



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6663 OF 2025

[REDACTED]

Versus

[REDACTED]

...

- Mr. M. P. Gandle, Advocate for the Petitioner

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CORAM : ROHIT W. JOSHI, J.
(VACATION COURT)

DATE : 27th MAY, 2025

ORDER :

. The petitioner has filed an application seeking custody of his child Asit @ Ankur. The date of birth of child is 21.09.2023. The child is required to undergo an open heart surgery. In this petition for custody the petitioner filed an application for *interim* custody on medical ground i.e. for the purpose of operation of the child. He had also filed an application for taking case on board before District Judge-2 and Additional Sessions Judge, Kaij (Mr. Sudhir B. Bhajipale). Along with the said application for taking the case on board, the petitioner husband had also filed a certificate dated 09.05.2025 issued by MGM's Medical Centre & Research Institute Super Specialty Hospital, Aurangabad certifying that the child is required to undergo surgery which is tentatively scheduled in the first week of June, 2025.

Despite this, to the utter dismay of this Court, the learned District Judge has rejected the application for taking the case on board by passing the following order:-

“The non applicant is the mother of child. In such circumstances, no urgent ground to decide the application of custody in summer vacation”

2. It appears that in serious matter like this where a child of less than two years of age was required to undergo an open heart surgery, the learned Judge has not deemed it appropriate to take the case on board to consider as to whether the prayer for *interim* custody on medical ground should be granted or not. The conduct of the learned judge to say the least, is unbecoming of any judge. Equally shocking is the conduct of the respondent – mother, who is opposing the prayer for *interim* custody, despite specifically admitting that the child is required to undergo the said operation. At the instance of this Court the Office Staff has confirmed from the concerned hospital that the child is required to undergo open heart surgery and the surgery is scheduled in the first week of June, 2025.

3. In view of the aforesaid order dated 17.05.2025 passed by District Judge-2 and Additional Sessions Judge, Kaij, (Mr. Sudhir B. Bhajipale), on an application for taking the case on board, dated 17.05.2025 filed in case Filing No. 107/2025 is quashed and set aside.

4. Having regard to the urgency in the matter, the application for *interim* custody of the child filed in the said proceeding is allowed. The respondent - mother is directed to place the child in custody of the father in Aurangabad tomorrow i.e. on 28.05.2025 for the purpose of undergoing surgery as recorded above. The child will be in custody of the father during the course of hospitalization and the mother will get custody of the child subject to further medical advise since the mother stays at Kaij, which is at a distance of 200 km from Aurangabad.

5. Having regard to welfare of the child, it is directed that the father will grant continuous access to the mother while the child is in his custody. After the surgery is performed, the petitioner - husband shall file an affidavit along with appropriate documents to demonstrate that the surgery is performed as stated by him in the application.

[ROHIT W. JOSHI]
JUDGE

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