

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

BAIL APPLICATION NO. 1278 OF 2017

Ruksana @ Sana Gaffur Maniyar.	..Applicant.
Vs.	
The State of Maharashtra	..Respondent.

Mr. S.S. Sayyed, advocate for applicant.

Mr. P.P. Shinde, APP for State.

Mr. S.N. Wagh, Wagle Estate Police Station, Thane City

CORAM : SMT.SADHANA S. JADHAV,J
RESERVED ON: AUGUST 23, 2017
PRONOUNCED ON: SEPTEMBER 13, 2017
(In Chamber at 2.45 p.m.)

P.C.

1 Heard the learned Counsel for the applicant and the learned APP
for State.

2 This is subsequent bail application filed by the applicant seeking
enlargement on bail. The earlier application bearing Bail Application No. 257
of 2016 filed by the present applicant was rejected on 19/1/2017 wherein this
Court has observed as follows :

“After arguing for some time, the learned Counsel for the applicant, upon

instructions, seeks liberty to withdraw the application. Liberty as prayed for is granted in the interest of justice. Application stands dismissed, as withdrawn.”

In fact, there is no change in circumstances to reconsider the merits of the matter as the applicant had not approached the Sessions Court again.

3 The learned Counsel for the applicant submits that while arguing the bail application on the earlier occasion, the learned Counsel then appearing had not demonstrated the merits of the matter appropriately and therefore, it was necessary to file subsequent application. It is in this circumstance that the facts of the case as well as the submissions advanced on behalf of the applicant need to be considered.

4 The applicant herein is a woman and the mother of three children. The applicant was divorced by her first husband after 3 years of her marriage. The first husband has expired. She then got remarried. Her second husband has also deserted her. The applicant had then remarried and her third husband is in Dubai. The applicant's eldest daughter was 16 years old at the time of incident.

5 On 18/8/2016 the police arrested the applicant near hotel Pappu Da Dhaba where she had been with her daughter. It is the case of the prosecution that the applicant was to meet one Mr. Bobby at the said hotel.

6 It is the case of the prosecution that on 18/8/2016 Michel Pramod Yangad lodged a report at the police station alleging therein that he is a social worker and he was informed by PI Shri Daundkar that the police has received a secret information that a woman called Rukhsana @ Sana was trying to push her minor daughter into prostitution and had demanded Rs. 5 Lakhs from one person. Her cell phone number was mentioned by PI Daundkar. The police had decided to lay a trap and had completed initial formalities for the same. A decoy customer was asked to call upon the given cell phone number and solicit minor girl for having sexual intercourse.

7 It is further case of the prosecution that the applicant had demanded Rs. 5 Lakhs for the same. The decoy customer had asked the applicant to bring her daughter and that he would pay her Rs. 50,000/- as an advance. She agreed to bring her daughter near Luiswadi service road i.e. near Pappu Da Dhaba.

8 The decoy customer had prepared a bundle of 500 rupees denomination in such a manner that the first and last few notes were genuine and the rest of the bundle was made of plain paper cut to the same size. The police had reached the spot i.e. Pappu Da Dhaba at about 3.20 p.m. The applicant had reached the spot alongwith her daughter. The decoy customer has asked the minor girl as to why she came with her mother and that she informed that her mother had told her that her cousin was to get married and if the girl had offered herself to the said man, they would receive a huge amount. Thereafter, the bundle of notes was given to the applicant. She accepted the same, kept it in her purse and at that time, the police had apprehended her and she was taken into custody.

9 The first informant had once again asked the minor girl the purpose for visiting the hotel Pappu Da Dhaba. The minor girl had disclosed that they had come to Thane railway station. She found her mother in disturbed set of mind while talking on phone. Upon enquiry her mother disclosed that a customer had approached her for having sex with the minor girl and that he would pay a handsome amount. According to the victim, she had initially resisted the said offer. But her mother had coerced her into the said Act as said customer was to pay a good amount and therefore, she had

accompanied her mother to Pappu Da Dhaba. When they reached the dhaba her mother had enquired with the customer about the payment. Thereafter the victim had been to the wash room and when she returned, her mother had asked her to accompany the customer and in the mean while the police had apprehended her mother.

10 On the basis of the first information report, Crime No. 226 of 2016 is registered at Wagle Estate Police Station against the applicant for offence punishable under section 370, 372, 366(A) of the Indian Penal Code.

