

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1900 OF 2023

**DILIP S/O. SHRIHARI RAUT
VERSUS
THE STATE OF MAHARASHTRA**

...

Mr. Rajendra Deshmukh, Senior Advocate
a/w Mr. Vishal A. Chavan i/b. Mr. V.S. Wakale, Advocate for applicant.
Mrs. P.V. Diggikar, APP for respondent State.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 7 NOVEMBER, 2023
PRONOUNCED ON : 10 NOVEMBER, 2023.**

ORDER :-

1. The applicant seeks bail in connection with Crime No. 151 of 2023 registered with Jawahar Nagar Police station, Dist. Aurangabad for the offences punishable under Sections 370, 317 r/w. 34 of IPC and under Sections 80, 81 and 87 of the Juvenile Justice (Protection and Care of Child) Act, 2015.
2. The investigation was set in motion on the basis of information given by Anita Dyandeo Fasate, who is deputed as Police Sub Inspector, Damini Squad, Chatrapati Sambhani Nagar. She alleges that on 20.6.2023, secret information was received that an infant is put to sell at Jijamata Balak Ashram (Orphanage). Accordingly, police party raided the said place. The accused who was found on spot introduced himself to be the Manager of the orphanage. On search, the infant was seen and

accused No.2 – wife of the applicant/accused was found taking care of the infant. When accused/applicant was interrogated regarding parents of the infant, he told name of mother is Anita Sable and she had voluntarily kept the child with them for the purpose of giving in adoption. However, the applicant/accused could not produce evidence to indicate that accused Sunita is mother of the infant. It is further alleged that while the panchanama was being prepared, witness Pradip Daga and his wife Samata Daga arrived at the orphanage and told that the applicant/accused had assured them to make available the infant for adoption and demanded an amount of Rs. 5 Lakhs for that purpose. It is further alleged that applicant/accused was not authorized to admit any infant/child in his orphanage or authorized to provide for adoption. It is accordingly alleged that the applicant/accused and his wife, mother of the infant and her brother, had prepared a plan for illegal trafficking of infant/child, which constitutes an offence under Section 370 of IPC, so also, sections 80, 81 and 87 of the Juvenile Justice (Protection and Care of Child) Act. 2015.

3. On the basis of such information, Crime No. 151 of 2023 came to be registered with Jawahar Nagar police Station at Aurangabad against in all 4 accused persons. The applicant has been arrested on 26.6.2023. Since then, he is behind bars. His plea for grant of bail has been rejected by the trial court. After completion of investigation, charge sheet has been filed. Even successive application of the applicant for grant of bail after filing the charge came to be rejected. Hence, the present application.

4. Mr. Rajendra Deshmukh, learned senior counsel appearing for

the applicant would submit that the applicant runs the orphanage which is duly registered with the concerned authorities. He would submit that there is no evidence to indicate that the authority of the orphanage is misused. He would submit that false allegations are made against the applicant in connivance with the owner of the premises where the orphanage is being run. He would further submit that the husband of accused No.1 has been expired. She had conceived pregnancy out of illicit relations. Therefore, she wanted to give the child born out of such relationship in adoption and kept the child with the orphanage of the applicant. He would submit that neither it is case of illegal trafficking nor there was payment of any money. Pradip Daga, who is friend of the owner of the premises has falsely implicated the applicant. The learned Senior Counsel would further submit that investigation in the matter is complete. Charge sheet is filed. The offences alleged are punishable with sentence less than 10 years. Further detention of the applicant would not be necessary.

5. The learned APP strongly opposes the prayer on the ground that the applicant/accused had no valid authorization to admit any child or infant below age of six years. She would submit that the statement of witness Pradip Daga is recorded under Section 164 of Cr.P.C. wherein he specified that applicant had demanded Rs. 4 to 5 lakhs towards expenses and donation for giving the child in adoption. Therefore, according to her, case of illegal trafficking of minor child under the pretext of adoption is made out. She would further point out that the previously, the applicant was found involved in similar type of offence.

6. Having considered the submissions advanced, it can be gathered that the applicant runs the orphanage which had valid authorization from competent authority and in view of the directions of this Court in W.P. No. 7821 of 2021 the application for further renewal was under consideration. However, whether the orphanage of the applicant was having permission to admit child below age of six years would be a question to be considered in trial. So far as the allegations in the FIR are concerned, prima facie, it can be seen that infant was found with orphanage when the police party raided the premises. However, except the statement of witness Pradip Daga, there is nothing to demonstrate that child was being offered for adoption against consideration.

7. A careful reading of Section 164 statement of Pradip Daga would depict that he alleges demand of Rs. 4 to 5 Lakhs towards payment to be made to the parents of the infant and donation to the orphanage, to which he had responded to donate the amount as per his ability. The statement do not show that any payment was actually made or advanced. The statement of Samta Pradip Daga do not make reference regarding any deal or demand made by the applicant/accused. Taking into account the overall material available in the charge sheet, prima facie, Section 370 of IPC may not apply in facts of this case since it requires trafficking of person for the purpose of exploitation. However, it would be a matter of trial. So far as the other offences under the provisions of the Juvenile Justice Act are concerned, those are punishable with imprisonment of less than five years.

8. The investigation is compete. Charge sheet is filed. The

applicant is behind bars for more than 5 and ½ months. His further detention would not be necessary. In that view of the matter, a case is made out for grant of bail.

9. O R D E R

- (i) The Bail application is allowed.
- (ii) Applicant – Dilip Shrihari Raut, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (rupees fifty) with one surety in the like amount, in connection with Crime No.151 of 2023 registered with Jawahar Nagar Police station, Dist. Aurangabad for the offences punishable under Sections 370, 317 r/w. 34 of IPC and under Sections 80, 81 and 87 of the Juvenile Justice (Protection and Care of Child) Act, 2015.

on the following conditions :-

- [a] The applicant shall not tamper with prosecution evidence.
- [b] He shall attend the trial on each and every effective date.
- [c] He shall not indulge in any criminal activity;
- [d] He shall not establish any contact with any witness named in the charge sheet.
- [iii] The applicant stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-