

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1225 OF 2018

Babita Shubnarayan Dubey, Age 39 years,
R/o.Room No.103, Ground Floor,
Building No.1033, MHADA Sangarsh Nagar,
Powai, Mumbai (Presently lodged at
Aadharwadi Prison)

Applicant

versus

The State of Maharashtra

Respondent

AND

CRIMINAL BAIL APPLICATION NO.1761 OF 2018

Surendra @ Chotu Sito Yadav, Age 23 years,
Occ.Service, R/o.Room No.1,
Marva House Chawl, Saki Vihar Road,
Sakinaka, Andheri (West), Mumbai-72.
(Presently lodged at Thane Prison)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Prabhanjay R. Dave for applicants.
Ms.A.A.Takalkar, APP, for State in both applications.
Mr.Vishwas Patil, API, Nayanagar Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd October 2018

PC :

1. Both the applicants are arrested in CR No.I-253 of 2017 registered with Nayanagar Police Station for offences under Sections 376, 363, 366(a), 370(a), 376, 465, 467 of Indian Penal Code read with Sections 4 and 5 of The Immoral Traffic (Prevention) Act, 1956 r/w Section 67(a) of Information and Technology Act r/w Section 4 of Prevention of Children from Sexual Offences Act, 2012.

2. The prosecution case is that the victim was aged about 17 years and 10 months. On 2nd September 2017 the mother of victim lodged a complaint that the victim has left her house on 19th September 2017 and till date she has not returned. The first information report was lodged under above provisions of law. Pursuant to the FIR, police started investigation and the victim girl was traced at Pune on 9th October 2017. During the inquiry the victim had disclosed that she was interested in modeling and with a view to make her career in modeling, she was in search on internet about the course of modeling. She came into contact with one Kalpesh who gave phone numbers of Babita and Vinod Yadav. She further stated that on 19th August 2017 she informed her mother that she is going to college and left her house. She contacted Vinod Yadav, who called her at Andheri and informed her that arrangements are made for her accommodation at the Picnic Hotel. She was taken to the said place where five to six other girls were also found residing. The victim was introduced to Babita (applicant in BA No.1225 of 2018). It is further stated that Vinod Yadav used to send victim to hotel for the purpose of prostitution. She was paid money for the prostitution activities. It is further alleged that the victim wanted to join the modeling course at Pune and therefore she left for Pune without informing her parents. In the subsequent statement the victim has stated that the applicant in Bail Application No.1761 of 2018 and one another person were working as servants in the premises where the victim and other girls were accommodated. It is also stated that the applicant Surendra @ Chotu was working as manager and the victim used to hand over money received by her from customers to him, which was being handed over by Surendra @

Chotu to Vinod Yadav. He used to get salary. It is also stated that other accused Kalpesh was getting commission. The statements of various persons were recorded. Investigation was completed and charge sheet was filed.

3. Learned counsel for applicant submitted that the victim was 17 years and 10 months old at the relevant time. There was no reason to believe that she was minor. It is submitted that the victim had volunteered to indulge in the alleged prostitution activities. There is no evidence that she was forced to indulge in prostitution. It is submitted that co-accused Vinod Yadav has been granted bail by this Court. It is further submitted that the applicant in Bail Application No.1225 of 2018 Babita is a lady and she is in custody from the date of arrest. It is submitted that the applicant in Bail Application No.1761 of 2018 Surendra @ Chotu was allegedly working as servant in the premises where the victim and others were residing. It is submitted that there is no allegation against him that he was instrumental in inducing the victim or any other persons to indulge in prostitution activities. He was a paid employee and beyond that he had not played any role in the said crime. It is further submitted that the provisions of Section 370 of IPC would not be attracted as there is no evidence of exploitation and that the victim was not coerced to carry out the alleged activities of prostitution. It is submitted that investigation is completed and charge sheet has been filed.

4. Learned APP submitted that the applicants are involved in serious crime. Specific overt act has been attributed to both the applicants. The applicant Babita Dubey was instrumental in inducing

the victim to indulge in prostitution activities. She has played a major role in the crime. It is further submitted that other applicant Surendra @ Chotu has also participated in the crime. The amount which was earned in prostitution by the victim, was being handed over to him and he used to maintain accounts and also used to work in the premises where the victim and other girls were accommodated. He used to hand over the amounts to the main accused and has thus played vital role in the crime. It is further submitted that consent of victim is immaterial as contemplated in Explanation-2 of Section 370 of IPC. Accused were aware about the age of victim. There is sufficient evidence to show that the accused had fabricated the Aadhar Card of the victim girl to show that she is major girl. It is thus submitted that the applications for bail may be rejected.

5. I have perused the material on record. The statement of victim girl was recorded on 9th October 2017. In the said statement she has stated that she was interested in modeling and hence contacted one Kalpesh who thereafter introduced her to Vinod Yadav and Babita aunt. She has further stated that Vinod Yadav used to send her to hotel and used to make her indulge in prostitution activities. She has further stated in her subsequent statement recorded on 9th November 2017 that the accused-applicant Babita had clicked her photographs and informed her that she is attractive. Thereafter she had contacted Vinod Yadav and informed him that the victim is attractive. She also informed Kalpesh that the victim child has reached the destination. It is further stated that the accused had taken photocopy of Aadhar Card from the victim child. The original date of birth was then changed and it was shown that the date of birth of the victim is 21st

February 1992. The name of the victim was also changed. It is further stated by the victim that the accounts in relation to prostitution activities were being maintained by applicant Surendra @ Chotu. The version of victim is also fortified by the statement recorded u/s 164 of Code of Criminal Procedure, 1973. The evidence also indicate that Kalpesh (co-accused) was involved in fabricating the Aadhar Card. The date of birth of the victim child was changed to show that she is major. Learned APP had also submitted that the prosecution is contemplating to challenge the order passed by this Court granting bail to Vinod Yadav. I have perused the said order. It appears that this Court was not apprised with the incriminating evidence against the said co-accused. It is, thus, clear that the victim was minor at the time of incident and the said fact was known to both these applicants as well as other accused. The accused had taken undue advantage of the situation. It is true that the victim had left house on her own. However, she was interested in modeling career. Under the garb of providing modeling career to the victim child, the accused had called her at Andheri and then she was induced to indulge in prostitution. The applicant Surendra @ Chotu although appears to be working at the premises, it is apparent that he was aware about the victim being minor. He used to act as manager and maintain accounts. The victim used to hand over the money received by her to him. Thus, the evidence clearly shows that there is involvement of both the applicants in the crime. Prima facie offences are made out against the applicants. Hence, no case for grant of bail is made out. Accordingly Criminal Bail Application No.1225 and Criminal Bail Application No.1761 of 2018 are rejected.

6. Considering the fact that both the applicants are in custody since last about one year, the trial is expedited. Learned Trial Court is requested to make an endeavour to conclude the trial within one year from the date of receipt of copy of this order.

(PRAKASH D. NAIK, J.)

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