11 After registration of FIR, the statement of the victim was recorded and she had disclosed that her mother has married thrice and third husband of her mother is residing at Dubai. She had further disclosed that she has two paternal aunts and they have daughters of marriageable age. The daughters of her paternal aunts were to get married between November to December, 2016 and that they would have to spend huge amount on their marriages. She further disclosed that she has set her profile photo as Display Picture(DP) on her mother's smart phone. That on or about 12/8/2016 her mother was conversing with some person on her cell phone and the victim had heard reference to 'one night'. After the phone was disconnected, her mother

seemed to be disturbed and upon query she scolded her daughter for setting her images as a DP. Her mother had further disclosed that one person called Bobby was soliciting sexual favours from the victim girl for one night and that he is willing to pay a huge amount for the same. The victim has further disclosed that she had voluntarily enquired with her mother as to what she has to do. Her mother had further informed her that Bobby would get the victim girl medically examined.

12 On 18/8/2016 Bobby had called them. She accompanied her mother. Her maternal uncle Javed Sayyed had come in his Ola car and at about 1 p.m. they left Deonar. They waited for the person who had called them. However, the said person did not turn up. Her maternal uncle parted with their company. Then she accompanied her mother to Viviana Mall. She contacted Bobby. He asked them to go to Pappu Da Dhabha. She further disclosed that she was asked whether she is willing to cooperate and that she had agreed. The rest of the case is as narrated in the first information report.

13 This Court cannot be oblivious of the fact that the applicant happens to be none other than a biological mother of the victim girl. An outside/stranger coercing a minor girl to take up profession of prostitution is

punishable and it is deprecated. But in this case, the person who was pushing her minor tender daughter into prostitution happens to be a mother.

14 The learned Counsel for the applicant submits that the applicant is a mother of 3 children. The minor youngest daughter happens to be hardly 3 and half years old and by pointing out to her, the learned Counsel submitted that she needs the company of her mother. It is further submitted that by virtue of proviso to Section 437 of the Code of Criminal Procedure, 1973, the applicant deserves to be enlarged on bail as she happens to be a woman. Needless to mention that section 437 of the Code of Criminal Procedure, 1973 is applicable in a case where the accused being a woman is arrested and brought before a Magistrate and not always when investigation is completed and charge-sheet is filed.

15 In the present case, the investigation is completed and charge-sheet is filed in a heinous offence like the present one, no such leniency can be shown, more so to secure the minor daughter, who happens to be the victim.

16 According to the learned Counsel at the first instance, in all

probabilities, the advocate representing the applicant may not have made out a case for bail. In fact this is a presumption as this Court also had recorded that it was only after arguing at length, the application was withdrawn in order to avoid inviting observations of the Court.

17 It is also submitted that after filing of the charge-sheet further incarceration is not warranted. This Court is of the opinion that taking into consideration the gravity of the offence, the prosecution has to be taken to its logical end.

18 It is also contended that the investigation was not initiated and conducted by a special officer and therefore she deserves bail. That the presence of the applicant is necessary to give instructions to the lawyer defending her. That person named Bobby was not apprehended although he was present at the spot and he was allowed to escape. That the money was not accepted as consideration for illicit relationship and therefore, it cannot be assumed that the girl was being offered for prostitution. The call details record between Bobby and the applicant are not on record. No report is called from Ola company to establish the story that they had been by Ola cab. It is also submitted that the victim girl had attained the age of understanding

and was on the verge of becoming major and funds were required by the family members for the marriage in the family and therefore, she had consented for the act and only thereafter, the applicant contacted the said person and therefore, according to the learned Counsel, provisions of PITA Act are not attracted and that the statement would not attract the provisions of IPC and PITA. In short, according to the learned Counsel, the victim girl had volunteered herself to accompany the said person for a consideration would clearly indicate that the victim was a consenting party and therefore, no offence is made out. Certain other lacunas in the course of investigation have been demonstrated such as that C.C.T.V. footage of the table no. 21 or table no. 30 is not on record. The fact that there are lacunas in the investigation, according to the learned Counsel, the applicant deserves to be enlarged on bail.

19 This Court has, at the threshold observed that the age of the victim girl at the time of the incident was just 16 years old. Her date of birth is 2/4/2000 and therefore, she would be a child under the provisions of PITA Act and her consent cannot be taken into consideration. Moreso, because the mother has induced her to enter in this profession due to economic necessity. The applicant would be liable to be punished under Section 5(d) read with

proviso (i) & (ii) of the Immoral Traffic (Prevention) Act 1956.

