

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
CHANCHAL, MALDA**

Present : Smt. Pradipta Bhattacharya,
Additional Chief Judicial Magistrate,
Chanchal, Malda.
J.O Code WB01286
Case No. 241M/2025
(Registration No. 241M/2025)
CNR No. WBML 0800 1440 2025)

Marija Khatun

Vs.

Rejaul Hoque

Ex Parte order dated: 06th June, 2026

under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023

Today is fixed for ex-parte order.

Now the record is taken up for passing order.

Perused the case record and on careful perusal of the same it transpires that the petitioner filed an application under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 on 06.08.2025 and it is the contention of the petitioner in a nutshell that she is the legally married wife of the O.P. and their marriage took place on 02.06.2016 as per Muslim rites and customs. At the time of the marriage the father of the petitioner provided sufficient dowry including in cash. After marriage, the petitioner went to her matrimonial house and started residing as husband and wife with the O.P. Out of that wedlock two children born namely Injamul Hoque and Israt Khatun who are now 8 and 4 years old respectively. It is alleged that soon after the marriage, the O.P. used to inflict physical as well as mental torture upon the petitioner on demand of more and more dowry. The opposite party started to create pressure upon the petitioner to bring Rs. 1,00,000/- from her father. For that one case was already filed being Ratua P.S case No. 469/2025 under Section 85/109/3(5) of the Bharatiya Nyaya Sanhita, 2023. Thereafter, suddenly on 12.06.2025 the opposite party and his family members increased the torture upon the petitioner and again demanded dowry in the form of cash from the father of the petitioner and on refusal to fulfill the said amount, the opposite party and his family members assaulted the petitioner mercilessly and drove the petitioner out from her matrimonial house along with her children. Although the O.P. has sufficient income he intentionally neglects to maintain the petitioner. Thus, the petitioner prays for a monthly maintenance amounting to Rs. 12,000/- for herself and Rs. 9,000/- each per month for her minor children.

To prove the case the petitioner examined herself as P.W.1 on dock. Perused the marriage registration certificate. Let the photocopy be kept with record.

Heard the Ld. Advocate on behalf of the petitioner and perused the petition under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Considered.

The case record reflects that notice was duly sent to the O.P. and postal track report was filed after due service but as none appeared on behalf of the opposite party, ultimately the case was fixed for Ex-parte against the O.P. on 28.04.2026.

Decision with Reasons

After careful consideration of the materials on record it appears to this Court that the petitioner has in her evidence corroborated her case. Despite being granted the opportunity to present his case, since the O.P. had refrained himself from doing so, this Court finds no reason to disbelieve the unchallenged testimony of the petitioner and holds that she is entitled to get maintenance from the O.P. However, she has not sufficiently proved the income of the O.P by producing any shared of documentary evidence. Although both in the original application as well as during evidence, she has stated that her husband has a monthly income of Rs. 85,000/- to Rs. 90,000/- per month but has failed to produce any such document before this Court in support of her claim. Be the fact as it may, as according to Section 109 Bharatiya Sakshya Adhiniyam, 2023, the source of his income is in the knowledge of the husband, thus the burden of proving the same lies upon him. But in this case, surprisingly though the husband could avail that opportunity, he decided not to contest the same for the reasons best known to him. It also appears from the record as well as the evidence of P.W.1 that after marriage the petitioner used to reside at her matrimonial home. Therefore, in the absence of evidence to the contrary, this Court is inclined to presume that the O.P is an able-bodied person and has sufficient means to maintain his wife and child even when she is residing in her paternal house, separately from her husband/O.P. It is observed by the Hon'ble High Court of Calcutta that the term 'means' which not only signifies only visible means such as real property or definite employment. If a man is healthy and able-bodied he must be held to be possessed of sufficient means no matter whether he is a professional beggar or a minor or a monk. Once a person has capacity of earning, he cannot refuse or neglect to maintain his wife, child or parent.

[Dasarathi vs Anuradha 1988 CrLJ 64(Cal) & Durga vs Prembai 1990 Cr LJ 2065; 1990 Jab LJ 307].

Considering the objective of section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 i.e. to achieve the social purpose of preventing vagrancy and destitution of the hapless wife, and also keeping in mind of

the soaring prices of essential commodities as well as the basic needs of the petitioner for leading a modest life, the status of the party and the facts and circumstances of this case, this Court is of the opinion that an order of maintenance of Rs. 7,000/- per month for the petitioner and Rs. 4,000/- each per month for the children would be fit and proper.

Hence, it is,

ORDERED

that the instant case is and the same be allowed ex-parte against the O.P in part.

The petitioner do get an order of maintenance of Rs. 7,000/- per month for herself towards maintenance allowance from the opposite party from the date of filing of this case till she remarries and Rs. 4,000/- each per month for the children till they attain majority.

The opposite party is directed to make payment of Rs. 7,000/- per month to the petitioner till she remarries and Rs. 4,000/-each per month for the children till they attain majority that is in total Rs. 15,000/- per month on or before the 10th day of every succeeding month.

The opposite party is further directed to clear out the arrears of maintenance incurred from the date of filing of the case in 12 equal monthly instalments along with the maintenance amount for that month. In default on the part of the opposite party, the petitioner would be at liberty to execute the order so passed as per the provisions of law.

A copy of this order and judgment be given to the petitioner, free of cost, at once.

The case thus stands disposed of on contest.

BC-II to keep note of the same in the relevant register as well as CIS.

Let the record be sent to the record room after expiry of appeal period as per due provision of law.

Dictated & Corrected by me,

Sd/- Pradipta Bhattacharya
Addl. Chief Judicial Magistrate,
Chanchal, Malda.

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Addl. Chief Judicial Magistrate,
Chanchal, Malda