



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1337 OF 2025

- 1] Sanjay Shankar Rathod
Aged about 41 years, Occu. : Service
- 2] Shankar Kishan Rathod
Aged : 66 years, Occu. : Nil
- 3] Kamal Shankar Rathod
Aged : 56 years, Occu. : Household
- 4] Santosh Shankar Rathod
Age : 43 years, Occu. : Agri and Business
- 5] Supriya Santosh Rathod
Age : 43 years, Occu. : Household
- 6] Savita Ravi Pawar
Age : 37 years, Occu. : Household
- 7] Sangeeta Ashok Chavan
Age : 37 years, Occu. : Household,
All R/o. Kamal Niwas, Sundar Nagar,
Tanda, North Parle, Tah, Karad,
Dist. Satara. ...Petitioners

VERSUS

- 1] Sau. Supranjana Sanjay Rathod
Aged about 34 years, Occu. : Service
R/o Laxman Chavhan, Datta City,
Behind Gajanan Temple,
Malegaon Road,
Nanded. ...Respondent

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- Mr. Mahesh Rai, Advocate for the Petitioners
- Mr. Rupesh Hake, Advocate h/f. Mr. A. M. Reddy, Advocate for Respondent

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CORAM : MEHROZ K. PATHAN, J.

RESERVED ON : 22.01.2026

PRONOUNCED ON : 10.02.2026

ORDER :

1. The petitioners have filed the present petition challenging the judgment and order dated 25.08.2025 passed by the learned Additional Sessions Judge-1, Nanded, in Criminal Appeal No. 11 of 2025, as well as the order dated 28.02.2025 passed by the learned Judicial Magistrate First Class, Court No. 5, Nanded, below Exhibit-4/1 in P.W.D.VA. No. 52 of 2024, whereby interim custody of the child has been granted to the respondent-wife under Section 21 of the Protection of Women from Domestic Violence Act, 2005.

2. Learned counsel for the petitioners submits that petitioner No.1 and the sole respondent are husband and wife. The marriage between petitioner No.1 and the respondent was solemnized on 26.11.2017, and out of the wedlock, a male child, *Bhim*, was born on 10.05.2022. Due to matrimonial disputes between petitioner No.1–husband and the respondent–wife, the respondent-wife left the matrimonial home and started residing with her parents from around September 2023.

3. It is submitted that a meeting was held at the house of the respondent-wife at Nanded on 13.11.2023, which was attended by the petitioner-husband along with his relatives. According to the petitioner-husband, during the said meeting, the male child, who was then aged about two years, was voluntarily handed over to him on 13.11.2023.

4. However, the respondent-wife has strongly contended in the proceedings that on 13.11.2023, the petitioner-husband forcibly snatched away the child from her custody. It is her contention that she lodged a complaint with Bhagya Nagar Police Station, Nanded, on 16.12.2023, alleging forcible removal of the child by the petitioner-husband; however, no action was taken by the police authorities.

5. As no action was taken by the police, the respondent-wife filed proceedings before the learned Judicial Magistrate First Class, Nanded, under Section 97 of the Code of Criminal Procedure, seeking custody of the child on 06.01.2024, which proceedings were pending at the relevant time.

6. Thereafter, the respondent-wife filed the present proceedings under the Protection of Women from Domestic Violence Act, 2005, against the petitioner-husband and the other petitioners, who are relatives of the petitioner-husband, on 27.03.2024

7. It is the submission of the learned counsel for the petitioners that the application filed by the respondent-wife under Section 97 of the Code of Criminal Procedure before the learned Judicial Magistrate First Class came to be rejected by order dated 19.08.2024. Despite the rejection of the said application, the respondent-wife continued to pursue the proceedings under the Protection of Women from Domestic Violence Act, 2005, and filed an application under Section 21 of the D.V. Act seeking interim custody of the child. The said application for interim custody came to be allowed by the learned JMFC by order dated 28.02.2025, thereby granting interim custody of the child to the respondent-wife.

8. Aggrieved by the said order dated 28.02.2025, the petitioners preferred an appeal before the learned Sessions Court, Nanded, challenging the exercise of powers under Section 21 of the D.V. Act by the learned JMFC. The learned Additional Sessions Judge, Nanded, dismissed the said appeal by judgment and order dated 25.08.2025.

