

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.213 OF 2026

S [REDACTED] S [REDACTED] N [REDACTED] [REDACTED] ...Applicant

Versus

N [REDACTED] [REDACTED] [REDACTED] [REDACTED] & Anr. ...Respondents

Mr. Aniket Vagal a/w M/s Juhi Kadu & Savvy Kolhekar, for the Applicant.

Mr. Mahendra N. Sandhyanshiv a/w Vikas B. Mourya, for the Respondent No.1.

Ms. S. M. Yadav, APP, for the Respondent – State.

CORAM: MADHAV J. JAMDAR, J.

DATED : 06th JULY 2026

PC:-

1. Heard Mr. Vagal, learned Counsel appearing for the Applicant, Mr. Sandhyanshiv, learned Counsel for the Respondent No.1 and Ms. Yadav, learned APP, for the Respondent-State.

2. By the present Criminal Application, the challenge is to the legality and validity of order dated 13th January 2026 passed by learned Additional Sessions Judge, Malegaon, District Nashik in Criminal Revision Application No.93 of 2025. By the impugned order dated the learned Additional Sessions Judge set aside the order dated 28th November 2025 and 15th December 2025 passed by the learned Magistrate in Criminal Miscellaneous Application

No.772 of 2025 and directed that the custody of the child which has been handed over, pursuant to the said order, to the wife shall be restored to the husband before learned Magistrate and that only after handing over the custody of the child, the wife has been directed to move the fresh application for custody of the child under relevant provisions of law.

3. By order dated 28th November 2025 passed by learned Additional 5th Chief Judicial Magistrate, Malegaon in Criminal Miscellaneous Application No.772 of 2025 the Police Officials of Pawarwadi Police Station, Malegaon were directed to take the search of house of the present Respondent and if son of age 2 years and 6 months of the Petitioner and Respondent No.1 is found then, he shall be brought before the Court on or before 02nd December 2025 and for that purpose search warrant under Section 100 of the BNSS has been issued. Thereafter, the child was brought before the Court and by the impugned order dated 15th December 2025 the learned Trial Court directed that the custody of the child shall be handed over to the Petitioner-Wife. The said order has been challenged by the Respondent-Husband in the Court of learned Additional Sessions Judge, Malegaon and the learned Additional Sessions Judge although observed in the impugned order dated

13th January 2026 that the child is only of 3 years age and therefore, in view of the welfare of the child he has to be in the custody of the mother, however, by observing that custody of a child in either place of spouse does not amount to confinement observed that Section 97 of Criminal Procedure Code, 1973 (“**CrPC**”) or Section 100 of Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”) will not apply to the facts of this case.

4. However, bare perusal of averments made in Criminal Miscellaneous Application No.772 of 2025 clearly shows that the Respondent forcefully took away the child from the custody of the mother by showing the revolver and confined him at another place. Thus, the impugned order dated 13th January 2026 passed by completely ignoring the said aspects is perverse and illegal. Considering the facts and circumstances, the learned Magistrate has passed the appropriate order by exercising the powers under Section 100 of BNSS.

5. Thus, in the facts and circumstances, the Additional Sessions Judge should not have interfered in the order of the learned Magistrate.

6. It is also required to be noted that a learned Single Judge by order dated 20th February 2026 has issued notice to the

Respondents and stayed the impugned order. Thus, consequently the child is with the mother.

7. Accordingly, in the facts and circumstances and for the reasons set out herein above the impugned order dated 13th January 2026 passed by learned Additional Sessions Judge, Malegaon, District Nashik in Criminal Revision Application No.93 of 2025 is quashed and set aside and order dated 28th November 2025 and 15th December 2025 passed by learned Magistrate in Criminal Miscellaneous Application No.772 of 2025 are restored.

8. The Criminal Application is disposed of.

[MADHAV J. JAMDAR, J.]