

MHWS080013852026 	Cri.M.A No. 165/2026 <u>Sonu Abhishek Chavhan Vs Datta</u> <u>Haridas Chavhan</u> <u>ORDER BELOW EXHIBIT - 01</u>
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This application is filed under section 100 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter will be referred as the 'BNSS') for issuance of search warrant of son of applicant namely Shambhu Abhishek Chavan.

In brief facts mentioned in application -

2) The marriage of applicant No.1 was solemnized on 26/04/2024 with the son of non applicant No.1 and 2 and brother of Non applicant No.3. Out of the said wedlock they have begotten one son Shambhu (age 13 months). Further contended that on 03/08/2026 the Non applicants removed the applicant from their house and forcefully taken the possession of the minor child Shambhu and threatened the applicant that, they will kill her if she came back to their house. Further contended that the child Shambhu is of 13 months and living on the breast milk of the her mother i.e applicant. Further contended that the Non applicants have kept the child Shambhu in one room which amounts to wrongful confinement and there is threat to his life. Therefore, by way of this application, she is praying that custody of her son i.e. Shambhu shall be given to her.

3) Heard learned advocate for applicant. Learned advocate for applicant submitted that, the Non applicants have detained applicant's son in their house and there is danger to his life. Further the child is of

13 months. In such circumstances custody of the child required to be with his mother i.e applicant. Hence, he prayed for allowing the application. The Learned advocate for Non applicant submitted that, the custody of the child Shambhu is with his father Abhishek and it does not amount to offence. With this he prayed for rejection of application.

4) Perused the record and considered the submission of applicant in the light of contents of application and documents filed on record by applicant. Applicant has filed copy of Aadhar card of her self and Birth Certificate of her son Shambhu. It can be seen that applicant in her application has alleged that non applicants have detained her child Shambhu. The non applicant No.1 to 3 have filed their say at Exh.09, Affidavit of father of child Shambhu at Exh.10,

5) On perusal of the birth certificate of child Shambhu it appears that he is of 13 months old. The Affidavit of father of child Shambhu at Exh.10 reveals that the custody of the child Shambhu is with him currently i.e with biological father.

6) At this juncture, I find it necessary to reproduce of provision of Section 100 of the BNSS here as under-

*100. Search for persons wrongfully confined. If any District Magistrate, Sub- divisional Magistrate or Magistrate of the first class has reason to believe that **any person is confined under such circumstances that the confinement amounts to an offence**, he may issue a search- warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance*

therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

7) On perusal of above provision, it can be said that for issuance of search warrant the primary requirement is that any persons is confined under such circumstances that the confinement amounts to an offence. Therefore, it is necessary to be seen in case in hand whether custody of child with Non applicant No. 1 to 3 can be termed as confinement amounting to offence. However it is pertinent to note that on perusal of the affidavit of father of child Shambhu at Exh.10 it reveals that the custody of the child Shambhu is with him. At this juncture, I find it apposite to refer section 6 of the Hindu Minority and Guardianship Act. According to section 6, father is a natural guardian of child. Therefore, when custody of children is with their father who is natural guardian then said custody cannot be termed a confinement amounting to offence as required by section 100 of the BNSS.

8) The above said legal position has been laid down by the Hon'ble Bombay High Court in Vishal Jivan Jogure V/s Smt. Megha Vishal Jogure and another 2005 SCCOnline Bom 541 as under -

" 6. The question of invoking power under section 97 of the Code, as mentioned earlier, is available only if it is asserted and is established before the Magistrate, prima facie though, that confinement of any person in the circumstances amounts to an offence. By no stretch of imagination, custody of the children with the real father by itself can amount to an offence. Something more has to be alleged and established to

support that position. No such allegation is forthcoming in the application, as has been filed. Viewed in this perspective, the Magistrate could not have assumed jurisdiction to issue search warrant in such fact situation, as the basic requirement of section 97 of the Code is not fulfilled. This is not to say that the Respondent No.1, who is the natural guardian of the children, being mother, has no other remedy in law to secure the custody of the said children. We are presently concerned with the question whether search warrants can be issued by the Magistrate merely because the mother complains that she apprehends that something will happen to the children, who are in custody of their father.”

9) Also in case of **Marotrao Pachare v/s Usha Pachare** reported in **2003 SCC OnLine Bom 747** Hon’ble Bombay HC held that,

“18. Under section 6 of the Hindu Minority and Guardianship Act, the mother is guardian of the child who has not completed age of 5 years and may have custody of minor. According to section 6, preferential guardian is the natural father, except when minor has not completed age of five years, in which circumstances the custody shall be that of mother. The use of the word “ordinarily” used in section 6 reflects legislative intent to be that welfare of the child has to be kept in view and thereafter custody should be decided. Such a question of welfare of the child is to be decided by the Civil Court in an appropriate proceeding as observed by the Apex Court in AIR 1987 SC 3, Mrs. Elizabeth v. Arvand.

Paramount consideration is welfare of the child. Therefore, the learned Additional Sessions Judge was not justified to direct that the children shall be produced by applicant No. 1 for handing over them in the custody of the mother non applicant till they attain majority. Such direction is not contemplated in terms of section 97 of Criminal Procedure Code.”

10) In view of above-mentioned legal position, the custody of children with father cannot be termed as confinement. There is nothing on record apart from allegations that there is danger to the life child Shambhu. There should be something on record to assert that there is danger to child's life. Mere allegations without anything to support it cannot form ground to assert that danger of life. Another aspect was that the child is minor and he need his mother care and protection. Here admittedly the child is 13 months old, however as alleged by the applicant that child Shambhu is in wrongpul confinement of the Non applicants prima facie has not been establish by the applicant. Moreover the child is in custody of his father. Moreover the father being natural guardian is at duty to protect the welfare of the child. As the custody of child with is father is legal one it can not be said that the father of the child will not protect his welfare. As discussed above and as per the ratio of case of **Marotrao Pachare (Supra)** this court has no jurisdiction to decide the custody of the child.

11) In conclusion Section 100 of the BNSS primarily requires the satisfaction as to confinement amounts to an offence. So far as case in hand is concerned, the applicant has failed to establish that custody

of her child Shambhu with his father can be termed a confinement amounting to offence or there is danger to their life. In the light of above discussion, the present application is liable to be rejected. Hence, I pass following order -

ORDER

1. Application is rejected.
2. The applicant is at liberty to seek proper remedy under the relevant provision of law.

(Kiran D. Lukde)

Judicial Magistrate First Class,
Court No. 3, Washim

Date. 07.08.2026

CERTIFICATE

I affirm that the contents of this PDF file Judgment/ Orders are same word for word as per original Judgment/ Order.

Name of the Stenographer	:	Bhisade(Steno),
Court Name	:	2 nd Jt. C.J.J.D. & J.M.F.C. Risod.
Date	:	07/08/2026
Judgment/Order signed by		
Presiding Officer	:	07/08/2026
Judgment/Order Uploaded on	:	07/08/2026