

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1710 OF 2016

Indian Rescue Mission
Through James Vergese

.....Petitioner

V/s.

The State of Maharashtra and another

....Respondents

Ms. Swapna Kode i/b Ms. Anshal A. Sontakke Advocate for Petitioner.
Mr. A. N. Pathan Advocate for Respondent no. 2
Mr. A. R. Patil APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : AUGUST 11, 2016.

PC :

- 1) Heard.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) The Petitioner herein is the Indian Rescue Mission. The Petitioner herein questions the correctness and legality of the order dated 21/04/2016 passed by the Court of Sessions, Greater Mumbai, Dindoshi Division. By the impugned order, the Petitioner Foundation was directed to hand over the custody of Ms. 'X' in favour of her father Abdul Baki Ansari who is present Respondent no. 2. It appears from the records that on 03/03/2016, James

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Vergese filed F.I.R. on behalf of the State at Goregaon Police Station alleging therein that they had received a secret information that certain minor girls were being dragged into trafficking and prostitution. On the basis of the said information, the Social Service Branch along with informant had conducted the raid and had apprehended Marjina Bibi Manirul Shaikh & Asma Tara Rubi Shaikh. By a decoy witness an offer was made for minor girls. The said two accused ladies had succumbed to the offer and had accepted the amount. A detailed Panchanama was recorded. The victim herein was found in the custody of Marjina Bibi Shaikh who happens to be the maternal aunt of the victim. Pursuant to the orders passed on June 7, 2016, the order of releasing the victim girl, in favour of her father who had filed an application was stayed. Subsequently, by an order dated 02/08/2016, the victim girl was summoned before this Court.

4) Today, this Court has interviewed the victim girl personally, in the chamber. Along with petition, the Petitioner has filed the statement of victim girl dated 03/03/2016 recorded by P.S.I. Sharda Bandgar. It is after interviewing the victim, it is clear that the statement was not recorded as per her say. It is also clear that at the time when the victim was taken into custody,

she was not well versed with the Hindi language and yet the statement is recorded on the same day in Hindi language. The girl appears to be of sharp cognition. She has learnt the Hindi language while in Rescue Foundation. The Superintendent of Rescue Foundation has also admitted that when the girl was brought in Rescue Foundation, she was not well versed with Hindi language and has picked up the language subsequently. It is true that the impugned order was passed in violation of Rule 17 of the Protection of Children from Sexual Offences Act, 2012. In fact, the Court should have waited for the home inquiry report to verify the genuineness of the statement of the victim as well as the identity of the applicant who had sought the custody of the victim girl and claimed to be a father. The Petitioner has tendered the Home Inquiry Report today. It is taken on record and marked as article 'X' for the purpose of identification.

5) The Home Report shows that the person who had filed an application, seeking custody, is the step father of the victim. In the course of inquiry, it was revealed that the step father is taking proper care of the victim girl and therefore, she calls him her father. The Home Inquiry Report as well as the personal inquiry would show that the girl has attended the school up to 6th

standard, however, the answer to question no. 4 in the statement dated 03/03/2016 shows that the girl had not attended the school. In answer to question no. 6, it is shown that her maternal grand mother has expired. However, the girl has informed this Court that her maternal grand mother is alive and she also cares for her.

6) In view of the inquiry conducted by this Court, the order dated 21/04/2016 passed by the Court of Sessions, Greater Mumbai, Dindoshi Division, releasing the child in the custody of the step father needs to be upheld.

7) The accused Marjina Bibi Shaikh was enlarged on bail by the Special Court on 03/06/2016 under Section 167 (2) of the Code of Criminal Procedure, 1973, since the charge-sheet could not be filed within the stipulated time. The accused was enlarged on provision cash bail. There is no inquiry thereafter, however, the accused has absconded as informed by the parents and relatives of the victim who were trying to search her. The police officer has also feigned ignorance about the whereabouts of the accused. Hence, prosecution is directed to take appropriate action.

8) Hence, for the above mentioned reasons and in view of the personal

interview, the petition is dismissed with no order as to costs. Needless to say that the interim relief is vacated.

9) Rule is discharged.

10) The victim be released in favour of the applicant namely Abdul Baki Ansari on 12/08/2016. The Rescue Foundation shall also take an undertaking from the parents that the victim girl will be produced before the Court as and when summoned by the Court concerned. Their permanent address shall be taken.

11) The copy of this order be sent to Court of Sessions, Greater Mumbai, Dindoshi Division as well as to the Commissioner of Police, Mumbai.

12) Parties to act upon authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)