9. Learned counsel for the petitioners submits that neither the learned Judicial Magistrate First Class nor the learned Additional Sessions Judge, Nanded, considered the fact that the child was voluntarily handed over to petitioner No.1–father by the respondent-wife on 13.11.2023. It is further submitted that there is no acknowledgment or material on record to show that any complaint

was lodged by the respondent-wife with Bhagya Nagar Police Station on 16.12.2023.

10. It is contended that the respondent-wife had virtually abandoned the child and is not in a position to take proper care of the child. Therefore, the interim custody of the child, which was voluntarily handed over by the respondent-wife on 13.11.2023, could not have been granted back to her by order dated 28.02.2025, particularly when the child had been continuously residing with petitioner No.1–father for nearly one year and two months prior to the passing of the said order.

11. Learned counsel for the petitioners places reliance upon the judgments of the Hon'ble Supreme Court in *Sumedha Nagpal v. State of Delhi & Ors.* (2000) 9 SCC 745, *R.V. Shrinath Prasad v. Nandamuri & Ors.* (2001) 4 SCC 71, *Athar Hussain v. Syed Siraj & Ors.* (2010) 2 SCC 654, and *Anjali Kapoor v. Rajiv Baijal* (2009) Supreme (SC) 754. Apart from the aforesaid judgments of the Hon'ble Supreme Court, learned counsel for the petitioners has also relied upon the judgments of the Hon'ble Bombay High Court in *Swapnil Bhajandas Kamble v. Sau. Manisha Swapnil Kamble* 2022 ALL MR (Cri) 2296 and *Arun Sharma v. Roxanna Sharma* 2014 (6) Bom. C.R. 2019.

12. The petitioners have also relied upon the recent judgment of the Single Judge of the Hon'ble Bombay High Court, Bench at

Aurangabad, in Criminal Revision Application No. 158 of 2025 with other connected applications, decided on 24.11.2025, in the case of *Sandeep Shivaji Pawar v. Mrs. Archana Sandeep Pawar*.

13. As against this, learned counsel appearing for the respondent has filed a reply opposing the present writ petition and submits that after the child was forcibly taken away from the custody of the respondent-wife on 13.11.2023, the respondent-wife continuously pursued the petitioner-husband and the other petitioners for handing over the custody of the child. As the custody was not restored, the respondent-wife lodged a complaint with Bhagya Nagar Police Station on 16.12.2023. However, since the petitioner No. 1 is the father of the child, the police authorities did not take any action by registering an FIR. The respondent-wife was, therefore, constrained to file an application under Section 97 of the Code of Criminal Procedure, which was registered as Criminal Miscellaneous Application No. 28 of 2024. On 06.01.2024, the learned Court issued notice, which came to be served upon the petitioners through the concerned police station on 08.01.2024. The petitioner No. 1 - father filed his reply on 05.02.2024, contending therein that the respondent-wife had an alternative remedy to seek custody of the child under the appropriate provisions of law. The said application under Section 97 Cr.PC. came to be dismissed by order dated

19.08.2025, primarily on technical grounds, namely that for invoking Section 97 Cr.P.C., there must be detention of the minor with an intention to commit an offence, which was not made out in the facts of the present case.

14. It is further contended that the respondent-wife had specifically mentioned in her application under Section 97 of the Code of Criminal Procedure that she had submitted a complaint dated 16.12.2023 at Bhagya Nagar Police Station, Nanded. It is submitted in the reply filed by the petitioner No. 1 - father, that the said complaint dated 16.12.2023 was termed as false, and on that ground, no action was taken by the police authorities.

15. It is further submitted by learned counsel for the respondent that the petitioner-husband has deliberately kept the child, namely *Bhim*, away from the mother at a tender age, which itself causes trauma to the young child by depriving him of the care and affection of his mother. It is further submitted that the child is suffering from bilateral severe hydronephrosis, and considering the young age of the child, the mother, being the natural guardian, is best suited to take care of the child. It is contended that these aspects were duly considered by both the Courts below, and therefore, the learned Courts have rightly granted interim custody of the child to the applicant-wife, who is the present respondent.

