

MR 64 of 24 (Reg no. 64 of 24)

Order no 18

Dated 21.04.2026

Today is fixed for filing declaration of Assets by OP.

Petitioner is present by Hazira through Ld Advocate.

No step is taken by the Opposite party.

None appears on repeated calls.

No declaration of assets is filed by the opposite party.

It appears that the opposite party is not willing to submit the declaration of Assets and he had taken dilatory tactics to drag the proceeding of the case.

In my opinion, petitioner should not suffer any prejudice due to laches on the part of opposite party.

Today Ld. Advocate for the petitioner pressed for hearing of amendment application filed on 18.04.2026.

Accordingly, the amendment petition is taken up for hearing.

It is submitted by the Ld. Adv for the petitioner that in the prayer portion of the interim application, the petitioner inadvertently prayed for maintenance for herself whereas she is actually praying for maintenance for her minor daughter.

Perused the case record and the application of amendment.

It appears that the amendment is formal in nature and does not change the nature and character of the case, rather it is helpful to avoid future complications. It does not appear that the opposite party will suffer any prejudice if the amendment application is allowed. Accordingly, the amendment petition is allowed without any order as to cost.

Petitioner is directed to file amended application after serving copy of the same to the opposite party.

D/C

Later

From perusal of the record, it appears that on 16.04.2026 itself the petitioner submitted the amended application.

Copy was also served upon the Ld. Advocate for the opposite party.

Heard Ld. Adv for the petitioner in respect of petition for interim maintenance allowance.

On the previous date, hearing on the part of opposite party regarding application of interim maintenance was heard in full.

The order for interim maintenance allowance shall be passed at the later half of the day.

D/C

Later at 4 PM

Now, the record is taken up for passing order in respect of the order of interim maintenance allowance.

By filing the instant petition, petitioner namely Rubi Gupta is praying for interim maintenance to the tune of Rs. 25000/- per month for the minor daughter from the opposite party namely Pradip Nandi.

The case of the petitioner in nutshell is that she was married to opposite party on 12.12.2014 by registry and on 27.01.2016 as per Hindu rituals. After marriage petitioner went to her matrimonial house and resided with the opposite party as husband and wife. It is the allegation of the petitioner that she was subjected to mental and physical torture by the opposite party after marriage. She was abused for her caste and was assaulted by her husband. It is also the allegation of the petitioner that opposite party is an intoxicated person and he misappropriated Rs. 1000000/- to Rs. 1200000/- of the petitioner and her family members. The opposite party purchased car but the down payment was made by the petitioner. Later, the opposite party sold out

the said car without intimating anyone and misappropriate the sale amount. The opposite party also took Rs. 88000/- from petitioner to purchase a flat in Malda. Allegedly, opposite party did not provide basic amenities to the petitioner. Petitioner bore all the torture and gave birth to a girl child. But opposite party never fulfill his duties towards the petitioner and the child. Finally, petitioner was driven out from her matrimonial house. Opposite party and his family members refused to accept the petitioner in the house. Petitioner also took loan by mortgaging her ornaments which were misappropriated by the opposite party. Petitioner stated that she is an employee of health department but she is the custodian of the minor child. The minor child of petitioner is a student and the petitioner is finding it difficult to bear all the expenses for the up bringing of the child. As per the contention of petitioner, opposite party is a high school teacher and he earns Rs. 80000/- per month as salary. But despite having sufficient means he never provided any maintenance for the minor child. Accordingly, petitioner is praying for Rs. 25000/- per month as interim maintenance allowance for the minor child. Hence, the instant case and petition incidental thereto.

The opposite party contested the case of petitioner by filing written objection denying and disputing all the allegations of the petitioner. The opposite party admitted the marriage with petitioner. He also admitted the paternity of the child. The positive case as put forwarded by the opposite party is that after marriage petitioner did not fulfill her household duties and she always misbehaved with the opposite party and his family members. Allegedly, petitioner pressurized the opposite party to leave his ancestral house and aged parents and live with her in Malda in a separate accommodation. As the opposite party did not agree to such proposal of petitioner, he was abused and humiliated by the petitioner and her mother. It is the further allegation of the opposite party that as he could not fulfill the expensive demands of petitioner, she used to threat the opposite party for divorce and huge alimony. It is also alleged by the opposite party that the petitioner voluntarily left his house with the minor child as he could not fulfill the demands of petitioner. On several occasions opposite party tried to settle the dispute but petitioner refused to maintain conjugal relation with him. Petitioner also refused to accept gifts sent by the opposite party for the child. Opposite party stated that since December,2022 petitioner has been living separately from the opposite party on her own volition. Moreover, petitioner is a government employee and earns Rs. 70000/- per month and hence she is capable to maintain the child. On the other hand opposite party has to maintain his aged parents who are dependent on him. Accordingly, opposite party prays for rejection of the instant application.

