

MHDH040000642026

P.W.D.V.M.A. No. 07 of 2026



Puja Suraj @ Suresh Dhilor

Vs.

Suraj @ Suresh Siyanand Dhilor

ORDER BELW EXH.1**(Passed on 06.04.2026)**

This is an application filed by the applicant no.1 under section 21 read with section 23 of the Protection of Women from Domestic Violence Act, 2005 for obtaining temporary custody order of the child namely Rudra.

02. It is alleged by the applicant that, the applicant no. 1 and the respondent were married on 12/05/2023. The respondent is employed as a sanitation worker in the Malegaon Municipal Corporation and is addicted to alcohol. Due to his addiction, he used to physically assault the applicant no.1 and demand money from her. In these circumstances, on 04/05/2024, a male child named Rudra was born. The said child is still on breastfeeding. On 23/02/2026, when the applicant no. 1 had gone to her uncle's residence, at that time applicant no.2 was in Dondaicha with respondent. Thereafter, she returned to Dondaicha and found that Rudra was missing. The respondent's mobile phone was also switched off at that time. Subsequently, the applicant came to know that the respondent had taken Rudra to Malegaon. Thereafter, the respondent started demanding money from the applicant in exchange for allowing her to see the child. On the following day, when the applicant along with her parents went to meet

Rudra. She went to Chhavani Police Station alongwith her parents. The police called respondent and his father, they came there and the respondent refused to allow the applicant no.1 to meet the child and created a disturbance at the police station.

03. Applicant further submitted that, the respondent is employed but is addicted to alcohol and is incapable of fulfilling the regular needs of the minor child. Rudra is accustomed to his mother and cannot live without her. The respondent has wrongfully detained the child and is harassing the applicant for money. There is a serious apprehension of danger to the life and well-being of Rudra at the hands of the respondent, and there is a likelihood that the child may suffer neglect and starvation. The respondent's parents are also not taking proper care or responsibility for the minor child. Previously, the applicant had filed an application under Section 100 of the B.N.S.S.; however, the same was rejected. Nevertheless, considering the deteriorating condition of the child, it is necessary that custody of the minor child be granted to the applicant no.1. Therefore, the applicant has prayed that, the present application be allowed and that custody of the minor child be handed over to her.

04. As against this, the respondent has filed their say at Exh. 14 and contended that, the description of Rudra as applicant no. 2 is incorrect. As Rudra is a minor and not competent to act independently, he has no legal capacity to seek an order for being handed over to the custody of applicant no. 1. The applicant no.1 has neglected the day-to-day needs of Rudra. The respondent works on daily wages as a labour and maintains his family. The respondent resides in a joint family consisting of his parents, brother, sister-in-law, and his brother's children, and the said family members are taking proper care of Rudra.

On the contrary, the applicant no.1 remains away throughout the day for labour work, and therefore, Rudra would be deprived of maternal care in her custody. When the applicant had come to her parental home, she was requested to return to her matrimonial home; however, she instead asked that the child be sent along with her. Consequently, under compelling circumstances, the respondent took Rudra to Malegaon. Rudra is no longer a breastfeeding infant and consumes regular food such as chapati, rice, milk, biscuits, and fruits. He is safe and well in the custody of the respondent.

05. Respondent further contended that, previously also, the applicant had filed a false application seeking custody of the child, which was rejected by the Court. As per the provisions of section 6(a) of the Hindu Minority and Guardianship Act, the father is the natural guardian, and after him, the mother. Therefore, the custody of Rudra with the respondent is lawful. On these grounds, it is prayed that the application filed by the applicant be dismissed with costs.

06. In view of above contentions, following points arise for my determination to which I have recorded my findings with reasons as under:-

<u>Sr.</u> <u>No.</u>	<u>Points</u>	<u>Finding</u>
1.	Whether applicant is entitled to get temporary custody of child as prayed for?	In affirmative
2.	What order?	As per final order

REASONS

07. Before considering the merits of the present application it is necessary to consider section 21 of the Protection of Women from Domestic Violence Act, 2005. Section 21 provides that, *“Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:*

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit”.

08. Therefore, in view of above provision it is necessary to see whether applicant no.1 is entitled to get the temporary custody of child Rudra. At the same time, it is also necessary to see the best interest of child. The respondent has filed his written statement as well as reply to this application at Exh.14. The Ld. Advocate for the respondent Shri. M. B. Rupchandi has argued that respondent is the natural guardian of the child Rudra being his father. The present application is not maintainable. The applicant must have filed the application for custody of child under Hindu Minority and Guardian Act, 1956. He prayed for rejection of the application. He has also relied on citations laid down by Hon'ble Supreme Court and Hon'ble High Court in **Ramesh V. Laxmi Bai reported in (1998) 9 SCC 266, Anil s/o Baburao Angalwar V. Smt. Cynthai Bernard Samuel w/o Anil Baburao Angalwar Cr. Writ Petition**

No. 84 of 2007 and **Pramod Kamble V. Jyoti Kamble and Anr.** Perused the above-mentioned citations, all are on point of wrongful confinement made under section 97 of Cr.P.C. Hence, the said citations would not be helpful to the respondent.

