

Criminal Motion No. 253 of 2025.

CNR No. WBSP010114752025

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West Bengal Form No. 3386
High Court /criminal Form No. (M) 17

HEADING OF JUDGMENT OF APPELLATE COURT
Court of Sessions/Magistrate Appellate Jurisdiction .

In the Court of Additional Sessions Judge,
Fast Track 4th Court, Alipore, South 24 Parganas

Present: Himanil Bhattacharjee (JO CODE : WB01082)
Additional Sessions Judge,
4th Fast Track Court, Alipore.
South 24 Parganas,

CRIMINAL MOTION No. 253 OF 2025
CNR No. *WBSP010114752025*

Criminal Motion U/Sec. 438/440 of the
Bharatiya Nagarik Suraksha Sanhita,
2023 against the Order dated
06.06.2025 passed by the Court of the
Ld. J.M., 9th Court, Alipore, South 24-
Parganas, in connection with ACM
No. 607 of 2024.

Presented on : 11-08-2025
Registered on : 11-08-2025
Finally heard on : 08-07-2026
Decided on : 08-07-2026
Duration : 10 months, 28 days

Suman Naskar ... Petitioner.

Vs.

- 1. Sneha Naskar.**
- 2. State of West Bengal ... Opposite Parties.**

Ld. Advocate for the Petitioner Smt. Arpita Pal
Ld. Advocate for the Respondent No.1 Sri Amitabha Ray.
Ld. P.P. in-charge for Respondent No.2 Sri. Gautam Kansari.

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J U D G M E N T

1. The present Motion has been filed by the Petitioner challenging the correctness of the impugned order dated 06.06.2025 in connection with ACM 607 of 2024 passed by the Ld. Trial Court i.e. Ld. 9th Judicial Magistrate, Alipore whereby the said Ld. Court has been pleased to dispose of the application for interim maintenance under section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short BNSS) by directing the Petitioner/husband (OP before the Ld. Trial Court) to pay Rs. 20,000/- per month as interim maintenance to the Respondent no.1/ wife (Petitioner before the Ld. Trial Court) with effect from 09.07.2024 i.e. date of filing of the case. The Petitioner herein is aggrieved by such order as he claims that the Ld. Trial Court has failed to appreciate the settled proposition of law and did not assign proper reasons for passing the impugned order, rather, the impugned order has been passed arbitrarily.

2. The opposite party no.1 has contested the Motion, she has supported the impugned order and has contended that there is no ground for interference with the same.

3. The State of West Bengal was represented by the Ld. P.P. in-charge, but at the time of hearing, Ld. P.P. in-charge was not present.

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Backdrop

4. The facts of the present case are not required to be discussed in detail for the purpose of the present motion the scope of which is very narrow. The Respondent no.1 filed an application for maintenance before the Ld. Trial Court invoking jurisdiction under section 144 of BNSS claiming herself to be the legally married wife of the Petitioner; she alleged that she had been tortured at the hands of Petitioner forcing her to live separately from her husband. She contended that she had no income of her own, whereas, the Petitioner was earning Rs.1,25,000/- per month from working as a Manager under a builder, from his own business of Real Estate Brokerage, from supervising a kerosene oil dealership and from his four shop rooms, and yet, he did not provide any maintenance to her. The Petitioner as the OP contested the said case claiming that there was no torture upon the Respondent no.1 and she was residing separately without any reason. It has also been contended by the Petitioner that he only earns Rs. 12,000/- per month as an employee to a private concern; he denied his income as projected by the Respondent no.1.

Submissions by the parties

5. Ld. Advocate appearing for the petitioner has submitted that the Ld. Trial Court has committed error by not recognizing that the parties only lived together for

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about four months out of which also, the Respondent no.1 resided in her father's house for 2½ months. The Ld. Trial Court also did not consider that the Respondent no.1 in her affidavit of assets and liabilities has given an inflated account of expenditure and a single lady cannot have such expenditure. She has also submitted that the Ld. Trial Court has blindly believed that statements made by the Respondent no.1 in her affidavit of assets and liabilities regarding the income of the Petitioner/husband while totally disregarding the affidavit of assets and liabilities of the Petitioner/husband without recording any reason for doing so. She has submitted that the Petitioner/husband does not even earn Rs. 20,000/- per month, therefore, it is beyond his capacity to pay Rs. 20,000/- per month as maintenance to the Respondent no.1. She has further submitted that the Petitioner is even struggling to pay Rs. 5,000/- per month to the Respondent no.1 as per direction of the Ld. District Judge, South 24 Parganas passed in connection with this case while granting an order of stay upon the impugned order. She has therefore prayed that the impugned order should be set aside for the ends of justice.

