

MHYA110009822026 	<u>O.M.CRI.A. NO. 41/2026</u> <u>Shital Shirde VS. Kantheshwar</u> <u>U/S 100 OF BNSS</u>
---	--

ORDER BELOW EXH.NO.1
(Passed on 08.06.2026)

This is an application for issuance of search warrant under section 100 of Bhartiya Nagrik Suraksha Sanhita, 2023.

02. According to the applicant, the detainee namely Shrushti d/o Kantheshwar Shirde aged about 3.5 yrs and Ram s/o Kantheshwar Shirde aged about 1.5 yrs are her children. Respondent is her husband. It is contended by the applicant that, her marriage is solemnized with the respondent on 31/05/2021. Thereafter, she gave birth to detainee Shruti & Ram. After some years of marriage, the respondent and his family members started harassing the applicant on petty counts.

03. The applicant-mother alleges that the non-applicant/father has taken away and concealed the minor children Shrushti (aged about 3½ years) and Ram (aged about 1½ years). It is contended that despite efforts made by the applicant and police intervention, the whereabouts of the children are not known. Apprehending unlawful concealment and danger to the welfare of the minors, the applicant seeks issuance of a search warrant under Section 100 BNSS and production of the children before the Court. Therefore, lastly, applicant prayed to issue search warrant against the respondent.

04. In view of notice, respondent appeared and filed his say at Exh. No.07. He has categorically denied all the allegation leveled against him. The non-applicant/father opposes the application and submits that the minor children were not abducted, concealed, or wrongfully confined.

According to him, the children have been residing with him since 05.06.2026 pursuant to a family dispute, and are safe and well cared for. He denies all allegations of harassment and illegal detention and contends that the applicant herself neglected the children. Hence, he seeks dismissal of the application under Section 100 BNSS.

05. Heard Ld. Advocate Shri N.G.Ingle for applicant and Ld. Advocate Shri. S.K.Kadam for the respondent. Ld Adv. for applicant argued that, since the respondent has taken the custody of child forcefully, applicant have apprehension of danger to life of the child. Applicant being mother, is entitled for the custody of her daughter Shrushti and son Ram. Lastly, he prayed to allow the application and to issue search warrant. Ld. Advocate for the respondent argued application under section 100 BNSS. is not maintainable against the husband who is the natural guardian. This is not the first instance wherein the custody of child is claimed either by a husband or wife from each other by resorting the section 100 BNSS , rather than filing an application for the custody, and having recourse to the procedure laid down by law. Lastly, he prayed to reject the application.

06. I have gone through section 100 BNSS. It provides for issue of search warrant, if a person is wrongfully confined. Therefore, the paramount consideration under section 100 BNSS. is that, there shall be a wrongful confinement. Further, such confinement shall be the offence. No doubt the welfare of the child is at paramount consideration while dealing with the custody matters but it is needless to say that, this is not the appropriate forum to seek the custody of child. So also, this is not an application for the custody of child.

07. In this regard my view is guided by judgment of Hon'ble Bombay High Court in Jayshri Pravin Bhadne Vs. Pravin Vishram Bhadne in Cri. W.P. No.438/2017 In which, Hon'ble Bombay High Court has observed that, the application under section 97 of Cr.P.C. is

not maintainable against the guardian, the guardian shall have recourse to the appropriate forum and shall claim the custody, because the appropriate forum only can ascertain in appropriate proceeding that, who should be the custodian.

08. Having regard to the aforesaid facts and circumstances of this case and by considering the judgment of Hon'ble High court, I hold that, the children are in custody of natural guardian father. Custody with father doesn't amount to an offence as contemplated u/s 100 BNSS. The ingredients of section 100 BNSS. are not complied with. Needless to say that the applicant is at liberty to have recourse before the appropriate forum. Therefore, I hold that, the application is liable to be rejected. Hence, I pass the following order-

ORDER

Application is rejected.

(Typed and pronounced in open court)

Date : 08.06.2026.

(Jaykranti H. Panchal)
Judicial Magistrate First Class,
Court No. 03 Umarkhed.