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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 05.10.2015

BAIL APPLN.2102/2015

MAHAVIR YADAV

..... Petitioner

Through: Mr. Akhilesh Kumar Jha, Advocate

versus

STATE

..... Respondent

Through: Ms. Radhika Kolluru, APP with
Inspector Mahabir Kaushik, PS- Kotla
Mubarakpur

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A.14544/2015 (Exemption)

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

BAIL APPLN.2102/2015

1. The present is an application under section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') seeking pre-

arrest bail in FIR No.997/2015, under sections 23/26 of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'said Act'), registered at Police Station- Kotla Mubarakpur, New Delhi.

2. Ms. Radhika Kolluru, learned APP appearing on behalf of the official respondent states on instructions from the IO in the subject FIR namely Inspector Mahabir Kaushik, Police Station- Kotla Mubarakpur, New Delhi that subsequently the FIR has been modified to include section 370 of the IPC which deals with trafficking.

3. Learned counsel appearing on behalf of the applicant makes twofold submissions. Counsel would first urge that the victim was more than 14 years old at the time she was employed by a household with the assistance of the applicant, who operates a placement agency. Counsel would then urge that the gravamen of the charge against the applicant in terms of the provisions of section 370 IPC is not made out since the applicant did not induce the victim and in fact the victim was brought to his placement agency by the latter's aunt.

4. On the other hand, Ms. Kolluru, learned APP opposes the grant of pre-arrest bail to the applicant by asserting that the latter withheld the salary of the victim for almost two and half years and that the victim was less than

twelve years old when she was employed at the behest of the applicant. Ms. Kolluru would also urge that despite a notice in this behalf, being served upon the applicant by the Child Welfare Committee, District South to appear before the said Committee, the applicant has refused to make himself available. Ms. Kolluru, would lastly urge that in the facts and circumstances of the case, custodial interrogation of the applicant is necessary in the interest of justice.

5. In the present case, it is observed that the victim belongs to the poorest segment of society and is one of 8 children of a labourer in Hardoi District, Uttar Pradesh. Owing to penury, the victim was sent by her parents to live with her aunt in Delhi. The victim was admittedly a helpless participant in the whole affair. It has been alleged on behalf of the victim that neither would the applicant or the employer of the minor pay her salary nor would they allow the parents to meet or talk to the victim. The victim was rescued by an NGO and allegations of torture and ill-treatment have been levelled against the employer as well as the applicant.

6. A perusal of section 26 of the said Act makes it crystal clear that whoever withholds the earning that a juvenile or child derives from any hazardous employment or procures the services of a juvenile or child by

keeping the latter in bondage, is violating the mandate of the said provision of the said Act.

7. A plain reading of section 370 IPC reveals that it is stipulated that whenever a person, particularly a minor, is recruited for the purpose of exploitation by *inter alia* inducement of payments or benefits, the offender can be charged with trafficking within the meaning of the said section and upon conviction sentenced to a term which shall not be less than ten years but which may extend to imprisonment for life.

8. In view of the foregoing, considering the severity of the crime, the quantum of punishment upon conviction and the nature of allegations levelled against the applicant and the fact that he is not willing to submit himself for interrogation, in my view this is not a fit case for grant of pre-arrest bail.

9. The application is dismissed.

SIDDHARTH MRIDUL, J

OCTOBER 05, 2015

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