

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.274 of 2026

Md. Ashfaque Alam, Age - 40 Years, S/o - Md. Shamim Ahmad,
R/o - Vill- Bangla Road, Azad Basti, P.O. + P.S.- Lohardaga, Dist-
Lohardaga, Jharkhand. Represented through his Elder Brother
Md. Aftab Alam, Age- 43 Years, S/o- Md. Shamim, R/o- Vill-
Bangla Road, Azad Basti, P.O. + P.S. - Lohardaga, Dist-
Lohardaga, Jharkhand.

... Petitioner

Versus

1. The State of Jharkhand
2. Neha Parween, W/o- Asfaque Alam, Aged- 28 Years, R/o-
Dangra Toli, Old Purulia Road, Opp. Tanveer Petrol Pump, P.O.-
G.P.O., P.S.- Lower Bazar, Dist- Ranchi, Jharkhand.

... Opposite Parties

For the Petitioner : Mr. Rahul Pandey, Advocate
Ms. Aarti Kumari, Advocate
For the State : Mr. Manoj Kr. Mishra, Addl.P.P.
For the O.P. No.2 : None

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- **I.A. No.8610 of 2026**

1. Heard the parties.

2. Learned counsel for the petitioner submits that this interlocutory application has been filed for early hearing of the instant Criminal Miscellaneous Petition.

3. Since the hearing of the instant Criminal Miscellaneous Petition is taken up today, hence, his interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No.274 of 2026

1. Heard the parties.

2. Though the notice has validly been served upon the opposite party No.2 yet no one turns up on behalf of the opposite party No.2 in spite of repeated calls.

3. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with the prayer to quash the order dated 06.08.2025 passed by the Additional Principal Judge, Additional Family Court-I, Ranchi in connection with Original Maintenance Case No. 269 of 2018 whereby and where under the learned court rejected the prayer made by the petitioner not to insist upon payment of arrear amount of interim payment or to adduce evidence.

4. The brief facts of the case is that vide order dated 20.12.2021 passed in Original Maintenance Case No. 269 of 2018, the petitioner was directed to pay a sum of Rs.3,000/- per month as maintenance to the opposite party No.2 being his wife but since 02.07.2024, he stopped payment and in the said maintenance case after examining one witness

from the side of the opposite party, the petitioner herein, who is the opposite party of the maintenance case, is not examining any further witness. The petitioner filed a petition contending therein that as he is a mental patient, payment of arrear interim maintenance may not be insisted upon and no adverse order be passed against the petitioner. The learned Additional Family Court-I, Ranchi relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Suchita Srivastava vs. Chandigarh Administration** reported in (2009) 9 SCC 1 wherein, the Hon'ble Supreme Court of India has distinguished mental illness and mental retardation and opined that there are various degrees of mental disabilities and people suffering from mild, moderate or border line mental retardation are capable in living in normal social condition. The learned Additional Family Court-I, Ranchi further relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Ravindra Kumar Dhariwal vs. Union of India** reported in (2023) 2 SCC 209 wherein, the Hon'ble Supreme Court of India observed that in sharp difference to the Mental Health Care Act, 1985, the Mental Health Care Act, 2017 recognizes the legal capacity of person suffering from mental illness and confers an agency of person-hood upon them and it was further observed that a person suffering from mental illness will not be presumed to be incapable to make decision and their illness will not be seen as an impairment. The learned Additional Family Court-I, Ranchi also took into consideration Section 3(4) of the Mental Health Care Act, 2017 which envisages that the past treatment or hospitalisation in a mental health establishment shall not itself

determine the person's future or present mental illness and by thus considering the settled principle of law, considered the documents filed in support of his contention by the petitioner herein. From the documents filed by the petitioner who is the opposite party before the learned Additional Family Court-I, Ranchi; the learned Additional Family Court-I found that they merely indicated that the petitioner was diagnosed for suffering some form of mental ailment and his condition improved after certain medication. The learned Additional Family Court-I upon consideration of the materials in the record, came to the conclusion that there is nothing to show that the petitioner is unable to earn or mentally incapable of judging his self-interest, therefore, he cannot avoid the liability to pay interim maintenance and rejected the prayer.

5. Learned counsel for the petitioner submits that the learned Additional Family Court-I, Ranchi has committed an illegality by rejecting the petition even after accepting the fact that the petitioner is suffering from mental ailment and the same was done in a mechanical manner. Hence, it is submitted that the prayer as prayed for in this Criminal Miscellaneous Petition be allowed.

6. Learned Addl.P.P. appearing for the State on the other hand vehemently opposes the prayer of the petitioner made in this Criminal Miscellaneous Petition and submits that the documents filed before the learned Additional Family Court-I, Ranchi merely go to show that the petitioner is suffering from mental ailment but in view of the settled principle of law relied upon by the learned Additional Family Court-I,

Ranchi in the impugned order that in mental illness also, a person is capable of living in normal social situation and can earn his livelihood, so, merely a past mental ailment will not be a justifiable reason in the absence of any material in the record to arrive at a conclusion that the petitioner is incapable of earning his livelihood. It is lastly submitted that there being no illegality in the impugned order; this Criminal Miscellaneous Petition, being without any merit, be dismissed.

7. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, as already indicated above in the foregoing paragraphs of this judgment, it is a settled principle of law that a person suffering from mental illness which is mild, moderate or border line mental retardation is capable of living in normal social condition.

8. It is also a settled principle of law as already discussed in the foregoing paragraphs of this judgment that a person suffering from a mental illness will not be presumed to be incapable to make decision and their illness will not be seen as impairment.

9. In view of these settled principle of law; as the petitioner has failed to establish any material to suggest that he is suffering from mental disorder of such a nature, which has made him incapable of his earning his livelihood or to take any decision regarding prosecuting his case, this Court do not find any illegality in the impugned order passed by the learned Additional Family Court-I, Ranchi warranting interference of this Court in exercise of its power under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

10. Accordingly, this Criminal Miscellaneous Petition, being without any merit, is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 07th of July 2026
AFR/ Saroj

Uploaded on 09/07/2026

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