

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 426 OF 2026

Sow. Shivnanda w/o Satyawan Karadbhaje,
Age – 40 years, Occu : Service,
R/o : Bhagwan Nagar, Georai,
Tq. Georai, Dist. Beed.

..Petitioner

VERSUS

Satyawan s/o Aasaram Karadbhaje,
Age – 40 years, Occu : Service,
R/o. Bhagwan Nagar, Georai,
Tq. Georai, Dist. Beed.

..Respondent

...
Advocate for the Petitioner : Mr. P.K. Lakhotiya
Advocate for Respondent : Mr. A.A. Nimbalkar

...
CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : APRIL 06, 2026

PRONOUNCED ON : APRIL 10, 2026

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with consent of parties.

2. The petitioner impugns order dated 01.12.2018 passed by Civil Judge Senior Division, Beed in Hindu Marriage Petition No.249 of 2014, whereby petitioner is directed to remain present along with her son at Directorate of Forensic Science Laboratory, Maharashtra State, Mumbai Kalina, Vidyutnagari, Santacruz (East), Mumbai and to give blood and necessary samples as per convenient date given by laboratory. The order further stipulates that petitioner shall not be compelled to give any blood sample against her will.

3. The respondent/husband instituted Hindu Marriage Petition No.249 of 2014 before Civil Judge Senior Division, Beed under Section 13(1)(i) of Hindu Marriage Act seeking decree of dissolution of marriage. The sum and substance of contention in petition is that marriage between petitioner and respondent was solemnized on 13.12.2009 as per Hindu rights and customs. The petitioner resided at matrimonial home only for a period of eight days. The petitioner was constantly in contact with one Shivaji and she expressed her love for him. The petitioner left home within eight days of marriage and started residing at her matrimonial home. All efforts to bring her back failed.

4. On 22.12.2010, she gave birth to a child. She had suppressed pregnancy from respondent. The respondent claims that he is not father of son born to petitioner. The respondent had noticed petitioner in company of said Shivaji. On 27.12.2009, respondent has seen petitioner in compromised position in a room along with Shivaji. According to respondent, he is entitled for decree of divorce under Section 13(1)(i) of Hindu Marriage Act.

5. The petitioner filed written statement and refuted material averments in petition. In light of pleadings of parties, Trial Court framed issues.

6. Issue no.1(c) reads as under :

“1(c) Does the petitioner proves that petitioner is not a father of child which is born to by respondent no.1 on 22.12.2010 ?”

7. In deference to aforesaid issue, respondent filed an application below Exhibit-44 seeking order for DNA test to decide paternity of child. The application was opposed by petitioner. However on 01.12.2018, Trial Court passed following order :

“1) Application is hereby allowed.

2) Respondent Shivnanda Asaram Karadbhaje hereby directed to remain present alongwith son Kaustubh at Directorate of Forensic Science Laboratory, Maharashtra State, Mumbai Kalina, Vidyutngari, Santacruz (East), Mumbai and to give the blood and necessary samples as per convenient date given by the laboratory.

3) Applicant is directed not to compel her to give any blood sample against her will.

4) Respondent is hereby directed to file pursis regrading his presence or absence before laboratory on record.

5) Disposed off as accordingly.”

8. Eventually, petitioner filed pursis Exhibit-57 stating that she is ready to present herself along with child for DNA test, but she never presented herself before hospital authorities. Accordingly, parties recorded evidence in trial. Meanwhile, Trial Court had passed order dated 21.09.2016 below Exhibit-16 directing respondent to pay interim maintenance towards minor child. The said order was subjected to challenge in Writ Petition No.12010 of 2017 before this Court. The Writ Petition came to be disposed on 06.09.2024 with direction that petitioner to withdraw amount of maintenance awarded to minor after compliance of order dated 01.12.2018 i.e. impugned order in present petition. This Court has further directed expeditious disposal of Hindu Marriage Petition. In aforesaid factual

backdrop, petitioner raised challenge to impugned order in this petition.

9. Mr. Lakhotiya, learned advocate appearing for petitioner submits that petitioner could not challenge impugned order as she was not well advised at relevant time. She had filed pursis to make available herself along with child for DNA test at government recognized hospital or institution under misconception of fact and law. The direction compelling petitioner/wife and minor son to undergo DNA test constitutes an unwarranted intrusion into their bodily integrity, decisional autonomy and informational privacy, which is duly recognized by Hon'ble Supreme Court in case of ***K.S. Puttuswamy Vs. Union of India*** compelling an unwilling woman and minor child to provide bodily samples violates right under Article 21. Unless there is primary evidence to rebut presumption under Section 112 of Evidence Act, legitimacy of child cannot be questioned without proof of non-access.

10. In support of his contention, he heavily relies upon observations of Hon'ble Supreme Court in case of ***R. Rajendran Vs. Kamar Nisha and Ors*** reported in ***AIR Online 2025 SC 1060***, ***Ivan Rathinam Vs. Milan Joseph*** reported in ***AIR 2025 SC 1004*** and ***Banarsi Das Vs. Teeku Dutta (Mrs) and Another*** reported in ***(2005) 4 SCC 449***.

