

MHPU260085722025



**Order below Exh. 10 in PWDVA No 79/2025
(Ankita Vs. Salil)**

1. This is an application filed by respondent no. 1 for the visitation/access of applicant no. 2 Shreemayee to Respondent No. 1 Father, in the pending proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005.
2. Heard Learned Advocate Shri. A. N. Rajurkar for respondent no. 1 and Advocate Smt. P. J. Pardeshi for applicant.
3. The present proceeding filed by the applicant no. 1 who is the mother of the minor child 'Shreemayee' applicant no. 2 age 5 years has filed the present application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter, "the D.V. Act") against Respondent No. 1, the father of the child, alleging domestic violence and seeking reliefs including protection, residence and monetary relief under the Act. During the pendency of the main application, Respondent No. 1 has filed the present Interim Application under Section 21 of the D.V. Act, praying for an order permitting him visitation and access to meet the minor child, on the ground that he has been denied any opportunity to see or interact with the child since separation of the parties.
4. The Applicant has opposed the Interim Application, inter alia, on the ground that Respondent No. 1 is careless in his conduct and habits, that his character is not good, and that permitting access would not be conducive to the safety and welfare of the minor child. Respondent No. 1, in turn, disputes the allegations levelled against him and has, in his reply, made counter-allegations regarding the character and conduct of the Applicant no. 1.
5. Both parties have levelled allegations of bad character against each other. But, these allegations needs to be decided at the stage of final hearing and none of these allegations needs to

be decided at this interim stage.

6. The advocate for Respondent no. 1 has submitted that a father's right to the love, care and company of his minor child is a natural right, and denial of all access amounts to a serious deprivation both to the father and to the child. It is submitted that mere filing of a D.V. application, or unproved allegations of character, cannot by themselves operate as a bar to visitation. It is prayed that reasonable, periodic access be granted.

7. The advocate for applicant has submitted that Respondent No. 1 is careless and irresponsible in his conduct, behavior raise serious concern for the safety of a child of tender age (5 years), and that granting access, particularly unsupervised access, would expose the child to risk. It is further submitted that since serious and mutual allegations as to character are pending adjudication, the child's welfare, being of tender age, must be the predominant and overriding consideration, and any access order, if granted at all, should be closely regulated.

8. The section 21 of the Protection of Women from Domestic Violence Act, 2005 empowers the Magistrate to grant custody-related orders even at the interim stage of a domestic violence proceeding. The provision reads, in material part, that the Magistrate may, at any stage of the hearing of the application for protection order or any other relief, grant temporary custody of the child to the aggrieved person or the person making the application on her behalf, and may specify the arrangements for visit of the child by the respondent. The proviso to Section 21 casts an obligation on the Magistrate that where he is of the opinion that any visit by the respondent may be harmful to the interests of the child, the Magistrate shall refuse to allow such visit.

9. In **Rosy Jacob v. Jacob A. Chakramakkal**, (1973) 1 SCC 840 the **Hon'ble Supreme Court** held that the object of the welfare principle is to serve the interest and welfare of the minor, and that the court must be satisfied that the arrangement made would be conducive to the child's welfare.

10. In **Gaurav Nagpal v. Sumedha Nagpal**, (2009) 1 SCC 42 the **Hon'ble Supreme Court** held that the paramount consideration in matters of custody is the welfare of the minor and not the legal rights of the parents.

11. In **Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413** the **Hon'ble Supreme Court** held that, the moral and ethical background, conduct and character of the parent is a relevant factor, but it is relevant only to the extent it has a bearing on the welfare of the child.

12. In **Vikram Vir Vohra v. Shalini Bhalla, (2010) 4 SCC 409** the **Hon'ble Supreme Court** held that, visitation rights are meant to ensure that the child does not lose touch with the non-custodial parent, and that arrangements must be made keeping the child's comfort and welfare in mind, without completely severing the bond with either parent.

