

CRIMINAL MISC. APPLICATION - J - NO.: 261 OF 2024.

ORDER BELOW APPLICATION - EXH.: 36.

- 1.This application is at the instance of the applicant, after adducing evidence and at the stage of cross examination of applicant, claiming interim maintenance, pending hearing and final disposal of the application filed invoking provisions of section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023.
- 2.In the main application, applicant has claimed Rs.50,000=00 per month.
- 3.By way of present application, applicant has claimed, by way of interim maintenance, same Rs.40,000=00 per month and Rs. 2,000=00 towards travelling expenses as well as litigation expenses for each date of attendance in this proceeding.
- 4.So far as question of awarding travelling expenses as well as litigation expenses are concerned; same is beyond scope of provisions contained in section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023; as same would fall within

domain of section 24 of Hindu Marriages Act, 1955. At the most in present application, this court can award cost of present application.

5. The other side is duly served with notice of present application and Respondent has preferred not to file any reply of this application; however he has through his legal counsel has declared vide Purshish - **Exh.: 45** - to the effect reply of main application be treated as his reply to this application.
6. On going through record it is seen that, applicant has adduced her evidence on 23.04.2025 - **Exh.: 22** - and additional examination-in-chief at **Exh.: 31** on 19.07.2025 after filing of reply - **Exh.: 28-A** - by Respondent and matter is pending at the stage of cross examination since then.
7. As such in application of this nature, there would hardly be any witness and if at all any witness are to be examined then same would not be more than 1 or 2, as such matter is likely to be finally disposed of in very near future.
8. I have heard Ld. Counsels for the parties and have gone through reply - **Exh.: 28-A**; wherein except their matrimonial relation all other

allegations are totally denied and there are counter allegation against applicant.

9. Having gone through record; there is no dispute about the fact that, parties are wife and husband and their marriage is solemnized on 16.02.2024 at Vyara and present application is filed on 29.11.2024 as such their matrimonial life is of not even 01 year as on the date of filing of present application. As per her application she has returned to India on 25.10.2024 as such parties are not residing together since then. As such going by this fact it can be seen that, parties have resided lived one roof/together for 08 months only.

10. There is no dispute or denial as to matrimonial relationship between parties; however it appears that, serious questions of both fact and law are involved in it and this court after recording evidence of both parties is required to record findings as to whether applicant is voluntarily residing separately or is compelled to reside separate due to ill treatment of Respondent that to at USA - outside India and who is at fault. The applicant has not stated as to under what circumstances as well as at whose cost and

expenses she has come to India and who accompanied her to India.

11. Both parties have placed on voluminous documents in the form of photographs, prima facie indicating violence on their body; again that would be question of evidence as to whether same are inflicted by other side and/or self inflicted to create evidence against each other. As already stated herein above, as matter is already ripe for cross examination and evidence of applicant is already on record; therefore, now it is question of few months, if not days, for culmination of evidence. Even otherwise as amount claimed in main application as well as in interim application is more or less same; therefore, also if this application is allowed then, question of taking evidence and evaluating it would be nothing but futile exercise.

1. The Respondent has not placed on record requisite affidavit as per guideline laid down in the case of **Rajnish Vs. Neha & Ors. [Criminal Appeal No.: 730 of 2020]** wherein by Order dated: 04.11.2020 parties to litigations claiming maintenance under different statutes are required to place on record, by way of affidavit, their source of income as well as

assets and liabilities; for same adverse inference can be drawn against him.

12. At the same from the affidavit placed on record by the applicant at Exh.: 24 it is evident that, she is well educated having educational qualification of B. Pharm. & MBA and from the statement of bank account maintained with Bank of Baroda it is seen that, there is no regular source of income however she is spending huge amount and appears to be living a lavish life as she has made payments to Starbucks, different super markets as well as for fueling vehicle in different cities of Gujarat State; as such prima facie it appears that she is able to maintain herself independently and accordingly she has managed her affairs for about 1 year.

13. Even otherwise as matter is pending since November, 2024 and according to applicant's own version she is residing separately since 25.10.2024 i.e. about 01 years and she is able to manage her affairs since then and she is also able to engage private lawyers and she has preferred not to file application for interim maintenance at the time of filing of main application is indicative of the fact that she is able to manage her affairs independently and in

fact managed it for about 01 year; therefore, I see no reason to award interim maintenance at this stage as she can always wait for some more months.

14. If any maintenance is awarded by way of interim arrangement, then, it is likely that, parties may resort to delaying tactics by way of filing appeal/revision and/or application for recovering amount and under pretext of non-payment of due and outstanding amount, applicant may not permit respondent to cross examine her; hence without pondering into any other aspects of the issues involved in this case; following order is passed:

:::: O R D E R ::::

Application is rejected with no orders as to cost.

PRONOUNCED IN OPEN COURT ON THIS 06TH DAY OF OCTOBER, 2025 AT TAPI @ VYARA.

[RAVICHANDRAN PERIYASWAMY DAVENDRA],
ADDL. CHIEF JUDICIAL MAGISTRATE,
TAPI @ VYARA [GJ-00459]