

Misc. Case No. 222/2023
Taniya Chakraborty Sengupta Aggrieved party
Vs.
Mithun Sengupta and others.....Respondents

ORDER DATE: 09.07.2026

Today is fixed for interim hearing.

Both the parties are present before this Court by filing hajira.

Ld. Advocate on behalf of the OP had submitted some copies of document and asset declaration. Let the same be kept with the record.

Now the record is taken up for hearing of the interim petition. Ld. Advocate for the petitioner moves the petition filed by the aggrieved party for interim maintenance under the Protection of Women from Domestic Violence Act, 2005 by virtue of an Affidavit sworn in by the petitioner u/s 23(1) of the Act and prays for relief in interim form.

The fact of the case of the Aggrieved Person in brief is that the marriage between the Aggrieved person and her husband was solemnized on 21.11.2021 as per Hindu Rites and Customs and the same got registered on 10.08.2020. At the time of the said marriage some cash and other valuable articles were given as stridhan articles. The petitioner is the married wife of OP no. 1. After the said marriage the AP had started living her matrimonial house at the house of the respondent. After some days the Respondents used to inflict torture both physical as well as mental upon her by claiming more dowry. On several occasion the petitioner was subjected to torture by the respondents on several occasions by claiming money from her. Then at the time of death of the father of the petitioner she went to her paternal house to observe her father's last rites and since then she is staying there. Then lastly on 30.04.2023 when the petitioner along with her relatives tried to enter into her matrimonial house, then they were not allowed to enter there and abused badly. The AP stated that the respondent no. 1 works as an employee of private factory and earns Rs 45,000/-per month.

Therefore, at this interim stage she had prayed for passing interim order of monthly maintenance of Rs. 15,000/- per month in her favour and other relief such as protection order, residence order and compensation order.

Respondents have filed W/O and denied all the allegations made against the respondents by the A.P but admitted the marriage and the fact that the petitioner had lived in the house of the respondent after snatching the same from the OP she had given the same on rent. Then the suddenly without having any reason the petitioner abandoned the OP and after that never came back and as the petitioner left her matrimonial house voluntarily because of which she is not entitled to get maintenance. The OP further contended that he is paying maintenance to the AP as per the order of the Court and the mother of the respondent is dependent upon him the respondent no. 1 works as a private employee and has an income of Rs. 19,300/- per month and wherefrom he has to bear all his responsibilities and he is paying Rs.3,000/- per month to the petitioner as per the order of the Court after her son attained majority.

Therefore, Ld. Advocate for the Respondent submits for rejection of the application praying for Interim relief u/s 23 of P.W.D.V. Act.

Now the definition of domestic violence as jotted in section 3 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act) is very wide in its scope. It takes within its fold different acts including physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. Now, the question that crops up is whether the allegations as outlined in the petition make out a case as presented by the petitioner before this court or not. What would be the standard of proof at this stage of interim hearing regarding the allegations stated in the application? Section 23 of the Act is relevant in this regard. It reads as follows;

Sec.“23. (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

Sub Sec.(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

The plain reading of the provision goes to show that the Magistrate has to satisfy himself as regards the existence of a prima-facie case in the factual set-up projected by the petitioner/applicant on the basis of an affidavit. In its literal sense, 'prima facie' means on the face of it. The expression 'prima facie' is often used in common parlance to mean 'on first blush' or 'on first impression', without deriving a conclusive meaning. Therefore, if the allegations depicted in the application make out a case that falls among any of the category mentioned under section 3 of the Act, the court would then have to pass an order keeping in mind the object for which the Act was enacted. The tangled factual questions that have surfaced in the instant case from the pleadings of the contending parties would be dealt with according to the evidence led by the parties during trial. But, the legislative mandate as reflected under section 23 should be honoured by the court so far as the interim relief is concerned. The petition filed on behalf of the Aggrieved Party prima facie shows that the applicant was subjected to physical, verbal and emotional abuse and economic abuse at the hand of the respondent.

In this case A.P. has filed an application U/s 23 of the P.W.D.V. Act supported with affidavit.

