



P. W. D.V. A. No. 30/2024  
Pranali -vs- Sandip

**ORDER PASSED BELOW EXH. 22**  
**(Dt. 15/02/2025)**

The present application has been filed by the non-applicant under Section 21 r.w Section 23 of the Protection of Women from Domestic Violence Act of 2005 (in short 'the Act'). The application has been opposed by the applicant by filing her say at Exh.24.

2. Perused the application and reply thereon. Heard both the parties.

3. Ld. Adv. Shri. Barsinghe appearing for the non-applicant submitted that non-applicant is the natural guardian of his children Saksham and Sara. Children are residing with applicant no.1 at her maternal home. He is being deprived of the love and affection of his children. He has tried multiple times to meet his children but applicant is denying the meet. Hence, the application may kindly be allowed.

4. *Per contra*, Ld. Adv. Shri Undirwade for the applicant urged that non-applicant is in a habit of consuming liquor and gambling. He always abuses applicant and her parents in person or on phone call. He is not in a position to take proper care towards upbringing of the children. Both the children are of tender age. They are afraid of their

father. Applicant is residing at her maternal home and looking after the needs of the children Saksham and Sara. If visitation right is granted, it may be harmful to the interest of the children. Hence, the application may kindly be rejected.

5. Perused the record. Considered the submissions of both the parties.

6. It appears that the parties solemnised marriage on 20/08/2016. They have two children Saksham and Sara. Saksham was born on 06.09.2017 whereas Sara took birth on 08/06/2020 out of the marriage between the applicant no.1 and non-applicant. Saksham and Sara are 8 and 5 years old respectively. As such, they are of tender age. A child born to a couple is the responsibility of both of them and neither can exclude or singularly claim entire rights and obligations over the child. It is the natural result that mother and father both should be presumed to have constructive custody of the child so that both can contribute towards his upbringing. It is immaterial as to with whom the actual physical custody lies at a given point of time, constructive custody always remains in both of them. With the aforesaid in mind, it is necessary to appreciate the dispute projected in the present application.

7. Section-21 of the DV Act provides as follows:

"21. Custody orders.- 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".

8. The aforesaid provision shows that a discretionary power has been given to the Magistrate to grant temporary custody of the child to the aggrieved person (normally a mother of the child) and simultaneously Magistrate has also been given another discretionary power to specify if the father will have any visitation rights or not. The proviso appended thereto indicates that if the visitation may result in any harmful effect on the child, the Magistrate is bound to decline the right of visitation. Meaning thereby that unless the Magistrate forms an opinion about harmful effect of visitation, she cannot refuse the visitation by the father.

9. In the present case, the non-applicant has not specifically pressed for custody of children since the children are already in complainant's custody. The non-applicant merely sought visitation of the children. As discussed earlier, both the children are of tender age. In case the visitation right is not given to non-applicant especially to the father, the minor children would be deprived of father's love and affection. The paramount consideration is welfare of the child. The endeavour for the Court should be to ensure that child gets love and affection of both the parents. If father is denied access to his children, it will not only be detrimental to father's rights but obviously it would have an effect on smooth and over all development of the child. Considering the tender

age of the child and his over all well being, if the child does not meet his father at this tender age, they will start to forget him. Affection of both father as well as mother is very crucial for the child and father should not be stopped from visiting his child only because child's parents unfortunately chose to enter into litigation. In the instant case, respondent is the biological father of the child. He is equally entitled to child's love and affection as that of the complainant.

10. So far as harmful effect of visit to the interest of the children is concerned, there is nothing on record to show that non-applicant has at anytime ill-treated his children except bare pleadings that non-applicant need not provide for the expenses incurred for the upbringing of the children. It is true that it is his moral and legal obligation to provide for the growth, development and upbringing of his children but the allegations made by applicant cannot prima facie amount to 'harmful effect of the visit to the interest of the children' in absence of cogent material. In this premise, the application deserves to be allowed. Hence, the following order:

### **ORDER**

1. The application is partly allowed on following conditions:-
  - a. The non-applicant is permitted to meet minors Saksham and Sara during 1:00pm to 5:00pm on every Sunday at the residence of non-applicant at Shivni, Dist.Gadchiroli.
  - b. The applicant namely, Pranali Dudhe shall drop minors Saksham and Sara at the residence of non-applicant namely Sandip Dudhe at Shivni, Dist. Gadchiroli at

1:00pm on every Sunday unless the circumstances permit otherwise.

- c. The non-applicant is permitted to take minors for outdoor tour during permitted time.
- d. The non-applicant shall not demand, ask or adjust any other day than Sunday for visitation of minors.
- e. The non-applicant shall peacefully return the custody of both minors to applicant or any person on her behalf at 5:00 pm after visitation time is over. The applicant shall take back the custody of minors.
- f. The non-applicant shall bear the costs of travel to and fro present residence of applicant to his residence at Shivni, Dist. Gadchiroli.
- g. The non-applicant shall not disturb the temporary custody of the minors Saksham and Sara granted to the applicant till the disposal of the main application of until further orders of the Court.

**2.** To understand this order in letter and spirit, a copy of this order be given to the parties, the SHO of Police Station, Gadchiroli and Protection officer as per S.24 of the Act.

**3.** Both the parties are directed to follow this order religiously and scrupulously.

Date: 15/02/2025

sd/-  
(S.A.Bhaisare)  
J.M.F.C.Gadchiroli.