

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 37 OF 2017

Dinesh Kamata Savaji @ SawApplicant

V/s.

The State of MaharashtraRespondent

WITH
CRIMINAL BAIL APPLICATION NO. 90 OF 2017

Aarti Kunwar SinghApplicant

V/s.

The State of MaharashtraRespondent

WITH
CRIMINAL BAIL APPLICATION NO. 91 OF 2017

Rajni Shankar SinghApplicant

V/s.

The State of MaharashtraRespondent

Mr. Prabhanjay R. Dave Advocate for Applicant in BA 37 of 2017.
Mr. Nilesh R. Pandey a/w Mr. Siddharth Jaiswal in BA 90 of 2017
and 91 of 2017.

Mr. Arfan Sait APP for the State.

Mr. R. A. Utekar, P.I. V. P. Road Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 16th MARCH, 2017.

PC :

1) Heard. These are applications under section 439 of Code of Criminal Procedure, 1973. Applicants herein are arrested on 26/08/2016 in crime no. 369 of 2016 registered at V. P. Marg Police Station for offence punishable under sections 366 (A), 370 (A), 370 (1) (3), r/w 34 of the Indian Penal Code and section 4 & 5 of the Immoral Traffic (Prevention) Act, 1956. Investigation is completed and charge-sheet is filed against the applicants.

2) It is the case of the prosecution that police has secret information that if call is made on cellphone no. 7045173023, one Virendra, he supplies minor girls for prostitution at Rs. 2 Lacs. Police had called upon the said number and upon verification of the information had found it to be true. It was therefore, decided to lay a trap. A phone call was made on 7045173023. Police was called on Grant Road Station. Police had carried Rs. 2 Lacs.

3) Virendra had informed the police that his friend Dinesh would bring the

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minor girls to Sai Shradha Guest House, Khambata Lane, Khetewadi, Mumbai. Police had taken a decoy customer and had reached the scheduled spot. Decoy customer had gone to Sai Shradha Guest House. Police had concealed their presence. Dinesh had reached the spot along with two women and two minor girls who were taken to room no. 204. The decoy customer had handed over the amount to Dinesh i.e. present applicant. The girl was rescued and thereafter Akshay Madvi who was working with N.G.O. Transforming Life Foundation, lodged a report at the police station.

4) The statement of the rescued girls was recorded by the police. Statement of two rescued girls was recorded on 26/08/2016. Ms. 'X' has disclosed that she is the original resident of Gola Gorakhpur. She had come to Mumbai along with her grand mother. That Arti Kunwar Singh i.e. applicant in Criminal Bail Application No. 90 of 2017 happens to be her paternal aunt. Few months prior to 26/08/2016, her paternal aunt had sent her to work in ladies Bar but since she was a minor, the owner of the Bar had refused to take her for service. She also did not like to work in the Bar and therefore, she refused to oblige her paternal aunt. She has further disclosed that on

26/08/2016, she had been to Malad with her brother. From there, they came to Bombay Central to meet her paternal aunt. Her brother had dropped her at her aunts place and had left for Malad. After some time, she had asked Ms. 'X' to accompany her and they had gone to Sai Shradha Guest House. They were accompanied by another woman and one young girl. At the guest house, minor girls were seated in the taxi and both women had entered Sai Shradha Guest House. They had taken the girls in the guest house and when they were about to enter into a room, the police had accosted them.

5) Ms. 'X1' has disclosed that Anjana Singh had brought her to Mumbai to see immersion procession of Ganesh. Thereafter, she had requested her paternal aunt to drop her at the house of her maternal aunt Rajani Singh i.e. applicant in Criminal Bail Application No. 91 of 2017. While leaving her native village, she had brought her Adhar Card along with her. The date of birth shown in the Adhar Card was 31/12/2000. At the behest of her maternal aunt, a fresh Adhar Card was taken and the date of birth was shown as 31/12/1996. The incident dated 26/08/2016 is narrated wherein they were accosted when they were about to enter the rooms.

6) The girls were sent for medical examination on 27/08/2016. Doctor has opined that biological examination indicates that the girls are between 15-16 years including margin of errors.

7) Learned counsel for the applicant in Criminal Bail Application No. 37 of 2016 submits that the applicant was at Sai Shradha Guest House as a matter of accident as he used to visit the guest house quite often. That there is no material to indicate that the applicant was accompanying Arti Kunwar Singh or Rajni Singh. That the principal accused Virendra is absconding. It is also vehemently argued that no case under the provisions of Protection of Children from Sexual Offences Act, 2012 would be attracted in the present case as there is no allegation of sexual harassment, sexual abuse. Hence, the learned counsel prays that the applicant be enlarged on bail.

