

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2143 OF 2016

Priyanka Pravin Nikam

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Ms. Mallika Ingale Advocate for the Applicant.

Ms. Veera Shinde APP for the State.

Mr. Devidas Sonawane, P.I. Khargar Police Station, Navi Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 15th DECEMBER, 2016.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending her arrest in crime no. 366 of 2016 registered at Khargar Police Station for offence punishable under sections 325 r/w 34 of the Indian Penal Code.

2) The learned counsel for the applicant submits that the present applicant was produced before the Magistrate and was granted bail as the offences were bailable offences. Subsequently upon seeing the gravity of the offence, section 307 of the Indian Penal Code and section 75 of the The Juvenile Justice (Care and Protection of Children) Act, 2015 (Hereinafter referred as “the said Act”) has been added and hence, applicant is apprehending her arrest.

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3) It is the case of the prosecution that on 24/11/2016, Ruchita Sinha, mother of Ritisha, lodged a report at the police station stating therein that she is working in private firm at Chembur. She has a daughter who is 10 months old. That she used to keep her daughter in creche, when she was away at work. She had approached Purva Play School Nursery. The owner of the said creche was one Priyanka Nikam i.e. present applicant.

4) It is alleged that on 21/11/2016, she had dropped the child at the nursery at about 8.25 a.m. as usual. She was inquiring about the welfare of her child after every half an hour. It is alleged that the applicant had specifically informed the complainant that the child is well. At about 7.00 p.m. on the same day, she had been to nursery to take the child home. She realized that the child was not normal. She had noticed that there was swelling on the face of the child. Her eye was swollen. Upon inquiry with the applicant, she was informed that the child might have sustained the injury while playing and it could be a self inflicted injury. The mother believed the applicant and had taken the child home. Soon after reaching home, child had started vomiting and could not open her right eye. On the next day also, the child was not keeping well and therefore, the child was taken to Fortis

Hospital at Vashi. Upon examination, the doctor had disclosed that the child has been brutally beaten and that she has sustained a traumatic internal injury to her head and her eye and that the condition of the child was critical. The child had to be admitted in the hospital.

5) The first informant had inquired with the applicant about the said injuries sustained by the child and at that time she had offered to show the images captured in the CCTV footage installed in the said nursery. The images captured in the CCTV footage were not only shocking for a mother but would shock the conscience of any person. The child was brutally beaten by the maid employee of the present applicant. The first informant had requested the applicant to give her a copy of the CCTV footage. They have taken the police along with them and had taken the copy of the CCTV footage.

6) The learned counsel for the applicant submits that the applicant had no knowledge that the maid employed by her would act in such ghastly manner with the infants who were admitted in the creche. According to the learned counsel for the applicant, the incident had occurred at the time when the applicant had retired for lunch for a short while. It is also submitted that

applicant cannot be held vicariously liable for the act of the maid.

7) As against this, the learned APP has submitted that it was incumbent upon the applicant to take responsibility of the infants who were admitted in the creche. The parents had left tender children in the care and protection of the applicant and therefore, it was incumbent upon her to look after the children.

8) Papers of investigation reveal that investigating agency has seized the images of CCTV footage of 10/11/2016, 11/11/2016 and 12/11/2016 and all the images which clearly show that every day, the same maid was assaulting infants brutally. It cannot be believed that being the owner of the creche, applicant must not have seen the CCTV footage at least at the end of the day. In fact, applicant appears to have turned a blind eye to the act of her maid as if to say she was doing a favour to the parents by admitting the infants in the creche.

9) The learned APP submits that the applicant was only concerned with minting money by charging fees for looking after the infants while the parents were at work.

10) The learned counsel for the applicant, upon instructions submits that

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initially applicant had no licence to run creche and she was running the creche on trial and error basis only to see as to whether she could manage the affairs and that she has got licence for running creche in January 2016. To consider the said submission, this Court has perused the papers of investigation which only shows that there was registration certificate and that Purva Education Trust is registered under the Bombay Public Trust Act and that the applicant has no licence to run the creche.

11) In fact, it is the responsibility of the State to see that no such institutions are functioning without a licence. Section 41 of the The Juvenile Justice (Care and Protection of Children) Act, 2015 contemplates as follows.

*“ 41. **Registration of child care institutions.** - (1) Notwithstanding anything contained in any other law for the time being in force, all institutions, whether run by a State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially, **for housing children in need of care and protection** or children in conflict with law, shall, be registered under this Act in such manner as may be prescribed, within a period of six months from the date of commencement of this Act, regardless of whether they are receiving grants from the Central Government or, as the case may be, the State Government or not:*

Provided that the institutions having valid registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) on the date of commencement of this Act shall be deemed to have been registered under this Act.

(2) At the time of registration under this section, the State Government

shall determine and record the capacity and purpose of the institution and shall register the institution as a Children's Home or open shelter or Specialised Adoption Agency or observation home or special home or place of safety, as the case may be.

