

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

**CRIMINAL APPLICATION NO.923 OF 2016
IN
CRIMINAL APPEAL NO.551 ODF 2016**

Radha @ Reena Saila Tamang ... **Applicant**

V/s.

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

.....

Mr.Sunny Singh, Advocate for the Applicant.

Mrs.N.S.Jain, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 28th August 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 her.

2 Heard the learned Advocate appearing for the Applicant/Accused. He argued that evidence of victim itself shows that she was residing in the populous area surrounded by several houses. The learned Advocate further argued that the victim of the crime was not knowing her date of birth and the prosecution has not proved age of the victim. My attention was drawn to admission given by the alleged victim of the crime in question to the effect that her age was 21 years as per police station. The

learned Advocate also drew my attention to the admission in the cross-examination of the victim of the crime/PW.No.2 to the effect that on assurance of one Priya madam that the institution will clear the expenses of her study, she had made statement. The learned Advocate argued that as the substantive part of sentence has already undergone by the Applicant/Accused, she be released on bail during pendency of the Appeal.

3 When turn of the learned Additional Public Prosecutor came, she has stated that she is not ready with the matter.

4 I have carefully considered the submission so advanced by the learned Advocate for the Applicant/convicted accused and also perused Record and Proceedings made available including depositions of witnesses. The Applicant/Accused along with co-accused came to be prosecuted for several offences and ultimately she is convicted of offences punishable under Section 368 read with Section 34 of the Indian Penal Code (hereinafter referred to as "IPC" for the sake of brevity), under Sections 3,4 and 6 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as "PITA" for the sake of brevity) as well as under Section 17 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act" for the sake of brevity). Accordingly, the Applicant is sentenced to undergo imprisonment for the period mentioned in the Judgment and the

higher is up to seven years apart from payment of fine. It is not necessary to mention the sentences on each count as all substantive sentences are directed to run concurrently.

5 For releasing the accused on bail particularly, after conviction, nature and seriousness of the offence is one of the main factor to be considered by the Court. In the case in hand, it is alleged by the prosecution that after kidnapping from Bangalore the minor female victim of the crime in question was subjected to aggravated penetrative sexual assault with others by accused persons who were leaving on earing from the prostitution by maintaining three brothels. Ultimately after due trial, offences as stated in the opening paragraph of the judgment are held to be proved against the present Applicant /original accused No.1.

6 I have carefully considered the evidence of the minor victim of the crime in question, who is examined as P.W.No.2 by the prosecution. She narrated the story of her kidnapping by co-accused Santosh from Bangalore. She has vividly explained how she was forced or compelled to indulge in sexual relations with other persons by accused persons. Particularly, in paragraph 4 of her deposition, she has stated that the present Applicant took her to Bhandup Kamathipura with Pinky and Kavita and there she was forcefully engaged in prostitution for a period of one month.

7 It is seen that during course of the trial, the defence has admitted School Leaving Certificate of the victim/P.W.No.2 disclosing her date of birth as 08/05/1995 which pointed that the victim girl was less than 18 years of age at the time of alleged offence. The learned trial Court has also considered the medical evidence regarding age of the victim to conclude that she was a minor female child at the time of commission of alleged offence against her.

8 Statements made by witnesses to the police cannot constitute evidence and therefore, the admission by the victim that in her statement before police she has told her age as 21 years, does not *prima facie* constitute a piece of valid evidence to give benefit of doubt to the accused. Similarly, the admission of the victim that Priya madam has assured clearing of expenses does not *ipso facto* reveals that whatever is stated by the victim is false.

9 Considering the nature of offence and its repercussions on the society, the case in hand is not a fit case for suspension of sentence and releasing the Applicant/Accused on bail and, therefore, the Order :

- (i) The Application is rejected.
- (ii) Hearing of the Appeal is expedited.

(A.M.BADAR J.)