

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

CRIMINAL BAIL APPLICATION NO. 1577 OF 2018

Shabnam Umar Shaikh

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Aabad Ponda I/by Mr. Ashish Raghuvanshi for the applicant.
Mrs. G.P. Mulekar, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd SEPTEMBER, 2018.

P.C.

1. This is an application for bail. The applicant was arrested on 25th January, 2018 in connection with C.R. No. I-49 of 2018 registered with Mumbra Police Station Thane for the offence punishable under Sections 371, 370, 120(B) of Indian Penal Code and Sections 75 and 81 of Juvenile Justice Act.

2. The prosecution case is that the police received the information that on 25th January, 2018 one man and woman are coming at a particular place to sell the new born child. The police therefore decided to lay the trap. Panchas were called. The police reached the hospital, one man and woman came near the hospital

holding one child. On inquiry they could not give satisfactory explanation. Hence, they were taken in custody. Women told her name as Hasina and the other person told his name as Mohd Ayub. On further inquiry they informed that child was produced by them from Shabnam whose name was not known to them and further information is that they had shown the place where they took the custody of the child. Applicant accused who had allegedly confessed that child was sold to the couple for an amount of Rs.30,000/-. In pursuant to that FIR was registered, the applicant was arrested. The applicant was remanded to custody from time to time. The couple who had purchased the child were found in possession of the child and were also arrested and they are in custody. The mother of the child was also impleaded as accused. She preferred an application for anticipatory bail which was allowed by this court vide order dated 2nd August, 2018. The other relations of the said accused were also granted anticipatory bail by this Court.

3. Taking into consideration the case of the prosecution it appears that the child was born to the accused Humaira Mohiddin Sayed and with her consent the child was being sold to the couple. On perusal of the statement recorded by the police it appears that

the name of the applicant was referred to Mousina to whom the child was directed to be handed over. The statement of Mousina was recorded on 29th January, 2018. She is not impleaded as accused but the statement is being recorded as a witness.

4. Learned advocate for the applicant submitted that Section 370 as well as 317 of Indian Penal Code are not attracted in this case. Role attributed to the, applicant is that she handed over child to the couple. It is further submitted that investigation is completed and the chargesheet has been filed. There are no reported criminal antecedents against the applicant.

5. Learned APP submitted that the offence involves human trafficking. The present applicant handed over the child to accused No.1 and 2 and accepted the amount as 30,000/- and as per CDR report show that the applicant was in contract with other accused. Applicant was knowingly involved in the offence of human trafficking. She submitted that section 370 is attracted in this case.

6. I have gone through the documents on record. It is pertinent to note that the entire investigation is completed and the chargesheet has been filed. The applicant is in custody from the date of arrest. On perusal of Section 370 of IPC it can be seen it

refers to trafficking of person for the purpose of exploitation. It is pertinent to note that in the present case new born child was being sold. It is not the case of the prosecution that couple who had purchased the child is indulging in human trafficking. It is not the case of the prosecution that child was sold through accused without the consent of the mother. Be that as it may, it could not appropriate to scan the evidence on record at this stage. However, applicability of the said provisions is debatable. The applicant is in custody from the date of arrest. Investigation is completed and chargesheet has been filed. The mother of child and other relations impleaded as accused has been granted bail.

ORDER

- i) Criminal Bail Application No. 1577 of 2018 is allowed.
- ii) The applicant is directed to be released on bail in connection with C.R. No. I-49 of 2018 registered with Mumbra Police Station on furnishing P.R. Bond of Rs.20,000/- (Rs. Twenty Thousand only) with one or more sureties in the like amount;
- iii) The applicant shall attend Mumbra Police Station once in a month on first Saturday between 10 a.m. to 12 noon till conclusion of the trial;
- iv) The applicant shall not tamper with the evidence and/or

influence the prosecution witnesses.

v) The application stands disposed off.

Sachidanand
Kuttan Nair

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signed by
Sachidanand
Kuttan Nair
Date:
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(PRAKASH D. NAIK, J.)