During hearing, Ld. Advocate for the petitioner submitted that the petitioner was severely tortured by the opposite party mentally and physically. Moreover, opposite party did not pay any maintenance for the minor child for which petitioner is finding it difficult to bear the expenses for the up bringing of the child.

On the other hand, Ld. Advocate for the opposite party submitted that the instant petition is liable to be rejected as OP is never neglectful towards the child and petitioner left her matrimonial house on her own volition. He also submitted that the opposite party is unable to provide maintenance for the child if she stays separately.

It is worth mentioning that while disposing an application for interim maintenance allowance u/s- 125 Cr.P.C the Court has hardly any scope to go through the merit of this case but to pass necessary order based on the materials apparent on record. The allegations and counter allegation

between the parties shall be decided only after holding trial of the case while appreciating the evidence adduced by both the parties.

The marital status of petitioner and opposite party is admitted in this case. Opposite party also did not deny the paternity of the child. It is the social and legal duty of the opposite party to provide maintenance for the minor child. At this stage, opposite party failed to establish prima facie that he has provided any maintenance for the minor child after separation. It is needless to say that the husband of a wife, having sufficient means is under a statutory obligation to maintain his child. In this case, there is no document on record which shows that opposite party has sent any amount for sustenance of the child. Hence, neglect and refusal on the part of opposite party towards the child is hereby prima facie presumed.

In the written objection the opposite party did not reveal his income. Opposite party has also not filed declaration of his assets on affidavit though opportunity was given to him. Hence, it is presumed that the opposite party does not want to disclose his income. It is pertinent to mention here that the opposite party has never denied that he is a school teacher as alleged by the petitioner. However, actual income of opposite party is irrelevant in a case under section 125 Cr.P.C. The factor that is to be considered whether the opposite party has sufficient means or not. In judicial interpretation, “means” does not signify only actual income in hand. It includes the capacity to earn, ownership of property, access to financial resources, and the overall economic position of the person liable to maintain. Even an able-bodied person who claims to be unemployed may still be held to have sufficient means if he possesses the physical and mental capacity to work and earn. Courts have repeatedly emphasized that a person cannot evade liability by remaining idle or deliberately suppressing income. In this context, I would like to refer to the decision held in the case of **Gh. Hassan Ganai vs. Mst. Raja Bibi reported in 1973 Cri.L.J 1019** where it was held that the word “means” does not only signify means like income, revenue, estate or definite employment but also includes capacity to earn money. Accordingly, a man who is healthy and able bodied, he must be taken to have means to support his wife and children and he cannot take the plea of not having sufficient income.

In this case, it is nowhere stated by the opposite party that he is suffering from any kind of disability to earn livelihood. Hence, it will be presumed that the opposite party is an able-bodied person and has sufficient means to maintain his wife and minor child.

In the instant case while appreciating the materials apparent on record I have reason to believe that a prima facie case has been made out in favour of the petitioner/wife for her entitlement to claim interim maintenance allowances for the minor child.

Having regard to the submission of the Ld. Advocates for the both sides coupled with the materials available on the record as well as considering the need and urgency of the petitioner this court of the view that if a sum of Rs. 6000/- per month for the minor child be allowed that would not be prejudicial to either of the parties at this stage.

In view of the judgment of Hon'ble Supreme Court **Rajnesh VS Neha and another reported in (2021)2 SCC 324** this order shall effective from the filing of this application i.e from 06.06.2024.

The arrear amount accrued from the date of the application shall be paid by the opposite party in six installments within six months from the date of this order.

Accordingly, it is

ORDERED

that the opposite party Pradip Nandy is directed to pay a sum of Rs. 6000/- per month for the minor child namely Priyanshi Nandi as interim maintenance allowance, by 10th day of each succeeding month.

This order shall be effective from the filing of this application.

The arrear amount accrued from the date of the application shall be paid by the opposite party in six installments within six months from the date of this order.

Thus, the petition for the interim maintenance is allowed to the above extent.

Let a copy of this order be given to the petitioner free of cost.

Fixing 16.06.2026 for evidence of petitioner.

D/C by me

ACJM
Gangarampur at Buniadpur
Dakshin Dinajpur
JO Code WB01164