Thus, keeping in view the benevolent nature of the Act, the provisions under the act should be interpreted liberally. Unless the contrary is shown by the respondent, the provision made in favour of the women will be interpreted in their favour. Since the burden upon the victim of domestic violence is to show by way of an affidavit that she was subjected to domestic violence, the Court would pass the order at the interim stage which appears to be justified and necessary. In the instant case, the aggrieved party/petitioner has alleged that she was tortured by respondent and she has filed an affidavit to that effect. She has thus met the terms of the requirement of law as contemplated under section 23 of the Act.

After perusal of the DIR submitted by the Protection Officer it also appears before this Court that the AP of this case has subjected to the physical, verbal, economic and emotional abuse and also economic violence committed by the respondents towards her and therefore, entitled to get an order u/s 23 of this Act as the prima facie case has been made out against the respondents.

In this instant case respondent had admitted that he earns Rs. 19,300/- per month and on the contrary the respondents had failed to adduce any evidence in support of the contention that the AP is having any source of income and can bear the expenses of herself, therefore, at this stage, it can be adduced that Respondent is having sufficient means and able bodied person to maintain his wife. Therefore, it appears before this Court that Respondent is financially capable enough to provide interim maintenance to his wife.

In this instant case the AP had not given any prima facie proof about her residence in the shared household and neither given any details of the said household and had averred that she had been ousted from her matrimonial house by the respondents. Therefore, without adducing evidence no residence order could be passed in favour of the AP at this stage. Moreover, the Court is at the position to grant any order of compensation in favour of the AP without conducting trial. Moreover, no such documents had been adduced by the AP to establish prima facie the physical and mental damaged caused to her due to the alleged torture caused by the respondents upon the AP and thus at this stage, no order of compensation can be granted in favour of the OP.

Based on the observation made above, I am satisfied that there is prima facie case for passing an order for interim maintenance of monetary relief and protection order.

In **Reema Salkan v. Sumer Singh Salkan (2019) 12 SCC 303** it was held that the factors which would weigh with the Court inter alia are the status of the parties reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family, reasonable costs of litigation for a non working wife.

In **Chaturbhuj v. Sita Bai (2008) 2 SCC 316** it was held that the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance and dependent family members whom he is obliged to maintain under the law, liabilities if any would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

In **Manish Jain v. Akanksha Jain (2017) 15 SCC 801** the Court 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.

In **Rajnesh v. Neha and Anr.** it was held that the maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

Bestowing on an anxious consideration of the petitioners and taking wisdom from the authoritative judgments of the Hon'ble Court, in the lights of minimum needs of the petitioner, price index of essential commodities in the present market in one hand and the income of the OP on the other hand, I am of the opinion that an order of monthly interim maintenance allowance at the rate of Rs. 4,000/- per month to the AP as her interim maintenance will be just and reasonable. At this stage this Court is not in a position to decide to grant the other relieves without adducing evidence. Hence the prayer made by the AP u/s 23 of the PWDV Act is considered and allowed in part on contest.

Hence, It is,

Ordered

The respondent no. 1 is directed to provide Rs. 4,000/- per month to the AP as her interim maintenance till disposal of this case as monetary relief by the 10th day of every succeeding month allowance with effect from the date of filing of the application i.e. 15.06.2023 as per the guidelines provided by the Hon'ble Apex Court in **Rajnesh Vs. Neha (Criminal Appeal No. 730 of 2020)**.

The monthly payment must be made within 10th day of each succeeding English Calendar month failing which, the petitioner is at liberty to realize the same through Court. The Respondent can pay the amount due from date of filling to the date of passing this order in 24 instalments under section 23 of the Act.

Be it mentioned here that the amount received by the AP in this case shall be adjustable with any other monetary relief accepted by the AP under any provision of law and by order of any LD. Court.

The respondents are further directed not to inflict any kind of torture upon the AP.

Let a free copy of the order be given to the petitioner, respondents and I/C of concerned P.S. free of cost for compliance.

The petition under section 23 of the Act is disposed of in interim form accordingly.

Fix **23.12.2026** for PW.

Typed and printed by me:

Judicial Magistrate 2nd Court,
Barrackpore, North 24 Parganas

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Barrackpore, North 24 Parganas
JO Code- WB01493