16. It is further submitted that Section 21 of the Protection of Women from Domestic Violence Act, 2005, specifically empowers the Magistrate to grant temporary custody of the child to the aggrieved person, upon an application being made, with appropriate arrangements for visitation of the child by the respondent. Thus, the powers under Section 21 of the D.V. Act have been rightly exercised by the learned Magistrate.

17. It is contended that the learned Magistrate has taken into consideration the necessary and relevant factors required to be assessed while granting interim custody of a minor child, particularly when the child is below the age of five years. The First Appellate Court has also duly considered all the relevant aspects involved in the present matter and, after examining the proviso to Section 6(a) of the Hindu Minority and Guardianship Act, 1956, has rightly upheld the order dated 28.02.2025 passed by the learned JMFC, by its judgment and order dated 25.08.2025, thereby dismissing the appeal preferred by the petitioners.

18. Learned counsel for the respondent has relied upon the judgment of the Hon'ble Bombay High Court in *Manjita Naik Teunkar v. Soiroo @ Sarvesh C. Naik Teunkar & Another* **2013 SCC OnLine Bom 521**. Relying upon the said judgment, it is submitted that despite the statutory provisions and the various judicial

pronouncements governing custody matters, each case has to be decided on its own facts and merits.

19. It is further submitted that the applicant-wife is employed as an Assistant Engineer with the Maharashtra State Electricity Board (MSEB), Nanded, and is financially capable of maintaining the child. Being the natural guardian, she is also well-equipped to take care of the needs of the minor child, who is aged about three and a half years. It is contended that both the learned Trial Court and the learned First Appellate Court have rightly adjudicated upon all the relevant factors involved in the present matter and, after considering the judgments of the Hon'ble Supreme Court, have directed handing over of interim custody of the minor child in favour of the applicant-wife/respondent herein, while granting visitation rights to the petitioner-husband.

20. I have perused the order dated 28.02.2025 passed by the learned 5th Judicial Magistrate First Class, Nanded. The learned Magistrate has taken into consideration the fact that when the child was taken away from the custody of the respondent-wife by the present petitioner No. 1 - husband, the child was of tender age. At the time of passing of the order, the child was aged 2 years, 9 months and 15 days, and considering the young age of the child, the learned Magistrate found it appropriate that the temporary custody of the

child should remain with the mother. The learned Magistrate has further taken into account that the petitioner No. 1 - father is also a natural guardian and, considering the love and affection of the father towards the child, namely *Bhim*, has granted visitation rights to petitioner No.1-father, permitting him to meet the child every Sunday from 12.00 noon to 4.00 p.m.

21. The learned JMFC, Nanded had relied upon the judgment of ***Smt. Manjita Naik Tuenkar Vs. Soiroor @ Sarvesh C. Naik Teunkar and Ors.; ALL MR (Cri.) 2456*** to handover the interim custody of the child to the mother. The Hon'ble Supreme Court in the aforesaid judgment was pleased to observe as under :-

“4. Mr. D'Souza, the learned counsel for the petitioner rightly submits that the entire approach of the Appellate Court has been incorrect and contrary to settled principles of law. For the child aged 5 years and that too a girl child in particular, the mother would be the natural guardian and as such first preference for granting custody of the child. It is only when the mother is shown to be unfit to have custody of the child then the father would be considered as the second preference for custody of the child. In the instant case, the Appellate Court has not even looked into the aspect whether the petitioner is fit to have custody. It is not disputed that on the date and time mentioned in the application, the respondent had snatched the child in the manner as alleged and gone away. This would mean that the child who was in the custody of the mother had been removed by the father without her consent.”

22. The judgment and order dated 25.08.2025 passed by the learned Additional Sessions Judge, Nanded, further reflects due

consideration of all relevant factors. The learned Additional Sessions Judge has examined the judgments relied upon by both sides and, after considering the legal position laid down by this Court in *Pramod Prakash Mulik & Another v. Manisha Pramod Mulik & Another* **2019 SCC OnLine Bom 1466**, as well as the authoritative pronouncement of the Hon'ble Supreme Court in *Gaurav Nagpal v. Sumedha Nagpal* **(2009) 1 SCC 42**, was pleased to dismiss the appeal.