(3) On receipt of application for registration under sub-section (1), from an existing or new institution housing children in need of care and protection of children in conflict with law, the State Government may grant provisional registration, within one month from the date of receipt of application, for a maximum period of six months, in order to bring such institution under the purview of this Act, and shall determine the capacity of the Home which shall be mentioned in the registration certificate:

Provided that if the said institution does not fulfill the prescribed criteria for registration, within the period specified in sub-section (1), the provisional registration shall stand cancelled and the provisions of sub-section (5) shall apply.

(4) If the State Government does not issue a provisional registration certificate within one month from the date of application, the proof of receipt of application for registration shall be treated as provisional registration to run an institution for a maximum period of six months.

(5) If the application for registration is not disposed of within six months by any officer or officers of any State Government, it shall be regarded as dereliction of duty on their part by their higher controlling authority and appropriate departmental proceedings shall be initiated.

(6) The period of registration of an institution shall be five years, and it shall be subject to renewal in every five years.

(7) The State Government may, after following the procedure as may be prescribed, cancel or withhold registration, as the case may be, of such institutions which fail to provide rehabilitation and reintegration services as specified in section 53 and till such time that the

registration of an institution is renewed or granted, the State Government shall manage the institution.

(8) Any child care institution registered under this section shall be duty bound to admit children, subject to the capacity of the institution, as directed by the Committee, whether they are receiving grants from the Central Government or, as the case may be, the State Government or not.

(9) Notwithstanding anything contained in any other law for the time being in force, the inspection committee appointed under section 54, shall have the powers to inspect any institution housing children, even if not registered under this Act to determine whether such institution is housing children in need of care and protection”.

12) Section 52 of the said Act contemplates as follows:

*“52. **Fit person.** - (1) The Board or the Committee shall, after due verification of credentials, recognise any person fit to temporarily receive a child for care, protection and treatment of such child for specified period and in the manner as may be prescribed.*

(2) The Board or Committee, as the case may be, may withdraw the recognition granted under sub-section (1) for reasons to be recorded in writing”.

13) Sub clause (4) Section 41 of the said Act contemplates that if the State Government does not issue a provisional registration certificate within one month from the date of application, the proof of receipt of application for registration shall be treated as provisional registration to run institution for maximum period of 6 months.

14) It is an admitted position that the State Government has not taken any steps for implementation of Section 41 the said Act. The Act contemplates 'Registration' but the State Government has not framed any Rules for registration, procedure for registration and therefore, such institutions do not fall within the purview of supervision by the State Authorities.

15) Section 2 sub-clause (21) of the said Act contemplates as follows:

*“ “child care institution” means Children Home, open shelter, observation home, special home, **place of safety**, Specialised Adoption Agency and a fit facility recognised under this Act for providing **care and protection to children, who are in need of such services**”.*

16) The creche is an institution which would fall under the definition of section 2 (21) of the said Act. It is unfortunate that for several years the State has not considered this aspect and untrained, illiterate women are also running creches. It can be women like the present applicant also running the creche without fulfilling the criteria and there is no assurance that the children could be taken care of in such institutions. It is in fact a fit facility for working parents. Needless to say that the Government of India has acceded on 11/12/1992 to the convention of the rights of the children adopted by the General Assembly of United Nations which has prescribed a set of standard to be adhered to by all State Authorities in securing the best interest of the child.

The welfare of the child would be of paramount importance in any society. The trust of the parents stands shattered and the safety of the child of the working parents is endangered at the hands of the people like the applicant.

17) In fact, the applicant was the custodian of the child during the day and the safety of the child was her responsibility. Applicant cannot simply shirk the blame on the maid. The act of the applicant in giving callous reply to the parents that it can be a self inflicted injury speaks volumes for itself. In fact, applicant ought to have informed the parents about the injury sustained by the child and not wait for an inquiry by the parents. The conduct of the applicant was extremely insensitive. It is in these circumstances that this Court is of the opinion that it is high time that the State of Maharashtra frames Rules for issuing licence in respect of such facility homes/care taking homes which are called as creche. In fact, these are facility homes for working women. There is an urgent need to regulate the functioning of such institutions. In the absence of any Rules, such institutions would crop up at every nook and corner without shouldering any responsibility towards the infants and children admitted in such homes.

18) Section 75 of the said Act reads as follows:

“75. Punishment for cruelty to child. - Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend upto five years, and fine which may extend upto five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended upto ten years and shall also be liable to fine of five lakhs rupees.

- 19) The case of the present applicant would fall within the proviso to Section 75 of the said Act as the applicant was purportedly managing the organisation which was entrusted with the care and protection of the child.
- 20) It is in these circumstances that the applicant does not deserve grant of pre-arrest bail. Application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)