

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 634 OF 2025

Pooja Abhijit Dhanashetty @ Pooja ... Petitioner
Suresh Shinde

V/s.

State of Maharashtra and Ors. ... Respondents

Mr. Prashant Pandey a/w Dinesh Jadhvani, Ridhima Mangaonkar and
Rahul Sinkar I.by W. Three Legal LLP, for the Petitioner.

Mr. S.V. Gavand, APP, for the State.

Mr. Vikas Shivarkar, for the respondent nos. 4 to 6.

**CORAM : SARANG V. KOTWAL &
S.M. MODAK, JJ.**

DATE : 25TH FEBRUARY 2025.

PC:

1. Mentioned out of turn.
2. This is a habeas corpus petition. The allegations are made by the mother of the children against the father of the children. The children are 3 and 4 years of age, respectively. The elder daughter is 4 years old. On the previous occasion i.e. on 27th January 2025, we had called for the report from the police in respect of the health condition of the elder daughter because she was suffering from ailment requiring medication. We also wanted to know whether the child was able to undertake journey from Pune to Mumbai. The police officers have filed a report dated 25th February 2025, which contains the report of the

doctor treating the child. The report mentions that the petitioner's elder daughter Vaishnavi is suffering from Thiamine Metabolism defect which is a genetic disorder. She is on supplement of Thiamine and biotin for the same disorder. She is clinically stable at this moment. She can travel from Pune to Mumbai. The statement of the doctor mentions that at present she is having vitamin tablets and she can travel from Pune to Mumbai.

3. At this stage, we are informed by Shri Pandey who is appearing for the petitioner as well as by learned counsel for the respondent no. 4 that the husband has filed a petition for divorce which is transferred to the Family Court at Bandra, Mumbai.

4. Learned APP submitted that the parties can make an application for custody of their children. Till today, though the petition for divorce is filed neither of the parties had sought orders for custody of their minor children. Instead of that, the wife has approached this Court by way of habeas corpus petition. Shri Pandey submitted that though ultimately the issue regarding right to have custody will be decided by the Family Court at Bandra; the husband's act of taking away the children forcibly should not be ignored.

5. We have considered the entire situation. As rightly submitted by learned APP Shri Gavand, the parties can agitate their rights to have custody of the children before the Family Court, Bandra in the pending proceedings. Till today, neither of the parties has taken any steps in that behalf.

6. Shri Pandey learned counsel for the petitioner submitted that he

would file appropriate proceedings before the Family Court at Bandra, Mumbai for custody of the children within a period of one week from today.

7. Learned counsel for the husband Shri Shivarkar also states that he would also file the necessary application for custody of the children before the same Court within a period of one week.

8. Both these statements are accepted. Therefore, today we are passing an order making some interim arrangement; keeping in mind, the interest of the child and, in particular, interest of the elder child.

9. In the present habeas corpus petition apart from the allegations and counter allegations; what we are considering as a major factor than anything else is the health condition of the elder child. We are taking that factor as a paramount consideration.

10. In this case, the report shows that she is on medication. Though today she is required to take only vitamin Tablets, we are more concerned about continuity in her treatment which she is taking from the doctor at Pune. Therefore, at this stage, we are not inclined to transfer custody from the respondent no. 4 to the petitioner. That question will be decided by the Family Court, but in the meantime, by way of an interim arrangement, exclusive access for some days can be granted to the mother. Hence, the following order:

ORDER

i) Stand over to 2nd April 2025.

ii) Till the next date, the ad-interim arrangement

shall be as follows:

The respondent no. 4 shall bring both the children to Mumbai and hand over their custody to the mother on 8th and 9th March, 2025 as well as on 22nd and 23rd March 2025. There shall be over night access to the mother for the night between 8th and 9th March, 2025 as well as 22nd to 23rd March 2025. On all these four days the petitioner shall have uninterrupted exclusive access to the children. The respondent no. 4 can take back the children to Pune on 10th March 2025 and 24th March 2025.

iii) Both the parties shall co-operate with this arrangement.

iv) In the meantime, both the parties are at liberty to prefer an appropriate application/applications before the Family Court at Bandra, Mumbai for permanent custody with an application for interim custody through appropriate proceedings.

11. It is made clear that the Family Court at Bandra, Mumbai shall decide the applications for custody on their own merits and in accordance with law.

12. The Principal Judge of the Family Court, Bandra shall make sure that the said applications of the parties are decided by a Judge who is available during the next month. This direction is necessary as we are

informed that the Court where the divorce proceedings between these parties are pending is vacant.

(S.M. MODAK, J)

(SARANG V. KOTWAL, J)