23. A perusal of the application filed under Section 97 of the Code of Criminal Procedure, as well as the complaint dated 16.12.2023 lodged at the police station, clearly reflects allegations of the child having been forcibly removed from the interim custody of the mother. The application under Section 97 Cr.P.C. came to be rejected only on technical grounds, namely that there was no intention on the part of the father to commit an offence against the minor child.

24. The learned Additional Sessions Judge has examined in detail the applicability of the provisions of Sections 10 and 11 of the Code of Civil Procedure vis-à-vis Section 21 of the Protection of Women from Domestic Violence Act, 2005, and has rightly held that the said provisions do not preclude the applicant-wife/respondent herein from filing an application under Section 21 of the D.V. Act. Neither Sections 10 and 11 of the C.P.C., nor Section 97 of the Cr.P.C., operate

as a bar to the maintainability of an application seeking interim custody under Section 21 of the D.V. Act.

25. The paramount consideration in matters relating to custody is the welfare of the child. Considering the allegations regarding forcible removal of the child by the petitioner-father from the custody of the respondent-mother, the proviso to Section 6(a) of the Hindu Minority and Guardianship Act, 1956, becomes relevant. It is well-settled that proviso to Section 6(a) mandates ordinarily that the mother is the natural guardian of a minor child who is below the age of five years. In the present case, the child is presently aged more than three and a half years, but below 5 years. The respondent-wife is employed as an Assistant Engineer with the Maharashtra State Electricity Board (MSEB) and has sufficient means to maintain herself and the minor child. The child is suffering from bilateral severe hydronephrosis, which requires constant care and attention, and such care can be effectively provided by the respondent-wife, who is the natural guardian. Taking into consideration the paramount consideration, namely the welfare of the child, who has been deprived of the maternal care and affection at such a tender age, I am not inclined to interfere with the findings of the Courts below.

26. The petitioner No.1–father has already been granted visitation rights and is permitted to meet the child every Sunday between 12.00

noon and 4.00 p.m. The petitioner-father is also employed as an Assistant Engineer, and considering his professional commitments, he may not be in a position to provide continuous care to a child of such tender age. Thus, in view of the statutory mandate under the proviso to Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the custody of a minor child below five years has rightly been continued with the respondent-mother.

27. In the case of *Gaurav Nagpal V. Sumedh Nagpal* (Supra), it is observed as under :-

“52. The trump card in the appellant’s argument is that the child is living since long with the father. The argument is attractive. But the same overlooks a very significant factor. By flouting various orders, leading even to initiation of contempt proceedings, the appellant has managed to keep custody of the child. He cannot be a beneficiary of his own wrongs. The High Court has referred to these aspects in detail in the impugned judgments.

53. The conclusions arrived at and reasons indicated by the High court to grant custody to the mother do not in our view suffer from any infirmity. It is true that taking the child out of the father’s custody may cause some problems, but that is bound to be neutralised.”

28. Taking into consideration the aforesaid judgments and the law laid down by the Hon’ble Supreme Court in *Gaurav Nagpal* (supra), it is evident that the long stay of a child with the father, by itself, cannot be the sole ground to deny custody of a child below 5 years to the mother, particularly when there are allegations that the child was

forcibly taken away from the mother's custody. It is true that taking the child from father's custody may cause some problems, but that is bound to be neutralized.

29. The Hon'ble Supreme Court in ***Roxann Sharma v. Arun Sharma***; (2015) 8 SCC 318 has lucidly explained the scope and significance of the proviso to Section 6(a) of the Hindu Minority and Guardianship Act, 1956, and observed as under :

