement shall continue until further orders by the Family Court.

38) The parties are directed to ensure that, their conduct does not adversely affect the minor child during the access period.

39) The Judge, Family Court at Bandra, is requested to hear and decide the Interim Application of the parties preferably within a period of six weeks. The Family Court shall pass an appropriate orders, without being influenced by any

observations made by this Court in the present Writ Petition and decide the matter on its own merits.

40) With the aforementioned directions, the Writ Petition stands disposed of.

[MANJUSHA DESHPANDE, J.]