



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 321 OF 2024

Sau. Dipika Pankaj Bhagat Vs. State of Maharashtra & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. D.V. Mahajan, Advocate for the Petitioner.

Mr. A.B. Badar, APP for Respondent Nos.1 to 3/State.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.

DATE : 11th DECEMBER, 2025.

. The petitioner-mother has approached this Court seeking a writ of habeas corpus for production of her minor son and for handing over his custody to her.

2. On 8th October, 2025, following order was passed:

“On 23.09.2025, following order was passed.

“Petitioner – wife has filed the petition for issuing writ of habeas corpus on the ground that her husband – respondent No.4 has illegally detained the child, aged 9 years.

2. The parties were directed to appear before the Court. We have interacted with them. Petitioner – wife fairly submits that she has no objection if custody of the child is kept with respondent no.4. She, however, made a request for visiting rights, to which respondent No.4 states that he is willing to give access to the petitioner as per her convenience. The petitioner submits that she will meet the child twice a month, to which respondent No.4 agreed. Since, respondent No.4 has acceded to the request, for the time being, no order is passed.

3. Learned counsel for the petitioner, however, has invited our attention to order dated 08.12.2023, passed by Family Court, Nagpur in Petition E-39/2021, directing respondent No.4 to pay interim maintenance at the rate of Rs.6,000/- per month to the petitioner and Rs.4,000/- per month to the child from the date of presentation of petition i.e. from 18.01.2021. Custody of the child was taken by

respondent No.4 on 05.03.2024. Accordingly, the petitioner submits that the amount as directed to be paid to the petitioner by the Court, be at least paid by respondent No.4 to her.

4. When inquired as to why the amount was not paid, respondent No.4, who is present in the Court, instead of answering the query, put up a question as to how would he pay the amount saying that he has no means to do so.

5. At this stage, counsel for petitioner submits that respondent No.4 is avoiding to pay maintenance and it is only when warrant of arrest was issued, he has deposited with the Family Court an amount of Rs.10,000/-. He is, thus, flouting the order passed by the Family Court.

6. Before we take a firm view against respondent No.4, we direct him to deposit, before the Family Court, the entire amount of arrears within two weeks from today, failing which, we may consider taking up an action under the contempt jurisdiction.

7. Further, respondent No.4 shall furnish details of income tax returns, for last three years.

8. Stand over to 08.10.2025.”

2. As could be seen, respondent No.4 was directed to deposit with the Family Court entire amount of arrears within two weeks from the date of order. Respondent No.4 was also cautioned that contempt jurisdiction may be invoked.

3. Despite such order, respondent No.4 has not deposited even part amount of arrears of maintenance.

4. Respondent No.4 is accordingly called upon to show cause as to why he should not be prosecuted and punished in terms of the provisions of the Contempt of Courts Act, 1971.

Stand over to 06.11.2025.”

3. Thus, respondent No.4-father, despite ordered by the Court, failed to deposit the amount of arrears. Thereafter, on 6th November, 2025, further order was passed:

“There are two orders one dated 23/09/2025 and another dated 08/10/2025 passed by this Court which indicate that respondent No.4 has willfully disobeyed the orders passed by this Court.

2. Accordingly respondent No.4 was called upon to show cause as to why he should not be prosecuted and punished in terms of the provisions of the Contempt of Court’s Act 1971.

3. The counsel for respondent No.4 seeks two weeks time to file cause.

4. Time granted as a last chance.

5. Since respondent No.4 has not complied the order dated 23/09/2025 without any valid reason and has not made any attempt to comply order, willful disobedience is apparent. We will accordingly hear the petitioner on punishment on the next date, of course by giving one more opportunity to him to comply the order dated 23/09/2025.

6. Stand over to 10/11/2025.”

4. As could be seen, since respondent No.4 has not even made an attempt to comply our order, wilful disobedience was found apparent. On the next scheduled date i.e. on 10th November, 2025, neither the petitioner nor respondent No.4 was present. Accordingly, non-bailable warrant was issued against respondent No.4. Thus, the situation reached a stage where the Court was required to issue non-bailable warrant to ensure the presence of respondent No.4. Such is the conduct of respondent No.4.

5. In the above set of facts, two questions fall for our consideration; one is whether custody of child should be handed over to the petitioner; and second, whether sufficient cause is shown by respondent No.4 to purge the contempt proceeding.

6. The counsel for respondent No.4 has filed an affidavit saying that respondent No.4 is not in a position to pay arrears of maintenance. As such, this fact of his inability to pay the amount is noted by us in our order dated 23rd September, 2025 as well. The order also indicates that the Family Court, *vide* its order dated 8th December, 2023, directed respondent No.4 to pay interim maintenance @ Rs.6,000/- per month to the petitioner and Rs.4,000/- per month to the child. The respondent No.4 to get rid of the order of maintenance payable to the child, took custody on 5th March, 2024. As regards maintenance to wife, he has till now paid only Rs.10,000/-, that too because the Family Court issued arrest warrant.

7. Thus, it appears that respondent No.4 is not in a position to maintain his wife as well as his child, in the sense if he could not even make an attempt to comply the order of the Court to deposit arrears of maintenance, it would mean that he could not even deposit part amount of arrears. Can he be then said to be in a position to maintain the child. The answer ought to be in negative. The question here is of the welfare of the child.

8. The counsel for petitioner submits that the petitioner has recently taken up a job as a Nurse and is earning Rs.6,000/- per month. She is desirous of taking care of her child.

9. Considering all attending circumstances, we are of the considered view that custody of the child should be handed over to the mother. So far as contempt is concerned, removal of child from the custody of father itself, according to us, is a

punishment that would meet the ends of justice. We, accordingly, refrain from imposing separate punishment, at this stage. We may, however, review the position in due course, if so required. Accordingly, following order is passed:

ORDER

- (i) The petition is **allowed**.
 - (ii) Respondent No.4 is directed to handover the custody of the minor son viz. Arav Pankaj Bhagat to the petitioner - mother. The custody shall be handed over to the petitioner on 18th December, 2025 before the Family Court, Nagpur, where the proceeding between the parties, being Petition No.E-39/2021, is pending.
 - (iii) We request the learned Judge of the Family Court, Nagpur, to facilitate smooth transfer of child from respondent No.4 to the petitioner. The learned Judge of the Family Court shall take cognizance of this development in order to pass further orders, if required.
 - (iv) If respondent No.4 fails to handover the custody of child, as directed by the Court, the learned Judge of the Family Court, Nagpur, shall take appropriate steps, including issuance of warrant, for execution of the order.
10. The petition is disposed of in terms of above.

(RAJ D. WAKODE, J.)

(ANIL L. PANSARE, J.)