

MHRG120002492024



Cri.M.A./15/2024

Mahek Shaekh Vs. Sharuk Shekh

ORDER BELOW EXH.5

This is an application Under Section 23 of the Protection of Women from Domestic Violence Act, 2005 [for short “PWDV Act”] seeking interim direction to provide interim maintenance of Rs.10,000/- p.m. and Rs.1,00,000/-medical expenses of delivery.

2. Perused application and say filed by respondents. I have gone through the documents filed on record and counter-pleadings.

3. Considering the material brought on record, following points arise for my determination. Findings thereon are recorded for reasons discussed here under ;

| Sr. No. | Points | Findings |
|---------|--|--------------------------------|
| 1] | Whether this application prima facie discloses that respondents are committing, or have committed or there is a likelihood that they may commit an act of domestic violence against the applicant? | ..Yes. |
| 2] | Whether applicant is entitled for interim relief as claimed ? | ... Partly Yes. |
| 3] | What order ? | Application is partly allowed. |

REASONS

As to Point No.1 and 2 :-

4. As per pleadings of both the parties the relations between applicant

and respondents are not denied. As per pleading in the petition and present application marriage of applicant and respondent No.1 is solemnized on 10-11-2024. However, as per affidavit of asset and liability filed by both parties marriage of applicant and respondent No.1 is solemnized on 10-11-2023. Thus, the year of marriage in petition appears to be mentioned wrongly. As per pleadings of both parties it is admitted fact that wedlock of applicant and respondent No.1 is still in existence and they have no daughter from said wedlock. In paragraph 5 of application there is allegation that after 15-20 days of marriage respondent No.1 abused and drove applicant out of house in midnight at 12.00 hrs. It is also alleged that respondent No.1 to 4 threatened applicant At this stage there is no other evidence on record except pleading.

5. As per pleading in the affidavit of asset and liability at Exh. 40 applicant is residing separately with her daughter since 07-03-2024 whereas as per affidavit of asset and liability filed by respondent No.1 at Exh. 29 dated of separation is mentioned as 11-01-2024. Though, respondents pleaded different date of separation, it is not disputed by respondents that applicant is residing separately. As per recital in the pleading and affidavit of asset and liability, it appears that since the separate residence of applicant, respondent No.1 has not provided her any sort of maintenance. This certainly amounts to refusal as well as neglect on the part of respondent No.1 to ensure the living and to maintain applicant and her daughter. Such instance certainly fulfill the ingredients of the terms "Domestic Violence" as defined in section 3 of the Act. As the existence of 'domestic violence' is prima facie shown, lets shift the focus of discussion on whether applicant has any source of income.

6. As per pleading and affidavit of asset and liabilities filed by applicant, she is graduate and she has no source of income. Applicant and her daughter both are fully depended upon respondent No.1. Applicant has sought Rs.15,000/- towards their maintenance. However, applicant has not given details

of expenditure required. Applicant submitted that respondent No.1 serving as Salesman in Laptop company at Dubai and he earns Rs.70,000/- p.m. and he is able to provide maintenance to her. Applicant filed with List Exh.49 copy of bank statement which appears in the name of Sultana Muazzam Karbhari. On inquiring with applicant and her advocate they submitted that said statement is of applicant's mother's bank account. Applicant filed puris Exh.54 stating that respondent No.1 had sent Rs.5,000/- each in the month of January, February and March 2024 in account of applicant's mother. Therefore, applicant filed copy of said bank statement. Applicant filed with List Exh. 57 copy of her bank statement wherein there is no material amount deposit or balance.

7. It is the case of respondent No.1 that, he is 12th pass and he was working as Warehouse Assistant at U.A.E. His salary was 1500 Dharam (in Indian Rupees Rs.35,000/-)p.m. On 01-11-2025 respondent No.1 filed photo copy of his salary slip in support of his claim. In the application at Exh.46 respondent No.1 stated that at the time of filing of asset and liability he was working at Dubai. However, as he lost his said service now he is working at S.N.Auto Service since 15-09-2025 and at present his salary is Rs.12,000/- p.m. In the affidavit of asset and liability respondent No.1 shown his monthly expenditure as Rs.37,000/-. He also shown loan of Rs.90,000/- in liability column which was allegedly taken for his marriage. Respondent No.1 filed with pursis Exh.49 copy of his bank statement for 31 March 2023 to 15-09-2025. Perusal of said bank statement depicts that, there are deposits ranging from 4,200/- to 40,000/-. The bank statement did not show particular fix income as salary. At this stage it is not clear whether respondent No.1 was getting his salary in bank account or by cash. Respondent No.1 filed his appointment letter dated 29-10-2025 issued by S.N. Auto wherein his monthly salary shown as Rs.12,000/- p.m.