8) It is a matter of record that by no stretch of imagination, it can be said that applicant Dinesh was present in Sai Shradha Guest House by chance as there is positive evidence on record that trap money was given to the present

applicant by the decoy customer and the same is recovered at the time of trap. In the eventuality that applicant was unconcerned with the incident or that was in no way concerned with absconding accused Virendra or with other two ladies, there was no reason for him to even accept the trap amount and this by itself would show that as instructed by Virendra, he had come to the guest house and had accepted Rs. 2 Lacs which was used as trap amount. Rescued girls were minors. They had no idea about the purpose for which they were brought to Sai Shradha Guest House. An offence punishable under section 370 (3) of the Indian Penal Code is punishable up to 10 years. It is in these circumstances that applicant in Criminal Bail Application No. 37 of 2017 does not deserve to be enlarged on bail.

9) As far as applicant in Criminal Bail Application No. 90 of 2017 is concerned, on 26/08/2016, in the police raid, applicant was arrested at Sai Shradha Guest House. Ms. 'X' who is 15 years old, had disclosed to the police that the applicant is her paternal aunt. She had further disclosed that a few months prior to 26/08/2016, applicant had tried to push her into profession, where she would be required to work in the Bar. Only because wisdom

prevailed over, the owner of the bar, she could be saved. She has also stated that she did not want to work in the bar and finally on 26/08/2016, applicant herein had tried to push her niece into prostitution.

10) The learned counsel for the applicant submits that the applicant had brought her niece to Sai Shradha Guest House as she was visiting certain places. That it is not the case of the prosecution that that the survivor was being forced into prostitution. That there is no material to indicate that the survivor was taken to Sai Shradha Guest House under coercion. The learned counsel has also stated that applicant has been falsely implicated.

11) Material on record clearly indicates the malafide intention of the applicant. In fact, she had forced her to work in the Bar. Fortunately, she was saved because the Bar owner refused to employ the girl who is minor. This would also indicate that the Bar owner had guessed from the very appearance of the survivor that she is a minor. Applicant claims to be paternal aunt of the survivor does not deserve sympathy or any leniency. The submission of the learned counsel for the applicant that no damage was done as the police had

apprehended the applicant and survivor at the right moment is unwarranted and by itself would not exonerate the accused of principal charge. Hence, application of the applicant deserves to be rejected.

12) As far as applicant in Criminal Bail Application No. 91 of 2017 is concerned, perused the statement of survivor who is 15 years old. She has disclosed that she is original resident of Uttar Pradesh. That she was studying in 8th standard. She had come to Mumbai along with her grand mother. The survivor has disclosed that she is original resident of Agra. Her father is a rickshaw driver. Her paternal aunt namely Anjana Singh residing at Andheri, Mumbai. She used to visit her native village some times. That in August 2016, she had brought survivor to Mumbai to see Ganesh immersion procession. Her paternal aunt had dropped her to the house of her maternal aunt Rajani Shankar Singh who resides at Congress House. She was residing with her maternal aunt.

13) While leaving her village, she had brought her Aadhar Card along with her which indicated that the date of birth is 31/12/2000. That her maternal

aunt had taken one more Aadhar Card at Mumbai which indicated her date of birth is 31/12/1996.

14) As far as the incident is concerned, she has reiterated the narration of the co-survivor. She does not know the purpose for which she was brought to the lodge. She expressed her desire to return home, native village at Agra.

15) The very fact that applicant had taken a second Aadhar Card indicating that she was a major in August 2016 would speak volumes for itself. It was with a malafide intention to show that survivor had voluntarily entered into the said profession.

16) The learned counsel for the applicant has submitted that only because she was taken to the hotel Sai Shradha Guest House at the relevant time, would not indicate that she was being forced into prostitution.

17) This Court cannot be oblivious of the fact that on the basis of a secret information, police had arranged a trap. The decoy customer had contacted

Virendra Singh and he had specifically stated that Dinesh would comply with the order and would provide two minor girls on 26/08/2016 at about 4.30 p.m. at Sai Shradha Guest House and the fact that all three girls were found at the relevant place, date and time along with two minor girls who had been cheated by their own aunts, coupled with the fact that the trap amount was found with applicant Dinesh Savaji @ Saw would clearly indicate that applicants are not falsely implicated. They have attempted to ruin the life of innocent minor girls and are indulging into trafficking of vulnerable minor girls. Hence, applicants are not entitled to be enlarged on bail.

18) Hence, applications stand rejected.

(SMT. SADHANA S. JADHAV, J.)