6. On the other hand, Ld. Advocate of the opposite party No.1 has submitted that the Petitioner/husband is an wealthy person and he has suppressed his actual income before the Court. He has further submitted that it was due to the torture upon the Respondent no.1 by the Petitioner in

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her matrimonial house that the Respondent no.1 had to be rescued by her father, or else, the Respondent no.1 could have been killed on demand of Rs. 2,00,000/-. His further point of argument was that the Petitioner/husband has not filed any document to establish his income which shows his intention to suppress his actual income. He further submitted that the Respondent no.1 is entitled to a life style that she would have had she been residing with her husband, therefore, the maintenance is not for the bare necessities, rather, it should be sufficient to enable the Respondent no.1 to maintain the same life style. Accordingly, the Ld. Advocate of the Respondent no.1 has argued that the amount of maintenance adjudicated by the Ld. Trial Court is perfectly fine and there is no reason to interfere with the same. Thus, the Ld. Advocate of the Respondent no.1 has prayed for dismissal of the present Motion and for confirming the order passed by the Ld. Trial Court.

Decision with Reasons

7. I have carefully gone through the materials on record including certified copy of the impugned order and also the respective affidavit of assets and liabilities filed by the parties.

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8. It appears to me that the Ld. Trial Court recorded a correct prima facie finding to the effect that the marriage between the parties being admitted and the allegations and counter allegations brought by the parties against each other being matters of trial, at this stage, there is a need of grant of interim relief to protect the Respondent no.1 from starvation and vagrancy. The Petitioner/husband has not claimed that the Respondent no.1 has any income of her own. Therefore, I am of the view that the Ld. Trial Court's decision to grant interim maintenance to the Respondent no.1 pending the trial is well founded and does not call for any interference. Similarly, the decision of the Ld. Trial Court to give the order of interim maintenance effect from the date of filing of the case is in line with the settled principles of law in this regard and the same also cannot be said to be faulty.

9. Coming to the quantification of the maintenance, I find that the Ld. Trial Court has not given any reason as to why he fixed Rs. 20,000/- per month to be just and sufficient for the Respondent no.1. The Respondent no.1 claimed that the Petitioner had income of Rs. 1,25,000/- per month, whereas, the Petitioner claimed that he earned Rs. 12,000/- per month. Clearly the Ld. Trial Court disbelieved the Petitioner and went with the statement of the Respondent no.1 while fixing the amount of maintenance to be paid by the Petitioner. While there is presumption that

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an able bodied person has the means to maintain his dependent wife, there is no presumption as to the quantum of his income per month. At this stage, the Respondent no.1 has not filed any document to show that the Petitioner has any business of his own; she has also not filed any document to show that he has any landed property, such as shop rooms, recorded in his name. Attempt of exaggerating the income of the husband by the wife in maintenance proceeding to have favourable order is not unheard of, rather, it is a subterfuge which is very commonly resorted to. Therefore, there is every reason to take such statement with a grain of salt.

10. Moreover, in her affidavit of assets and liabilities, the Respondent no.1 has stated that her total monthly expenditure is Rs. 18,198/- including litigation cost of Rs. 4,000/- and Rs. 10,000/- per month towards groceries, food items, personal care and clothing; but the Ld. Trial Court allowed maintenance of Rs. 20,000/- per month which is in excess of the expenditure claimed by the Respondent no.1 herself.

11. At this stage, the Petitioner also has not filed any document to establish his monthly income. He has not filed any document to show that the businesses claimed to be his own by the Respondent no.1 are businesses belonging to his father and uncle as submitted by Ld. Advocate of the Petitioner at the time of hearing. It appears prima facie that

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both the parties have tried their level best to distort actual facts to their own advantage. Nevertheless, the Court must be circumspect so that its decision is not based on conjecture and surmises. Objectively speaking, when the actual income of the Petitioner has not come before the Court at this stage from either side, the amount of maintenance should be fixed based on market price of essential commodities that are necessary for the basic human survival. Keeping in view the same, I think an amount of Rs. 6,000/- per month should be adequate for the petitioner for her basic needs, while, it would not be over burden for the Petitioner/husband under any circumstances.

12. Accordingly, I must hold that the impugned order cannot be maintained and should be set aside for the ends of justice.

9. Hence, it is

ORDERED

That the Criminal Motion No.253 of 2025 is hereby allowed on contest but in part and without any cost.

10. The impugned Order dated 06.06.2025 passed by the Court of the Ld. J.M., 9th Court, Alipore, South 24-Parganas, in connection with ACM No. 607 of 2024 is

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hereby partly modified to the effect that the Petitioner/husband shall pay an amount of Rs. 6,000/- per month to the Respondent no.1/wife as her monthly interim maintenance with effect from 09.07.2024 till disposal of ACM No. 607 of 2024. The other parts of the said impugned order shall remain unaltered.

11. The arrear amount as may be calculated shall have to be paid within three months from this order, in default, the Respondent no.1 may bring appropriate proceeding before the Ld. Trial Court for realizing the same.

12. Ld. Trial Court is directed to proceed with the trial of the said case in accordance with law as expeditiously as the business of the said Ld. Court permits.

13. Let a copy of this Judgment be sent to the Ld. Trial Court for information.

14. Copy of the Judgment be uploaded in the CIS.

15. The case is thus disposed of.

Dictated & Corrected by me

Additional Sessions Judge,
4th Fast Track Court, Alipore,
South 24 Parganas

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