

**CRI.M.A.NO.132/2024**  
**Roshani Surjit Shirole**  
**Vs.Surjit Bansi Shirole**

**ORDER BELOW EXH.10**

1. The applicant has filed present application for the custody of her son Vikrampratap Sinh Section 21 of the Domestic Violence Act, 2005.

2. Applicant submitted that her marriage was solemnized on 21.11.2022 with opponent. After some time, opponent started giving illtreatment to her. She has one son namely Vikrampratap Sinh out of said wedlock. Opponent has illicit relationship with the woman. He always threatened the applicant. She further submitted that on 27.5.2024, opponent No.1 hold her son with him and thrown the applicant out of matrimonial house. Opponent want to divorce from the applicant and so, he hold her son with him. At the time of filing of application, age of son was 9 months. Today, the age of son is one and half year. So, he is in need of love, care and affection of his mother. So, applicant prayed for custody of her son.

3. Opponent has filed his say at Exh.16. Opponent admitted relationship with applicant and her son. He submitted that application is not tenable. Applicant has suppressed material facts from the court. Applicant used to demand to live separate from the opponent. She is the follower of Christianity. He further submitted that applicant mentally affected and taking treatment in the hospital. After marriage, opponent got the information about mental condition of applicant. Applicant has no love and affection of her son. On 26.12.2023, applicant herself left the house and filed forged NC against the opponent. She has voluntarily deserted opponent and her son. After December 2023 till filing of this application, she never inquired about her son. Opponent is capable to take

care of son Vikrampratapsinh. Applicant is mentally unfit, so it is not just and proper to handover the custody to the applicant. If custody of son is handed over to applicant, then the life of his son will come in danger. Hence, prayed for rejection of the application.

4. Considering the allegations made by the parties and perusal of application and say, following points arise for my determination for reasons recorded there under:

<b>Sr.No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether the applicant prima facie prove that... she subjected to domestic violence by the opponents ?	Yes.
2.	Whether applicant is entitled for the custody of... child ?	Yes.
3.	What order ?	... As per final order.

### REASONS

#### As to Point No.01:

5. Applicant has stated various instances of domestic violence regarding physical and mental abuses in Domestic Incident Report. Even though all allegations have been denied by opponents, it prima facie appears from the avernments in Domestic Incident Report that she is residing separately due to domestic violence caused to her from the respondents no. 1 to 03. However, the report of protection officer and affidavit (Exh.04) filed by the applicant reveals that opponents no. 1 to 3 caused domestic violence to the applicant. This fact is sufficient to establish that prima facie, applicant have been subjected to domestic violence, at the hands of opponents. Moreover, opponents no.01 to 03 are not allowing the applicant custody of the child this obviously would amount to mental abuse of applicant as contemplated in the definition of domestic violence in the Protection of Women from Domestic Violence Act.

I hold that applicant is prima facie victim of Domestic Violence. Hence, I given answer of point No.1 accordingly.

**As to point No.02:**

6. Applicant has prayed custody of her child from the opponent. As per contention of applicant, the age of her son Vikrampratapsinh is 9 months and 8 days at the time of application. The relationship and age of child is admitted by the opponent. He is now one and half year old. Considering tender age of son Vikrampratapsinh, he is in need of love and affection of his mother. Opponent opposed application on the ground that applicant has voluntarily left the house and she is not mentally fit to maintain the son Vikrampratapsinh. But opponent has not brought on record documentary evidence which shows that applicant is mentally unfit and incapable to maintain her child. The welfare of the child is paramount consideration while deciding custody of child. Now, in such a tender age, child needs love, care and affection of mother. In the interest of child, it is necessary that the custody should be handed over to the applicant.

7. In **Tejaswini Gaud and Ors. Vs. Shekhar Jagdish Prasad Tewari and Others, Criminal Appeal No.838 of 2019 (Arising out of SLP[CNR NO. MHTH13-005372-2017] (Cri.) No.1675/2019), decided on 6th May 2019,** the Hon'ble Supreme Court held that; Welfare of the minor child is the paramount consideration:- “The court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes govern the rights of the parents or guardians, but the welfare of the minor is the supreme consideration in cases concerning custody of the minor child. The paramount consideration for the court ought to be child interest and welfare of the child.” (para No.25).

8. As per Section 21 of the Domestic Violence Act, 2005, “

Magistrate may any stage of hearing of application or any relief, grant temporary custody of any child or children to the aggrieved person or to the person making an application on her behalf ”. In the light of above provision applicant is entitled to get temporary custody of her son Vikrampratapsinh.

**: ORDER :**

1. The application is allowed.
2. Opponent No.1 is directed to handover the temporary custody of son Vikrampratapsinh to the applicant within two week from the date of this order, till the disposal of the main application.
3. Copy of this order be sent to the Protection Officer and concerned Police Station.

Place : Parner  
Date : 04/04/2025.

(Shital C. Salvi)  
Judicial Magistrate, First Class,  
Court No. 2, Parner.