

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

CRIMINAL BAIL APPLICATION NO.1734 OF 2018

Hasina Mohd. Ayub Siddiqui & Anr. .. Applicants

Vs.

State of Maharashtra .. Respondent

.....
Mr.Amin Solkar, Advocate for the Applicants.
Mr.A.R. Kapadnis, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 4, 2018.

P.C. :

This is an application for bail in connection with C.R. No.I-49 of 2018, registered with Mumbra Police Station, District – Thane, for the offences punishable under Section 363, 370, 373, Indian Penal Code (“IPC”, for short) and Sections 75 and 81 of the Juvenile Justice Act, 2015.

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 near Prime Criti Care Hospital, Mumbra. 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 infant. On inquiry they could not give satisfactory explanation. Women told her name as Hasina (Applicant No.1) and the other person told his name as Mohd Ayub (Applicant No.2). On further inquiry they informed that child was brought by them from one Shabnam Umar Shaikh by paying amount of Rs.36,000/-. In pursuant to that FIR was registered, the applicants were arrested. They were remanded to custody from time to time. 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. The applicants preferred application for bail before the Sessions Court which was rejected on 4th May, 2018.

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 applicants. The statement of Mohsina was recorded on 29th January, 2018. she has stated tht she was called by nurse Ayesha to keep her for delivery of one patient. The said women delivered child on 23rd January, 2018. The mother of child told Ayesha that

she should take the child with her. She was informed by Ayesha that Shabnam would meet her and she should hand over the child to Shabnam. Hence, child was handed over to Shabnam. She is not impleaded as accused but the statement is being recorded as a witness. Shabana has been granted bail by this Court on 3rd September, 2018.

4 Learned advocate for the applicant submitted that Section 363 as well as Sections 370 and 373 of Indian Penal Code are not attracted in this case. Role attributed to the, applicant is that they had purchased the child. It is further submitted that investigation is completed and the chargesheet has been filed. There are no reported criminal antecedents against the applicant. Other accused are granted bail. It is submitted that the mother of child was unmarried and coming from reputed family and to avoid child to be disposed of as illegitimate was willingly handed over to applicants. The applicants are aged about 50 and 53 years.

5 Learned APP submitted that the offence involves human trafficking. The present applicant purchased the child for an amount of 30,000/-. The accused were not childless. Applicant

was knowingly involved in the offence of human trafficking. It is submitted that Section 370 and Section 373 are 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 charge-sheet has been filed. The applicants are 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. Section 373 relates to buying minor for purpose of prostitution etc. 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 without the consent of the mother. It would not be appropriate to scan the evidence on record at this stage. However, applicability of the said provisions is debatable. The applicants are in custody from the date of arrest. Other accused is granted bail by this Court. The mother of child and other relations impleaded as accused has been granted anticipatory bail. There is no evidence that the applicants were indulging in human trafficking. The child was delivered by unmarried lady,

which was being sold to the applicants. Investigation is completed.

7 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.1734 of 2018, is allowed;
- (ii) Applicants are directed to be released on bail in connection with C.R.No.I-49 of 2018, registered with Mumbra Police Station, District-Thane, on their furnishing P.R. Bond in the sum of Rs.20,000/-, each, with one or more sureties in the like amount;
- (iii) Applicants shall attend Mumbra Police Station, District-Thane, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till conclusion of the trial;
- (iv) Applicants shall not tamper with the evidence and/or influence the prosecution witnesses;

(v) Bail Application No.1734 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)