

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1469 OF 2015

Kamruddin Nasir Shaikh. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Indrajeet Joshi, advocate for Applicant.

Ms. S.S. Kaushik, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 11, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 16/12/2014 in
Crime No. 480 of 2014 registered at Kurla Railway Police Station for
offence punishable under Section 370 of the Indian Penal Code read
with Section 26 of Juvenile Justice (Care & Protection of Children)

Act, 2000. The investigation is completed and charge-sheet is filed on 29/1/2015.

3 It is the case of the prosecution that on 16/12/2014 Sandhya Dhumal working as a social worker lodged a report at the police station contending therein that she works with Pratham Mumbai Education Initiative. The organisation works for the welfare of the children. Two members of the said organisation namely, Navnath Kamble and Mahendra Mane are working for the said cause in the State of Bihar. On 14/12/2014 the said members of the organisation informed to the Bombay office that several children are being brought from Bihar to Mumbai by Jansadharan Express for the purpose of employing them. They were further informed that the train would arrive at Mumbai Kurla Terminus on 15/12/2014. Accordingly, the complainant alongwith other social workers reached Lokmanya Tilak Terminus. The train was delayed by 5 hours. They had also informed the police about the operation and police had also arrived at Lokmanya Tilak Terminus. It was noticed that 82 children alighted from the train with some persons who had brought the children from

Bihar for the purpose of employing them in various small scale industries. Out of 82 children 14 children were with their guardians. 40 children were not accompanied by their guardians. 28 boys had come alongwith original residents of their village who were working in Mumbai. The FIR shows the list of children who were travelling without their guardians or parents. Some of the children were from the border area of India and Nepal. They were all taken into custody. Their statement were recorded. Subsequently, they were rescued and given into the custody of their parents/guardians.

4 In the course of investigation, the investigating officer had recorded the statement of the victim namely, Iqlaq Hamid Shaikh. He has disclosed to the police that he had come to Mumbai to see Mumbai and also to work. The applicant happens to be his paternal cousin. That he had accompanied the applicant on a bike upto Kundwa-Chainpur station and thereafter, they had taken train and came to Reskol. Thereafter they had taken Jansadharan Express for Mumbai. The moment, they alighted at Kurla Terminus railway station, they were taken into custody.

5 Prima facie, it cannot be said that the applicant herein who happens to be the first cousin of the victim had detained him. That the act of the applicant would not amount to slavery and servitudes. The applicant has been in custody for almost 8 months. He therefore, deserves to be enlarged on bail.

6 The learned APP submits that the applicant hails from Nepal and there is no possibility that the applicant would be available to face the trial and hence, it is prayed that the application be rejected.

7 The learned Counsel for the applicant submits that upon taking into consideration the statement of the victim, it cannot be said that the applicant had either misled the victim and brought him to Mumbai to engage him as child labour. That the victim also belongs to poor family. He had specifically and voluntarily stated that he has visited Mumbai to see Mumbai and to work. The learned Counsel for the applicant submits that the applicant would furnish local sureties

and would remain present at the time of trial on each and every date.

In view of this, the application deserves to be allowed.

8 The abovesaid observations are prima facie in nature and are restricted to decide the application under section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial. The learned Trial Court shall decide the same on its own merits in accordance with law uninfluenced by the above observations.

9 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- and one or more local sureties in the like amount.
- (iii) The applicant shall report to the police station on 1st Sunday of every month till conclusion of the trial.

(iv) Upon being enlarged on bail, the applicant shall also give an undertaking that he would remain present on each and every date of trial.

(v) Upon being enlarged on bail, the applicant shall furnish his permanent address, landline number, cell phone number to the investigating officer.

(vi) Upon failure to attend any two consecutive dates either at police station or at the time of trial, the prosecution shall be at liberty to file an application for cancellation of bail.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)