09. The Ld. Advocate for the applicant Shri. N. P. Ayachit has argued that, the respondent does job and he stays outside his house. Nobody is there to look after the child Rudra. On the contrary, it is argued by the Ld. Advocate for the respondent Shri. M. B. Rupchandi, that the respondent does not goes to job he works on daily wages as a labour and the in laws of the applicant no.1 takes good care of child Rudra. Here, it is important to note that, the protection and care which a mother would be able to provide at such a young age cannot be compared with the love and affection provided by any of relative. In such circumstances, in my opinion placing child beyond the reach of mother is prima-facie abuse caused against a mother. The applicant no.2 child Rudra is just of 19 months old. He needs the care and protection of his mother being a 19 months child.

10. Further, it is also argued by the Ld. Advocate for the respondent that, the present application is not maintainable and if the interim prayer is granted the main application will become infructuous. However, here, it is important to note, the main application is filed under section 12 of D.V. Act and the prayer made under Exh. 05 is interim under section 23 of the Act. Moreover, keeping child welfare as paramount consideration. The application needs to be allowed at this stage. Further, the main application will be decided on merits.

11. Further, the child namely Rudra is milk sucking child. The modern Medical Science says that, breastfeeding is the best way to give babies all the necessary nutrients and antibodies, which provide a vital shield of protection; the experts in the field of neo-natal science are of a considered opinion that the interaction between the lactating mother and the suckling infant involves a world of messages, which is essential for the intellectual and emotional development of the child. Here the child is just 19 months old. The welfare of child is a paramount consideration. It would be worthwhile to make reference of the authority of **Hon'ble Karnataka High Court in the case of Smt. Husnabano V.S. State of Karnataka in Writ Petition No. 16729/2021** in which Karanata High Court held that, *“Breastfeeding is an inalienable right of lactating mothers and this important attribute of motherhood is protected under the umbrella of fundamental rights guaranteed under Article 21 of Constitution of India.”*

12. Considering the above-mentioned observation, breast feeding is a fundamental right of mother and vital right of child which directly linked to the child's health and development. Public health authorities recommend in multiple occasions continue breast feeding up to two years or beyond in exception. Thus, for a child of 19 months, deprivation of maternal care and breast feeding is not merely custodial dispute but a matter directly affecting the child's immediate welfare.

13. Where a breast-feeding infant is kept in custody of father like in the present case to the exclusion of the mother and without her consent the child is effectively restrained from being with the lawful guardian which she ought to have been with and from accessing natural nourishment. Further, here conduct of the must also be

considered, the respondent was also directed to keep child Rudra present before the court 09.03.2026 and on 13.03.2026 as matter was referred to mediation but the respondent has not brought the child before the Court till date. In the present case, considering the tendered age of 19 months of child and also the applicant placed sufficient material showing that child is being breastfed and was forcibly kept away from her. The respondent has not produced any cogent material to justifies such deprivation. Therefore, prima-facie it appears that, best interest of child rests with her mother i.e, with the applicant. The age of child Rudra is 19 months only. More so, he is milk sucking child and he needs care and love of his mother. The aggrieved person i.e. applicant is residing at her parental house. She is ready to take care of child. Therefore, it will be appropriate to grant the temporary custody to the applicant for best interest of the child Rudra. Hence, application deserves to be allowed. Therefore, I answer Point no. 1 in affirmative and for Point no. 2, this Court passes the following order;

<u>::O R D E R::</u>	
1.	The application is partly allowed.
2.	The respondent is directed to handover the temporary custody of the minor child namely Rudra to the applicant forthwith, till disposal of the case.
3.	The Protection Officer of Malegaon is directed to assist the applicant for implementing the order.

4.	The copy of this order be given free of cost to both parties and concern police station.
5.	Also copy of order be sent to the Protection Officer, Malegaon for further necessary action.
6.	It is clarified by this Court, this order temporary in nature passed under section 21 read with section 23 for the immediate welfare of the sucking child. It does not decide questions of permanent custody of guardianship which remain open to be placed before the competent civil Court.

Sd/-

(R. D. Pawar)

Judicial Magistrate F.C.

(Court No. 02), Dondaicha

Dated: 06.04.2026

Dondaicha

CERTIFICATE

I certify that, the contents of this PDF File are word to word as per Original Order.

Name of the stenographer : Sunil D. Masule,

Name of the Court : Jt. Civil Judge J. D. & J. M. F. C.,
Dondaicha, Tal. Shindkheda, Dist.
Dhule

PDF Uploading Date : 06.04.2026

Sd/-

Stenographer