8. Learned advocate for respondents filed written argument at Exh. 53

as well as made oral submission before Court. Sum and substance of his argument is that applicant is graduate and she is able to earn for herself. The pleadings of applicant in petition and application are vague. Applicant has not produced any documentary evidence in regard alleged domestic violence against her. Applicant herself left companion of respondent No.1, she is graduate and she can earn for herself and her daughter. Therefore, applicant is not entitled for any maintenance. He relied on following cases;

a) Smt. Mamta Jaiswal Vs. Rajesh Jaiswal 2000 (3) MPLJ 100. In this case Hon'ble Madhya Pradesh High Court has held that everyone has to earn for the purpose of maintaining himself or herself or at least make a sincere effort in that direction. If this criteria is not applied, there will be a growing tendency amongst the litigants to prolong such litigation and to milk out the adversary.

b) Megha Khetrapal vs. Rajat Kapoor (19.03.2025 –DELHC) MANU/DE/1726/2025: In this case the Hon'ble Delhi High Court addressed the issue of whether revisionist wife was entitled to interim maintenance from her husband under Section 125 of the CrPC. The court considered revisionist wife's qualifications, including a master's degree and previous employment, and found that she was capable of earning a livelihood. The court noted evidence suggesting revisionist wife deliberately remained unemployed to claim maintenance. The Hon'ble High court dismissed the petition and upheld the Family Court's decision to deny interim maintenance, emphasizing that capable individuals should not remain idle to seek financial support.

9. The learned advocate for applicant argued that, though applicant is graduate, she has 11 months daughter and she has no service or any source of income. Applicant and her daughter both are dependent on respondent No.1. Therefore, interim maintenance be granted to applicant and her daughter.

10. On the point whether educated woman is entitled for maintenance or not, it will be beneficial to consider case of **Rajnish Vs. Neha and Ors.**

MANU/SC/0833/2020. In this case Hon'ble Apex Court given Criteria for determining quantum of maintenance. In the decision Hon'ble Apex Court reiterated the decision of Manish Jain v. Akanksha Jain (2017) 15 SCC 801 wherein it was held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

11. In the present case perusal of record depicts that, though, applicant is graduate, there is no document to show that applicant is working and earning any income. It is also not case of respondent that, applicant is actually working and getting any income. Further applicant has 11 months girl child. Thus, at present applicant has no source of income and she along with her daughter totally dependent on respondent No.1.

12. Upon perusal of record placed before me the maintenance amount of Rs.15,000/- per month claimed by the applicant seems unreasonable at this stage. As per appointment letter dated 29-10-2025 issued by S.N. Auto, monthly salary of respondent No.1 is shown as Rs.12,000/- p.m. He have responsibility of his parents. While considering the application for interim maintenance the Court has to consider the basic needs of the applicants, income of the respondent No.1 as well as social status of both the parties.

13. Considering the basic needs of applicants, income of respondent No.1, I think it fit to grant the interim maintenance of Rs.4,000/- per month to applicant and her daughter from the date of application till the final decision.

Accordingly, I answered point No. 1 and 2 in affirmative.

As To Point No. 03 :

14. Applicant has also claimed Rs.1,00,000/- towards expenditure of her delivery. However, at present there is no evidence on record in support of her claim. Therefore, at this stage it would not be just and proper to pass any order in that regard.

15. In view of findings to point No.1 and 2 supra, I am inclined to partly allow this application. In the result, in answer to point No.3 I pass the following order ;

ORDER

1. Application is partly allowed.
2. Respondent No.1 shall pay interim monetary relief in the form of interim maintenance **Rs.4,000/-** (Rupees Four thousand only) per month to applicant and her daughter from the date of application i.e. 17-05-2024 till the decision of this case.
3. Copy of this order shall be given free of cost to the parties to this application on an application for copy made in due course.

(G.R.Tiwari)
Judicial Magistrate, F.C.
Murud, Dist. Raigad-Alibag

Date:-08-12-2025