13. In **Yashita Sahu v. State of Rajasthan, (2020) 3 SCC 67** the **Hon'ble Supreme Court** held that, even where custody disputes are contested and allegations are levelled by parties against each other, the courts must ensure that, pending final adjudication, the child is not deprived of access to either parent, and reasonable interim visitation arrangements, including virtual/video-call access where physical access is not immediately feasible, should be worked out.

14. In **Kumar V. Jahgirdar v. Chethana Ramatheertha, (2004) 2 SCC 688** the **Hon'ble Supreme Court** held that, female child accompanied with mother and visitation rights to the natural father was just and proper.

15. It is well settled that in all matters concerning custody and access to a minor child, the welfare of the child is of paramount importance, and considerations of the legal rights of the parents are secondary to it. Considering the above authorities it is that mutual allegations of bad character or conduct between the parents, not disentitle a parent from access to the child. Such allegations, unless established and unless the Magistrate records a considered opinion that the visit would in fact be harmful to the child within the meaning of the proviso of Section 21, cannot operate as a complete bar to visitation. At the same time, given that the allegations are serious and remain to be tested, and having regard to the tender age of the child, it is necessary that access, if granted, be structured, supervised in the first instance, and made subject to review, rather than being unconditional or unsupervised.

16. Considering above discussion I conclude that, complete denial of access to the father is contrary to the welfare principle recognized in the decisions cited above, and would risk permanently affecting the child's relationship with her father. At the same time, having regard to the tender age of the child (5 years), the seriousness of the mutual allegations, and the fact that the parties have been living separately, I am coming to the view that unsupervised or unstructured access ought not to be granted at this stage. A calibrated, supervised visitation arrangement, subject to periodic review on the basis of actual experience, would best sub-serve the interest of the child while also protecting Respondent No. 1's right of access pending final adjudication of the main application. Hence, I pass following order,

Order

The application at Exh. 10 filed by Respondent No. 1 under Section 21 of the Protection of Women from Domestic Violence Act, 2005 is allowed in part, in the following terms:

(1) Respondents are permitted to meet and have physical access to the minor child 'Shreemayee' twice in a month, on the 2nd and 4th Sunday of every month, between 11:00 a.m. and 1:00 p.m., for a period of 6 months from the date of this order.

(2) Respondents are permitted to meet through virtual/video call access to the minor child 'Shreemayee' twice in a month, on the 1st, 3rd and 5th Sunday of every month, between 11:00 a.m. and 1:00 p.m., for a period of 6 months from the date of this order.

(3) The said physical meetings shall take place at neutral place to be specified, such as the office of the Protection Officer / Child Welfare venue or residence or any place which is mutually agreed relative and not at the residence of either party, unless the parties otherwise agree in writing.

(4) During the said period of 6 months, access shall be supervised, and the Applicant no. 1 or a responsible adult nominated by her and acceptable to the Court, shall remain present throughout the duration of each visit.

(5) Respondent No. 1 shall not, on any occasion, remove the child from the designated place of physical meeting, nor take the

child outside the said premises, without the prior written consent of the Applicant no. 1 or specific leave of this Court.

(6) Both parties are directed to refrain from raising or discussing the pending allegations, disputes, or litigation between them in the presence of the child, and shall ensure that the visitation is conducted in a manner that is not distressing or confusing to the child.

(7) The Protection Officer concerned is directed to make necessary arrangements to facilitate the said physical visits, to remain associated with at least the first two visits, and to submit a compliance/conduct report of physical visit to this Court on completion of 6 months from the date of this order.

(8) On expiry of the period of 6 months, and upon a report that the supervised visits have taken place without any complaint or incident detrimental to the child, either party shall be at liberty to apply for modification of this order, including for extension of the duration of visits, unsupervised access, or overnight/holiday access, as may be appropriate at that stage.

Place : Vadgaon Maval .

Date : 16/07/2026.

(S.P.Jadhav)

J.M.F.C Vadgaon Maval.