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

**CRIMINAL APPLICATION NO.569 OF 2017**

|                          |               |
|--------------------------|---------------|
| Kamlesh Balveer Singh    | ...Applicant  |
| Versus                   |               |
| The State of Maharashtra | ...Respondent |

Ms.P.U.Badadare, for the Applicant.

Mr.H.J.Dedhia, A.P.P for the Respondent-State

***CORAM : REVATI MOHITE DERE, J.***

***DATE : 7<sup>th</sup> FEBRUARY, 2018***

**P.C. :**

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission. Learned APP waives service on behalf of Respondent-State.
3. By this Application, the Applicant has impugned the Order dated 24.03.2017 passed by the learned Metropolitan Magistrate, Special

Court for ITPA, 54<sup>th</sup> Court at Mazgaon, Mumbai in R. A. No. 11 / RA / 2017, by which the Applicant's daughter – Pallavi was detained for a period of one year from the date of the order; as well as the Order dated 19.05.2017 passed by the learned Special Judge (POCSO) Court, Greater Bombay below M.A.No. 446 of 2017 in R. A. No. 223 of 2017, by which the Applicant's Application for taking custody of her daughter came to be rejected.

4. Learned Counsel for the applicant submitted that the applicant is a major and that she is desirous of going back to her parents. She further submitted that there is no prior record to show that the applicant was involved in any immoral activity/incident. Learned Counsel relied on the birth certificate of the applicant's daughter to show that her Date of Birth is 7<sup>th</sup> August, 1998. She submitted that the applicant has been in the Navjeeven Mahila Vastigruh, Deonar, Mumbai, for the last 11 months and that the period of 1 year will expire in a few days.

5. Learned APP opposed the application. He submitted that there is discrepancy in the date of birth of the applicant's daughter. He submitted

that although the birth certificate issued by the Government of Uttar Pradesh shows that the applicant's daughter was born on 7<sup>th</sup> August, 1998 at Agra, the said date of birth was registered on 20<sup>th</sup> January, 2014. He further submitted that the date of birth of the applicant's daughter, according to the Aadhar Card, is 8<sup>th</sup> August, 1994 and according to the family Ration Card issued by the Government of Uttar Pradesh is 1<sup>st</sup> January, 2001. He, therefore, submitted that if the date of birth on the Ration Card is to be considered, the applicant's daughter is still a minor.

6. Perused the papers including the impugned orders. The Applicant is the mother of the victim girl. The victim girl was rescued by a police officer in connection with C. R. No. 41 / 17 registered with the D. B. Marg Police Station, under Sections 366A, 370(1) r/w 34 of the Indian Penal Code, under Sections 3, 4, 5 & 7(1)(b) of the Immoral Traffic (Prevention) Act and under Sections 4, 8 & 17 of the Protection of Children from Sexual Offences Act. After the Applicant's daughter was rescued, she was kept in the custody of the Child Welfare Committee, Deonar, Mumbai. No doubt there is some discrepancy in the date of birth of the applicant's daughter, however if the date of birth of the applicant's daughter is

considered, as reflected in the birth certificate and Aadhar Card, it appears that the applicant's daughter is a major. It is not in dispute that the applicant's daughter is desirous of going back to her parents. There is no record to show that the applicant's daughter was earlier involved in any such incident/immoral activity.

7. Considering the aforesaid, the Application is allowed and is disposed of on the following terms & conditions :-

**ORDER**

(i) The impugned Order dated 24.03.2017 passed by the learned Metropolitan Magistrate, Special Court for ITPA, 54<sup>th</sup> Court at Mazgaon, Mumbai in R. A. No. 11 / RA / 2017 as well as the Order dated 19.05.2017 passed by the learned Special Judge (POCSO) Court, Greater Bombay below M.A.No. 446 of 2017 in R. A. No. 223 of 2017 are quashed & set aside;

(ii) The Superintendent, Navjeeven Mahila Vastigruh, Deonar, Mumbai is hereby directed to forthwith handover custody of the victim girl to the Applicant;

(iii) The Applicant shall give her address, mobile number etc. to the investigating officer as well as to the trial Court after the release of the victim girl;

(iv) The Applicant shall ensure that the victim girl does not indulge in these activities in future.

8. Rule is made absolute in the aforesaid terms.

9. All concerned to act on the authenticated copy of this order.

***REVATI MOHITE DERE, J.***