

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.144 OF 2017

IN

CRIMINAL APPEAL NO.104 OF 2017

Rubina Motiyar Choudhary ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Swapnil Ovalekar, Appointed Advocate for the Applicant.

Ms.V.S.Mhaispurkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 4th APRIL 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/accused has been convicted of offence punishable under Sections 370(1), 342, 323 of the Indian Penal Code ("IPC" for short), under Section 14 of the Foreigners Act, 1946 as well as under Section 6(a) of the Passport (Entry into India) Rules, 1950. For the offence punishable under Section 370(1) of the IPC, the applicant/accused is sentenced to suffer rigorous imprisonment for seven years apart from directing her to pay fine of Rs.10,000/- and in default to undergo further simple imprisonment for three months. Lesser sentences are imposed on

other counts and all sentences are directed to run concurrently, therefore, it is not necessary to quote other sentences imposed on the applicant/accused.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that the informant and P.W.No.2 Rameshwar Sahu were in love and ultimately they married after the incident in question. He further argued that the applicant/accused came to be prosecuted at the instance of both of them and there is no evidence to show that the applicant/accused was indulging in trafficking of a person. He further argued that considering the nature of evidence available against the applicant/accused, he is entitled to be released on bail during pendency of the appeal.

3 The learned Additional Public Prosecutor opposed the application by contending that evidence of P.W.No.1 Tumpa goes to show that the applicant/accused was confining her in the house and payment due to P.W.No.1 was actually paid to her aunt by the applicant. This, *prima facie*, detected trafficking of a person. The learned Additional Public Prosecutor further argued that other offences punishable under the Foreigners Act, 1946 as well as Passport (Entry into India) Rules, 1950 are also proved against the applicant/accused.

4 I have carefully considered the rival submissions and also perused depositions of witnesses as well as the impugned Judgment and Order.

5 Informant P.W.No.1 Tumpa entered into India without a valid passport and visa at the instance of her aunt. As seen from evidence of P.W.No.1 Tumpa, her aunt Kajal had sent her to the house of applicant/accused for household work.

6 Though informant Tumpa had deposed that on 08/12/2014, the applicant/accused has asked her to spend a night with a customer after receiving Rs.3000/-, cross-examination of Tumpa goes to show that the applicant/accused never asked her to do any immoral work. P.W.No.1 Tumpa deposed that on the next day, the applicant/accused had locked her inside the house and the neighbourer rescued her. Cross-examination of this witness reveals that the applicant/accused as a routine course use to leave her house in the morning for work and use to return in the night hours. It is also seen that the payment of work done by P.W.No.1 Tumpa was used to be made to her aunt Kajal, who had brought this witness without any legal documents in India.

7 Section 370 of the IPC deals with trafficking of person. Use of threats, force, coercion, deception, abuse of power or abduction are essential ingredients of this offence, which include

physical as well as sexual exploitation of a person. In the case in hand, it is seen that aunt of informant Tumpa had deputed Tumpa to the house of the applicant/accused for household work and she was receiving payment for the same. Evidence of the informant shows that she was locked inside the house only on one occasion. P.W.No.2 Rameshwar Sahu is claimed to have detected this confinement. Cross-examination of P.W.No.2 Rameshwar Sahu goes to show that the informant married him subsequently. In the wake of this evidence, one will have to examine whether the offence punishable under Section 370 of the IPC is proved or whether the offence cannot travel behind wrongful confinement. Possibility of false implication of the applicant/accused in the crime in question by adding embellishment to her version by P.W.No.1 Tumpa, cannot be ruled out. In this view of the matter, the applicant/accused had made out a case for grant of bail and, therefore, the order :

- (i) The application is allowed.
- (ii) Substantive sentence imposed on the applicant/accused is suspended and she is directed to be released on PR bond of Rs.15,000/- and on furnishing surety in the like amount.

8 Copy of this order be sent to the applicant/accused, who is reported to be undergoing jail sentence.

(A.M.BADAR J.)