11. Per contra, Mr. Nimbalkar, learned advocate appearing for respondent raises serious objection to entertain present writ petition on the ground of delay and laches. He submits that there is no explanation for impugning order passed on 01.12.2018 after 7 years, particularly when petitioner had accepted order and assured Court vide pursis Exhibit-57 to submit herself for DNA test along with child. He points out divorce proceeding instituted by respondent/husband is pending for last 13 years. On conclusion of recording of evidence when matter was posted for final arguments, present writ petition is filed only with intention to protract proceedings. The respondent is put to burden to prove that he is not father of child born to petitioner. Eventually, directions were given for DNA test, however, respondent was directed not to compel her to give her blood samples against her will. Eventually, respondent has not taken any coercive steps compelling her to give blood samples and recorded necessary evidence to discharge his burden. At this stage, no interference is required. Mr. Nimbalkar, in support of his contention relies upon observations of Hon'ble Supreme Court in case of *Balwant Singh (Dead) Vs. Jagdish Singh and Ors* reported in *AIR 2010 SC 3043*, *Pathapati Subba Reddy (Died) by Legal Representatives and Others* reported in *(2024) 12 SCC 336*, *Mrinmoy Maity Vs. Chhanda Koley and Ors* reported in *AIR 2024 SC 2717* and

observations of High Court of Madhya Pradesh in case of *Kamla Patel Vs. Govind Bahadur* reported in *2026 SCC Online MP 428*.

12. Having considered rival contentions and on perusal of record tendered into service, it can be observed that respondent/husband has instituted proceeding under Section 13(1)(i) of Hindu Marriage Act for dissolution of marriage. It is specifically pleaded that after marriage petitioner and respondent resided together hardly for eight days. Since then, she left company of respondent and resided at matrimonial home. The respondent had occasion to see petitioner in compromised position with a third person. The petitioner had no access with respondent when she conceived pregnancy. Eventually, respondent sought direction for DNA test to establish wife's infidelity in order to support claim for decree of divorce.

13. Apparently, objective of DNA test was not to prove illegitimacy of child, although such question is incidental in proceeding. It is trite that DNA test can be a mode to bring evidence of infidelity without disturbing presumption under Section 112 of Evidence Act. The DNA test itself cannot be used to declare illegitimacy of child as long as presumption under Section 112 remains intact. In case where declaration as to legitimacy of child is sought, the issue of non-access has to be proved with substantive evidence and then only question of directing DNA test arises for

consideration. However, in facts of present case where a decree of divorce is sought on the ground of infidelity of wife, husband is required to prove that wife had voluntarily inter-course with person other than him.

14. Learned advocates appearing for respective parties have relied upon catena of judgments on the issue as to whether matrimonial Courts have power to direct DNA test. The issue has been answered in affirmative with certain riders. It is left to discretion of Courts to direct DNA test without compelling a party or child and rest is left upon Courts to apply appropriate presumptions under law.

15. In light of aforesaid legal and factual matrix, this Court requires to consider one more objection as to delay and laches pressed into service on behalf of respondent. At this stage reference can be given to observation of Supreme Court in case of ***Chennai Metropolitan Water Supply & Sewerage Board and others v T.T. Murali Babu***, reported in ***(2014) 4 SCC 108***, which reads thus :-

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant – a

litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the list.”

16. The impugned order is passed on 01.12.2018 and same has been challenged in the year 2026 in present writ petition. To entertain or not to entertain writ petition on the ground of delay and laches is again discretion left to writ Court. In appropriate cases, de hors delay to make substantial justice, the Court may ignore the same. However, in present case, this Court finds that petitioner had accepted impugned order and assured Court to submit herself for DNA test, however, ultimately refrained herself from presenting before hospital authorities. In light of stipulations in impugned order, no coercive steps were taken against her to secure blood samples. Eventually, parties proceeded further to record evidence and when matter reached to final stage, present writ petition is filed raising challenge after 7 long year, probably apprehending adverse presumption by Court. In light of aforesaid factual background, this Court do not find any reason to entertain writ petition and disturb order passed by Court in exercise of discretionary jurisdiction in facts of present case. It is not the case that order is patently illegal or without jurisdiction or refusal to entertain writ petition would result manifest injustice to petitioner.

17. Although, this Court is not entertaining writ petition, it is necessary to observe here that issue before Trial Court is not regarding legitimacy of child. But, DNA test of husband and son could be vital evidence to prove infidelity of wife. Law requires husband to prove that after solemnization of marriage, wife had voluntary sexual intercourse with other person. So, unless husband leads sufficient evidence on aforesaid aspect, coupled with evidence as to non-access, presumption of adulterous behaviour cannot be drawn only on the basis that wife failed to submit for DNA test. It is trite that DNA test itself is not enough to rebut presumption under Section 112 of the Act. If evidence depicts that husband and wife lived together during time of conception, protection is offered by law in favour of innocent child from being bastardise.

18. In light of aforesaid observations, writ petition stands rejected.

(S.G. CHAPALGAONKAR, J.)