"10. Section 6 of the HMG Act is of seminal importance. It reiterates Section 4(b) and again clarifies that guardianship covers both the person as well as the property of the minor; and then controversially states that the father and after him the mother shall be the natural guardian of a Hindu. Having said so, it immediately provides that the custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother. The significance and amplitude of the proviso has been fully clarified by the decisions of this Court and very briefly stated, a proviso is in the nature of an exception to what has earlier been generally prescribed. The use of the word "ordinarily" cannot be overemphasised. It ordains a presumption, albeit a rebuttable one, in favour of the mother. The learned Single Judge appears to have lost sight of the significance of the use of the word "ordinarily" inasmuch as he has observed in para 13 of the impugned order that the Mother has not established her suitability to be granted interim custody of Thalbir who at that point in time was an infant. The proviso places the onus on the father to prove that it is not in the welfare of the infant child to be placed in the custody of his/her mother. The wisdom of Parliament or the legislature should not be trifled away by a curial interpretation which virtually nullifies the spirit of the enactment."

30. In the present case, the petitioner-father has failed to demonstrate any material on record to rebut the statutory

presumption in favour of the respondent–mother. On the contrary, the material placed on record indicates that the respondent–mother is gainfully employed, financially independent, and capable of taking proper care of the minor child, who is of tender age and is suffering from bilateral severe hydronephrosis, requiring constant care and medical attention. The judgments relied upon by the petitioner – father, does not apply in the facts of the present case.

31. The visitation rights granted to the petitioner–father sufficiently protect his right to interact with the child and ensure emotional bonding. The orders passed by the learned Magistrate as well as the learned Appellate Court strike a just balance between the welfare of the child and the rights of both parents.

32. Thus, upon an overall consideration of the facts of the case, the statutory provisions, and the settled legal position governing custody of minor children, this Court does not find any perversity, illegality, or jurisdictional error in the impugned orders warranting interference in exercise of powers under Articles 226 and 227 of the Constitution of India.

33. Consequently, this Court is not inclined to entertain the present writ petition. The writ petition is devoid of merit and substance and is therefore **dismissed**.

34. At this stage, it is also necessary to take note of the conduct of the petitioner–father. A perusal of the order dated 28.02.2025 passed by the learned Judicial Magistrate First Class, Court No. 5, Nanded, in P.W.D.VA. No. 52 of 2024 would show that the petitioner was directed to hand over the custody of the minor child to the respondent–mother within a period of fifteen days from the date of the said order. However, the petitioner preferred an appeal and, during the pendency of the appeal, the operation of the said order remained stayed. Consequently, the custody of the child was not handed over to the respondent–mother. After dismissal of the appeal, the learned Appellate Court, by order dated 25.08.2025, continued the interim protection till 22.09.2025. The office note further reflects that during the pendency of the present writ petition, there was no specific interim relief granted by this Court initially. However, vide order dated 30.09.2025, interim relief was directed to continue. Thus, the petitioner continued to retain custody of the child during the pendency of these proceedings.

35. In view of dismissal of the writ petition, the interim relief, if any, stands vacated. The petitioner is directed to hand over the custody of the minor child to the respondent–mother within a period of fifteen (15) days from the date of passing of this order.

36. However, insofar as visitation rights of the petitioner–father are concerned, the same are modified as under :-

A) In addition to the visitation rights on each Sunday of every month between 12.00 noon and 04.00 p.m., it is further directed that twice in every month, the respondent–mother shall permit the minor child to visit the petitioner–father from 08.00 a.m. to 08.00 p.m. on dates to be fixed by the petitioner–father after due prior intimation to the respondent–mother. On such days, the petitioner–father shall take custody of the child from Bhagyanagar Police Station, Nanded, at 08.00 a.m. and shall return the child to the same place at 08.00 p.m., without fail.

(MEHROZ K. PATHAN)
JUDGE

37. After pronouncement of the order, learned counsel for the petitioner seeks continuation of the interim order, contending that the interim relief was operating both before the learned Sessions Court in appeal and before this Court. However, it is noted that the learned JMFC had granted interim custody of the minor child to the respondent–mother and directed that the custody be handed over within a period of fifteen days. The said direction has not been

complied with by the petitioner–father, thereby depriving the minor child, aged below five years, of maternal care and affection. Taking into consideration the paramount consideration of the welfare of the child, I am not inclined to continue the interim relief. Hence, the prayer for continuation of interim relief is hereby rejected.

(MEHROZ K. PATHAN)
JUDGE