

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO.515 OF 2016

1. Bilkish Rashid Sardar .Applicants
2. Shahajiya Rajja Khan

Vs.

The State of Maharashtra .Respondent

Mr.Arun Rajput a/w. Ms Anjali Patil i/b. Ms
A.R.Howal, Advocate, for the Applicants
Ms A.A.Takalkar, APP, for the Respondent - State

CORAM : REVATI MOHITE DERE, J.

DATE : 19.12.2016

ORAL ORDER

. Heard learned counsel for the parties.

2. Rule. Rule is made, returnable forthwith
with the consent of the parties and is taken up
for final disposal at the stage of admission.

3. Learned APP waives notice on behalf of
the Respondent - State.

4. By this Application, the Applicants seek
quashing and setting aside of the order dated

07.06.2016 passed by the learned Metropolitan Magistrate, 15th Court, Mazgaon, at Sewree, Mumbai in R.A.No.25/RA/2016 (arising out of C.R.No.259/2016 of the MIDC Police Station), by which the Applicants were detained and were directed to be kept in Navjeevan Mahila Vastigruha, Deonar, Mumbai as well as the order dated 26.08.2016 passed by the learned Additional Sessions Judge, Borivali(Division), Dindoshi, Goregaon, by which the Applicants' Criminal Appeal, being Criminal Appeal No.143 of 2016 came to be dismissed.

5. Learned counsel for the Applicants states that the Applicants were rescued by the MIDC Police Station in a raid conducted by them. The Applicants, who are victim girls were brought before the learned Magistrate, pursuant to which the Applicants were detained. The learned Metropolitan Magistrate, Special Court(PITA) 15th Court, Mazgaon, at Sewree, Mumbai was pleased to detain the Applicants for

one year from the date of the order for their care, protection, shelter and training. The Superintendent, Navjeevan Mahila Vastigruha was directed to rehabilitate the Applicants (victim girls).

6. Learned counsel for the Applicants submits that the Applicant No.1 hails from Kolkata and that her husband - Rashid Sardar be allowed to take her custody. He submits that the Applicant No.1 has one minor daughter, aged about ten years and presently, the Applicant No.1's daughter is staying with her mother-in-law, as the Applicant No.1's husband is doing business of tailoring and is required to stay away. He submits that the Applicant No.1 is aged about 25 years and is willing to give an undertaking that she will not indulge in similar activities in future. He submits that the Applicant No.1 is competent and capable of looking after herself. He relied on the Applicant No.1's Voter ID Card, Marriage

Certificate, Aadhar Card and School Leaving Certificate of the Applicant No.1 in support of proof of her age and residence.

7. Learned counsel for the Applicants submits that as far as Applicant No.2 is concerned, she is aged about 26 years hails, from Mumbai and has one minor daughter, aged about seven years. He submits that the Applicant No.2's daughter is presently staying with the Applicant No.2's father in Mumbai. He relied on certain documents and certain photographs in support of the same i.e. residential proof etc. He submits that the Applicant No.2 is also ready to give an undertaking that she will not indulge in similar activities in future.

8. Learned APP states that the Applicants have undergone vocational training at the Navjeevan Mahila Vastigruha, Deonar for Murali painting and masala making etc.. She does not dispute the documents annexed to the

Application.

9. Learned APP does not dispute the documents.

10. Perused the papers. Investigation is complete and charge-sheet has been filed. It also appears that the Applicants are major and aged about 25 & 26 years respectively. They are married and they are having one child each and as such, are competent to take care of themselves. The Applicant No.1's husband is present in Court as well as the Applicant No.2's father is also present in Court today. It appears that the Applications for their release were rejected essentially on the ground that the Applicant No.2's father was not financially sound and as the Applicant No.1's husband was doing tailoring job and did not have a source of livelihood. Infact, the Applicant No.2's daughter is being looked after by the Applicant No.2's father and Applicant No.1's husband being

a tailor, has a livelihood.

11. The Applicants have been detained for one year and have been in the rescue home for more than six months.

12. Considering the overall facts of this case and considering the fact that the Applicants are major, married and having one child and that they are ready to give an undertaking that they will not indulge in similar activities in future, the Application is allowed on the following terms & conditions:-

O R D E R

(i) The impugned order dated 07.06.2016 passed by the learned Metropolitan Magistrate, 15th Court, Mazgaon, at Sewree, Mumbai in R.A.No.25/RA/2016 in C.R.No.259/2016 of the MIDC Police Station and confirmed by the learned Additional Sessions Judge, Borivali(Division), Dindoshi, Goregaon vide order dated 26.08.2016 passed in Criminal Appeal No.143 of 2016 are

quashed & set aside;

(ii) The Applicants are enlarged and set free from Navjeevan Mahila Vastigruha, Deonar, Mumbai forthwith;

(iii) The Applicants shall give an undertaking that they will not indulge in similar offences in future. The undertaking to also state the address where the Applicants will be residing and that if there is change in the address, they will inform the trial Court of the same. The said undertaking shall be filed by the Applicants, in the trial Court, within one week of their release;

(iv) The Applicants to remain present before the trial Court at the time of trial, on the date of recording of their evidence;

(v) The investigating officer to communicate the said order to the officer of the Navjeevan Mahila Vastigruha, Deonar, Mumbai.

13. Rule is made absolute in above terms.

Parties to act on the authenticated copy
of this order.

(REVATI MOHITE DERE, J.)