

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 550 OF 2016

(Smt. Munnibai Tikaram Kalkhor Vs. The State of Maharashtra)

AND

CRIMINAL APPLICATION (ABA) NO. 546 OF 2016

(Smt. Fulabai w/o Ajabsingh Dhanawat Vs. The State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri R. R. Vyas, Advocate for the applicant.
Shri R. M. Patwardhan, Advocate for the applicant.
Shri N. R. Patil, A.P.P. for the State.

CORAM : S. B. SHUKRE, J.

DATED : SEPTEMBER 22, 2016

Heard learned Counsel for the applicant and the learned A.P.P. for the State.

Smt. Munnibai Tikaram Kalkhor is the applicant in Criminal Application No. 550/2016 and Smt. Fulabai Ajabsingh Dhanawat is the applicant in criminal Application No. 546/2016. For the purposes of these applicants, both of them would be hereinafter referred to by their first names.

On the basis of information given by an activist of N.G.O., Abraham Hegde, a raid was conducted at the building owned by Munnibai and during that raid, it was found that two minor girls, Nitu and Pallavi were detained there for the purpose of prostitution and that they were kept there for several days. It was also revealed that those two girls were minor and were brought to the building of Munnibai by Fulabai and Tarana Kesiya. The statements of those two girls were recorded. These girls informed that they were forcibly brought there and pulled into the prostitution by Fulabai, the mother

of one of the Girls and Tarana, the elder sister of the other girl. So, offences punishable under Sections 344, 366(A), 372, 373 of the Indian Penal Code and Sections 3, 4, 5, 6 and 7 of the Prevention of Immoral Traffic Act, 1956 were registered.

It is the contention of the learned Counsel for Munnibai and Fulabai that the girls, Nitu and Pallavi, who were found to be present along with one customer in one of the rooms of the building owned by Munnibai, have been adjudicated to be major by the learned Magistrate in the enquiry conducted by him on the applications filed by father and mother of these two girls for their custody. They point out that statements of these two girls were recorded by the learned Magistrate and it was found that they were not forced by anybody to come to Nagpur and that according to their versions, they had been to Nagpur for sight seeing. They further submit that relying on the statements of minor girls and considering the material available on record, the learned Magistrate granted custody to the respective parents of these two girls. They also submitted that now the charge-sheet has been filed and considering the nature of allegations, custodial interrogation of the applicants would not be required.

Learned A.P.P. for the State strongly opposing these bail applications, submits that Tarana, who is also co-accused in this case, is the sister of one of the minor girls and her anticipatory bail application has been rejected by this Court by considering the material available on record. He points out from the case-diary that during the police investigation, these two girls Nitu and Pallavi had categorically stated that they were forcibly brought to Nagpur, kept in the building of Munnibai, driven in the prostitution and that they were minor. He further submits that further enquiry conducted by

the police also reveals that both these girls at the time of raid were minor. He further points out that statement of one more witness Ratna Goswami supports the versions of Nitu and Pallavi to the extent that they were being used for prostitution and that the premises of Munnibai were also being used for prostitution. He also submits that previously six crimes have been registered against Munnibai in the past and during the pendency of this application, he further submits, he has been informed by the Investigating Officer, two more crimes have been added to the list of criminal record that Munnibai is having.

So far as the registration of previous crimes and also new crimes is concerned, I must say that this factor would have to be considered only if it is seen that there is sufficient material pointing towards prima facie involvement of the applicant, Munnibai in the offences registered against her in the present crime, which is crime No.280/2015. Otherwise, the registration of the previous offences would not be relevant. In the instant case, we have before us two versions given by the prime witnesses of the prosecution. One version is as recorded during the course of police investigation and the other version is as recorded by the Court of Judicial Magistrate, First Class while conducting the enquiry into the applications filed by the parents of the victims seeking their custody.

No doubt, the statements of victims recorded by the police do prima facie show that at that time those girls were saying that they were forced into the business of prostitution by their mother and elder sister, respectively. Subsequently these two girls stated before the learned Magistrate that they came to Nagpur voluntarily and that no element of force or coercion being brought upon them by anybody was involved. Then, the question would be, as to which of

the versions could be relied upon so as to come to the prima facie conclusion regarding involvement of the applicants in the present crime. The question is quite difficult to answer. Suffice it to say that when there are two opposite versions available on record, some prima facie doubt about the role played by the applicants in commission of the offence alleged against them would arise.

It is the contention of the prosecution that these two girls were minor at the time when the offences were committed. However, this contention of the prosecution, at this stage, could be said to be not correct as the learned Magistrate has conducted an enquiry as mandated by the law under Section 17(2) of the Immoral Traffic (Prevention) Act and after recording his satisfaction regarding the age of the victims, has passed the order under Section 17(4) of the Act. This enquiry has revealed that both the victims are major. The order of the learned Magistrate has become final as it has not been stated to be challenged.

So, what is before us now is that the victims are prima facie major and there is doubt about the role played by both the applicants in forcibly bringing them to the building of Munnibai, pressurising them to be in that building and driving them into the prostitution. Therefore, I am of the view that both the applicants deserve to be released on anticipatory bail. Even otherwise, their custodial interrogation would not be required. Hence, the order.

Both the applications are allowed.

The interim bail granted to Smt. Munnibai by the order passed by this Court on 24/8/2016 and the one granted to Smt. Fulabai by the order dated 02/9/2016 are hereby confirmed on the same conditions.

CERTIFICATE

“I certify that this order uploaded is a true and correct copy of original signed order.”

Uploaded by : W. W. Lichade

Uploaded on : 23/9/2016