20 The learned Counsel for the applicant has placed reliance upon several Judgments such as:

1. **Aneesh v/s. State of Kerala, 2014 Cri. L.J. 1853.**
2. **Babu Singh v/s. State of Uttar Pradesh, 1978(1) SCC 579.**
3. **Rajdev Kumar Mathura Yadav @ Pappu v/s. State of Maharashtra, 2011(1) Bom. C.R. (Cri) 188.**
4. **Sunil Mahadev Patil v/s. State of Maharashtra, 2015 DGLS (Bom) 433.**
5. **Golapi Bibi and anr. v/s. State of Assam, 2004 DGLS(Gau.) 32.**
6. **Akhtari Bi v/s. State of Madhya Pradesh, 2001 DGLS (SC) 498.**
7. **Sri Mounesh v/s. State by High Ground Police Station.**
8. **Sanjay Chandra v/s. CBI.**

According to this Court, the above judgments are not applicable to the facts of the present case.

21 The learned Counsel has placed implicit reliance upon the Judgment of Kerala High Court in the case of **Aneesh(supra)** to urge that a subsequent application under section 438 also would be maintainable after

the earlier application is withdrawn. This Court is of the opinion that there was never an objection about maintainability of the subsequent application and therefore, the said ruling would not be applicable. All that the Court was considering is that the merits of the case were urged on the earlier which were not taken into consideration and therefore, grant of second application would amount to review in the absence of change of circumstance.

22 The learned Counsel has then placed reliance in the case of **Babu Singh (supra)** once again to reiterate that the subsequent application is maintainable. It is pertinent to note that in the case of **Babu Singh(Supra)**, Hon'ble Apex Court has observed as follows :

“the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice.”

Needless to state that the star witness in the present case would be the victim herself who happens to be daughter of the applicant and taking into consideration the nature of relationship between the accused and the victim, it is but obvious that the possibility of the witness being won over due to sentimental cloud cannot be ruled out.

23. Grant or refusal of bail is a discretionary power. In the case of **Babu Singh (supra)** the Hon'ble Apex Court has further observed that :

"An appeal, to a judge's discretion is an appeal to his judicial conscience. The discretion must be exercised, not in opposition to, but in accordance with, established principles of law."

The possibility of tampering with the evidence cannot be ruled out. Needless to state that in the case of **Babu Singh (supra)** the Hon'ble Apex Court was considering suspension of sentence.

24 The learned Counsel then placed reliance upon the Judgment of this Court in the case **Rajdev Kumar Mathura Yadav (Supra)**, where the Court was pleased to grant bail as there was a delay in trial. The Hon'ble Judge had considered the dates on which the matters were being adjourned before the trial Court and therefore, the bail was granted. In the matter of **Sunil Patil (Supra)**, the case pertains to a case where the prosecutrix was 15 years old, accused was 20 years old and that there were love relations between the parties and the accused and the victim had eloped and got married in a temple. The facts of the case are at variance with the present case.

25 Learned Counsel has then placed reliance upon the Judgment of

the Apex Court in the case of **Sanjay Chandra(supra)**, where the accused were being prosecuted for economic offences, to urge that the object of bail is neither punitive and nor preventive type. The Hon'ble Apex Court has observed that the provisions of Code of Criminal Procedure, 1973 confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against conviction since the jurisdiction is discretionary, it has to be exercised with care and caution by balancing valuable right of liberty of an individual and the **interest of the society in general**. It is also observed that the detention by way of refusal to grant bail cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law.

26 Economic necessity as urged by the learned Counsel cannot be considered since the husband of the applicant is in Dubai. Moreover, he would arrange funds for the marriage of her relative's daughter and she could not have induced her daughter to have sexual intercourse with a man for handful of consideration. It is clear that the applicant desires to live on the earning of her minor daughter. It was fortunate that the victim was saved at the nick of the time.

27 In the present case, at the cost of reiteration, it can be safely inferred that the dignity and womanhood of a minor girl who happens to be the biological daughter of the applicant was not safe and such people are likely to ruin the whole fabric of society. The victim was not safe in the custody of her own mother. Since the applicant had no respect for her own daughter, it cannot be said that during the pendency of trial she would not indulge into similar case, thereby exposing her own daughter as well as other such vulnerable girls to social obloquy and personal indignation. Hence, this Court is not inclined to consider the prayer for bail. However, this Court is inclined to expedite the trial and direct the learned trial Court to conclude the recording of evidence as far as possible within 6 months from the date of framing of charge.

28 The Application is disposed of accordingly.

[SMT.SADHANA S. JADHAV,J]