



CNR NO. MHSI070001202026
Order passed below Exh. 05 in
Other Crim.Misc. Application No. 04/2026

The present application has been filed by the applicant under Section 23 of the Protection of Women from Domestic Violence Act, 2005, seeking temporary/interim custody of minor Rudransh Akshay Madav.

2. The applicant and respondent No. 1 are husband and wife. Their marriage was solemnized on 16.03.2021 as per Hindu rites. They have a minor son, Rudransh Akshay Madav, aged about 4 years. On 21.09.2025, respondent No. 1 left the applicant at her parental home. He demanded ₹4,00,000/- and said she could not return without it. He also said that their relationship was over. The applicant's parents tried to convince him, but he refused. He then took the minor child with him. Before this incident, the child was living with the Applicant.

3. The applicant states that the respondents have kept the child in their custody without her consent. The child is presently with respondent No. 2, while respondent No. 1 stays in Kalyan for work. The applicant tried to contact them, but they did not respond. She was also not allowed to meet the child when she visited their house. Since 21.09.2025, she has not met her child. The child is very young and needs the care of the mother. Hence prayed for the custody of the child.

4. The respondents resisted the application by filing a reply at Exh. 11. It contended that the marriage is subsisting and no dowry was demanded. The minor son, Rudransh, is presently residing with respondent No. 1. After marriage, the applicant and respondent no.1 lived together at Jambhave and later shifted to Kalyan. Initially, their marital life was cordial.

5. Thereafter, the applicant started behaving in a quarrelsome and irresponsible manner. She used to argue, abuse the respondents, and neglect household duties. She frequently took money without consent and pawned and sold gold ornaments. She also borrowed money from others without informing respondent No. 1 and failed to repay it. Several incidents caused financial, mental, and physical hardship to respondent No. 1 and his family. Despite repeated efforts, her behaviour did not improve. Ultimately, in September 2025, she was taken to her parental home, where she admitted her mistakes.

6. It is submitted that the applicant has not shown proper concern for the welfare of the child. The child is well cared for by respondent Nos. 1 and 2 and is emotionally attached to them. Respondent No. 1 has arranged for the child's education and upbringing. The present application is filed only to harass respondent No. 1 after initiation of divorce proceedings. Considering the welfare of the minor

child, it is not in his interest to grant custody to the applicant. Hence, prayed to reject the application.

7. Perused record. Heard both sides. Following points arise for my determination. My findings on the said points are recorded for the reasons stated hereinafter,

Sr.No.	Points	Findings
1	Whether the welfare and best interest of the minor child require that temporary custody be granted to the applicant?	...Yes
2	What order?	The Application is allowed.

REASONS

AS TO POINT NO. 1 & 2

8. While deciding an application for interim custody, the paramount consideration of the Court is the welfare and best interest of the minor child. The Court must consider the age of the child, the need for care and emotional support and the capacity of each parent to provide a safe, stable, and nurturing environment. The conduct of the parties, their financial and social circumstances and the child's existing living conditions are also relevant. At this stage, the Court is not required to conduct a detailed trial, but must form a prima facie view to ensure that the arrangement serves the overall welfare of the child.

9. On perusal of the application, reply and after hearing both sides, it appears that both parties have made allegations against each other. At this stage, such allegations cannot be considered, as they require proof during trial. The present matter is only for deciding interim custody, and the trial is yet to commence. Therefore, the paramount consideration is the welfare and best interest of the child.

10. Admittedly, the child is about four years old and is presently residing with the respondents. Though there is some dispute regarding whether the child is with respondent No. 1 or respondent No. 2, it appears from the record that the child is in the custody of respondent No. 2, who is the grandmother. Respondent No. 1 is working at Kalyan and is engaged in his employment. There is nothing on record to show that proper arrangements have been made for the care of the child during his absence. Thus, prima facie, the child is mainly under the care of respondent No. 2.

11. As per Section 6 of the Hindu Minority and Guardianship Act, 1956, the custody of a minor below five years should ordinarily be with the mother. The child in the present case is only four years old. At this age, the child requires care, affection, attention, and proper nutrition. The applicant, being the biological mother, is in a better position to provide such care. It is also stated that she is earning by working as a house helper.

12. Education alone is not the only factor. Basic education is available even at the local/taluka level. At this stage, emotional and physical care is more important. A child of a tender age is naturally attached to the mother. The child depends on her for daily needs and comfort.

13. There are no strong reasons shown to deny custody to the applicant. Respondent No. 1 is engaged in employment and may not be able to give sufficient time to the child. The child is presently with the grandmother, but the care of a mother cannot be replaced by any other relative. Proper upbringing requires daily care, attention and emotional support, which can be best provided by the applicant, being the mother.

14. I have considered the judgment relied upon by the respondents in the case of ***Rakesh Singh vs Poonam Singh AIR ONLINE 2022 ORI 438***. In the said case, the Hon'ble High Court of Orisha granted custody of the child to the father. The child in that case was about nine years old. Upon interaction with the mother in the presence of the Court, the child expressed unwillingness to stay with the mother. The child had also been residing with the father for 5 years. The facts of the present case are entirely different. The child herein is only four years old and will not be capable of forming an independent or rational decision. Therefore, the said judgment is not applicable to the facts of the present case.

15. I have also considered the judgment relied upon by the respondents in the case of ***Swapnil Bhajandas Kamble vs Sau Manisha Swapnil Kamble 2022 All MR (Cri) 2269***. In the said case, custody of the child was granted to the father, as he was properly looking after the child. The father had arranged medical treatment and had admitted the child to school. The child was residing with the father for more than one year. Further, the reports of the Mediator and the Protection Officer indicated that the child was comfortable with the father and reluctant to go with the mother. The facts of the present case are entirely different. In the present case, the child is not in the custody of the father but is with the grandmother. It is not shown that the child has been in the custody of the father for a long period. There is also no report of the Mediator or Protection Officer to show that the welfare of the child would be better with the father. Therefore, the said judgment is not applicable to the present case.

16. Therefore, considering the age of the child and his welfare, it is in the best interest of the child that custody be granted to the applicant. Hence, Point No.1 is answered in the affirmative and in answer to Point No.2 following order is passed,

<u>ORDER</u>	
1.	The application at Exh. 5 is hereby allowed.

2.	The interim custody of the minor child, namely Rudransh Akshay Madav, is granted to the applicant till final disposal of the main application.
3.	The respondents are directed to hand over the custody of the minor child to the applicant within 7 days from the date of this order.
4.	The Protection Officer is directed to ensure compliance of this order within seven days. In case the respondents fail to hand over custody of the minor child to the applicant within the said period, the Protection Officer shall take necessary steps to secure compliance and execute the order in accordance with law. If required, the Protection Officer shall take assistance of police protection for effective implementation of this order.
5.	A copy of this order be furnished to the applicant and the respondents free of cost.
6.	A copy of this order be forwarded to the Protection Officer and the concerned Police Station for necessary action.
7.	No order as to costs.
	(Pronounced and dictated in open Court.)

Place : Malvan
Date : 17/04/2026

Sd/-
M.K.Fakih
Judicial Magistrate F.C., Malvan.