

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3210 OF 2015

Mrs. Sapna Devi Sandeep Yadav. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. V.B. Jaiswal, advocate for Applicant.

Ms. A.A. Mane, APP for State.

Mrs. Sarla Vasawe, PI, Powai Police Station.

Mr. J.R. Gaikwad, PI, Nagpada Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 20, 2015

P.C.:

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

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioner herein is questioning the correctness and validity of the order dated 11/5/2015 passed by the Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai, thereby rejecting the application filed by the Petitioner/by her husband seeking her release from Navjeevan Mahila Vasatigruh.

4 It is the case of the prosecution that on the basis of a secret information P.I. Mr. Yadav, attached to Social branch had raided Powai area. They had arranged for bogus customer who had contacted one Mohd. Jarar Khan on his cell phone number. Bogus customer had given Rs. 3,000/- to Mr. Mohd Jarar Khan who had arranged for a woman. Said Zarar Khan had asked the bogus customer to visit Relax In Residency opposite Sansrushti Complex, GuruKrupa Hotel, Powai Road, Sakinaka, Andheri (E), Mumbai. The raiding team followed. Two girls had accompanied the bogus customers. The girls were taken into custody. The Petitioner herein happens to be one of the woman who was taken into custody by the police in the raid.

5 The said victims were produced before the Magistrate. Crime No. 182 of 2015 was registered against Mohd Jarar Khan for offence punishable under Section 370(3) read with Section 34 of the Indian Penal Code and Section 4 and 5 of Immoral Traffic (_Prevention) Act, 1956. Learned Metropolitan Magistrate has considered the application filed by the prosecution. There was an enquiry as contemplated under the said Act. The victims were produced before the learned Magistrate. The learned Magistrate was pleased to release the victim Poornima Manikaran Yadav. Her husband was given her custody on giving an undertaking that she would not indulge herself in any immoral activities. The undertaking of the husband was also taken in the prescribed proforma. The learned Magistrate has directed that the present petitioner be sent to Navjeevan Mahila Vastigriha, Deonar, Mumbai for a period of one year.

6 The Petitioner herein being aggrieved by the order dated 11/6/2015 had preferred an appeal before the Court of Sessions, which was registered as Criminal Appeal No. 545 of 2015. The learned Sessions Court has also dismissed the appeal by an order dated 29/7/2015. Hence, this Petition.

7 The learned Appellate Court has considered that the Petitioner herein had given photo copies of Adhar Card of herself and her husband. However, there is no material to test the authenticity of the said documents. Moreover, there was no material to indicate that the present Petitioner was married to Sandeep Yadav with whom she was allegedly married and hence, the Appellate Court was of the opinion that she deserves to be detained in the rescue home.

8 The learned Counsel for the Petitioner submits that the Petitioner is 25 years old. She can take care of herself. It is also contended that the Court of Metropolitan Magistrate has not passed the order in accordance with the law as contemplated under Section

17(2) of the Immoral Traffic (Prevention) Act. It is submitted that it is incumbent upon the Magistrate to hold an enquiry in accordance with the Section 17(2) of the Act and the period of enquiry shall not be more than 21 days. According to the learned Counsel, in the present case, no such enquiry was held. It is submitted that the petitioner cannot be forced to stay with the social organisation when she can take care of herself. The husband of the petitioner had claimed her custody. Her husband had furnished his Adhar Card and other relevant documents which are verified and found to be genuine and true. In view of this, the petition deserves to be allowed.

9 The learned APP submits that on the day when the Petitioner was produced before the Magistrate, she had stated that she has nobody to look after her and therefore, she was sent with the social organisation. Today, it is contended that husband of the petitioner is willing to take care of her during the pendency of the proceedings.

10 Taking overall view of the facts of this case and the submissions advanced across the bar, this Court is inclined to allow the Petition. Hence, following order is passed :

ORDER

- (i) Writ Petition is allowed.
- (ii) The order passed by the Additional Sessions Judge, City Civil & Sessions Court, Gr. Mumbai dated 29/7/2015 confirming the order dated 11/5/2015 passed by the Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai thereby denying enlargement of the Petitioner is hereby quashed and set aside.
- (iii) The Petitioner be enlarged and set free from Navjeevan Mahila Vastigriha, Deonar, Mumbai forthwith. The Petitioner shall give an undertaking that she would not indulge into similar offences in future.
- (iv) The petitioner shall remain present before the trial Court at the time of trial on the date of recording of her evidence.

(v) An undertaking in the prescribed proforma may be taken from the person who has claimed to be her husband.

11 The Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV,J)