

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2043 OF 2016

Ganga Shivshankar SisodiyaApplicant

V/s.

The State of MaharashtraRespondent

AND
CRIMINAL BAIL APPLICATION NO 2439 OF 2016

Shivshankar Ramlal SisodiyaApplicant

V/s.

The State of MaharashtraRespondent

Mr. Milan Desai i/b Ms. Roseline Nadar Advocate for Applicants.
Mr. Arfan Sait APP for the State.
Mr. Jitendra Wagh, PSI, MIDC Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 9th MARCH, 2017.

PC :

1) Heard. These are applications under section 439 of Code of Criminal Procedure, 1973. Applicants herein are arrested on 09/08/2016 in crime no. 262 of 2016 registered at M.I.D.C. Police Station, Mumbai for offence

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punishable under sections 363, 419 r/w 34 of the Indian Penal Code. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that one Rakhi Sharma who happens to be a social worker filed a report to the police station contending therein that on 11/05/2016, she had received a phone call from her friend informing her that her daughter Sakshi has friend called Bindiya who is studying in the same school. That Bindiya has disclosed to Sakshi that she is not the biological child of the parents with whom she is residing and that when she was 4 years old, she had been kidnapped by some unknown persons and has travelled from one place to another and has reached the said place. The informant inquired with Bindiya about the same and she had disclosed to the first informant that when she was 4 years old, she was playing near the bus stand where her mother used to run a bangle shop. One person had lured her to have biscuits and had kidnapped her. She gave the description of that person. She further informed that she was made to stay with one aunty. That Kamala had been to the said house and taken her and dropped her to the house of another woman. She as sent to Mumbai with Arti i.e. her present mother. She was

threatened of dire consequences if she discloses her identity. She had also apprehended that since Arti did not have a good character, in all probabilities, she would also be introduced to the same profession. The first informant informed M.I.D.C. Police Station about the same. They had inquired about the same and thereafter, it was revealed that the victim was kidnapped from Satna, Madhya Pradesh by Ganga, Maya and one unknown person.

3) Learned counsel for the applicants submits that Kamala has been enlarged on bail under section 167 (2) of Code of Criminal Procedure, 1973. That Arti with whom the victim was staying was never arrested and in fact, she has been made a witness. It is submitted that the compilation of the charge-sheet does not indicate that there is cogent material to implicate the present applicant in any manner and therefore, it is clear that applicant has been falsely implicated and is in custody for more than 8 months. It is also submitted that the statement of the victim is recorded by asking her to answer leading questions and the whole story of the prosecution was put to the victim in the form of questions.

4) As against this, the learned APP submits that this was a case of trafficking and therefore, police have to strategically investigate the whole issue. It is submitted that the victim girl was residing with Arti and therefore, the first and foremost thing that the police had done was to record the statement of Arti. Arti had disclosed to the police that Kamala is her mother. 7 – 8 years prior to the registration of the F.I.R., her mother Kamala had brought this girl to Arti, entrusted her in the custody of Arti and upon inquiry had disclosed that she happens to be a distant relative and that she needs to be taken care of as she is from an economical backward class.

5) Police had then arrested Arti to know the source from where she could obtain the custody of the victim girl and also to find out as to whether she was acquainted with her parents. Upon inquiry, Kamala had informed that in fact, the girl was handed over to Kamala by one lady called Maya. She had given the identity and the address of Maya and through Maya police had reached the present applicant. It appears that Mayha had disclosed to the police that she had purchased the said victim for a consideration from Ganga. Maya had given the details of Ganga.

6) In this way, police could reach Satna and there they were inquiring about the present applicant. They had visited her house. The husband of the present applicant i.e. applicant in Criminal Application No. 2439 of 2016 had gone to the police station only to inquire as to why the police were inquiring about his wife. Upon seeing him at the police station, the victim not only identified but was scared and she had disclosed that it was the same person who had lured her and had taken her away.

7) According to the learned APP, present applicant had kidnapped the minor girl for the purpose of trafficking her and had sold her.

8) Learned counsel for the applicants submits that there is no material on record to substantiate the contention of the learned APP. It is submitted that initially the victim had given the description of the husband of the applicant as bald person and only because he had gone to the police station, she identified him. It is also submitted that it can be a case of mistaken identity.

9) Although, the victim was 4 years old at the time when she was kidnapped, the image of the person who had kidnapped her and the image of the person in whose custody she had stayed for a considerable time had left an impression in her mind and she could not have mistaken them.

10) There is no question of mistaken identity. It is an unfortunate incident where the victim was kidnapped. The statement of the victim also shows that Arti was working as bar dancer and that they were forcing the victim to learn dancing but she refused as she apprehended that she can be pushed into same profession as that of Arti. It was only because of the sensitivity of the first informant that the victim could be united with her biological parents.

11) Taking into consideration the submissions advanced across the bar, the material on record, gravity of the offence, and the fact that there is sufficient material to indicate that the applicant has committed alleged offence, this Court is not inclined to grant bail. The applicant in Criminal Bail Application No. 2439 of 2016 is the husband of the applicant in Criminal Bail Application No. 2043 of 2016. Both accused were identified by the victim and hence,

applicants do not deserve to be enlarged on bail. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

12) Applications stand rejected.

(SMT. SADHANA S. JADHAV, J.)