

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2531 OF 2018

Fatima Farid Ahmed

....Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Subhash Jha a/w. Ms. Sanjana Pardeshi i/b. Law Global Advocates for the Applicant.

Mr. S.V. Gavand, APP for the Respondent/State.

CORAM : A.M.BADAR, J.

DATED : 28th NOVEMBER 2018.

P.C. :

1. This application is placed before this Court for hearing in view of withdrawal of one application and rejection of another application for bail moved by the applicant Fatima Ahmed. She is an accused in Crime No.17/2017 for offence punishable under Sections 370, 465, 467, 468, 471, 419, 420 read with 34, 120(B) of the Indian Penal Code as well as under Section 12(1)(2) of the Passport Act, 1967 registered with Anti-Robbery and Dacoity Cell,

Crime Branch, Kurla (West), Mumbai. Investigation of which has culminated into registration of Sessions Case No.607/2017 pending before the learned Additional Sessions Judge, Mumbai.

2. Allegations against the applicant are to the effect that upon receipt of secret information that some minors are being trafficked in the foreign countries from the Chatrapati Shivaji Maharaj International Airport, Terminal-II, a trap was laid and the present applicant alongwith co-accused Aarif Shafi Farooqui and Rajesh Pawar came to be apprehended alongwith few children. Co-accused Rajesh Pawar informed police that two children found with him are his biological children named Sachin Pawar and Jitendra Pawar. In a similar way, the present applicant disclosed that two children with her are her biological children named Rafid and Kasam. No child was found with co-accused Aarif Farooque. During investigation, it was found that the children were not biological children of these accused.

3. Earlier Bail Application bearing No.2599/2017 moved by the present applicant came to be rejected with a reasoned order by this Court on 15th June 2018 and orders granting bail to the co-

accused by various Courts were considered in the said order.

4. Heard the learned counsel appearing for the applicant/accused. He drew my attention to the judgment of the Hon'ble Allahabad High Court in the matter of ***Yunis and Haroon Vs. State of U.P.***¹ which is followed in judgment of the said Court in the matter of ***Nawal Vs. State of U.P.***² and submitted that doctrine of parity is applicable for grant of bail and not for rejection of bail thereof. Reliance is placed on Paragraph 6 and 7 in the matter of ***Yunis and Haroon (supra)*** are thus.....

“6. In matter of release on bail to the co-accused may be applied where the case of the co-accused is identically similar, but cannot be applied for rejecting the bail application of co-accused. A co-accused cannot be denied bail, merely on the ground that the bail of another accused has been rejected by the Court earlier, the obvious reason being that while the earlier bail order denying bail to another co-accused was passed, the latter co-accused applying for bail was not heard. In Nanha v. State of U.P.

1 MANU/UP/1497/1999

2 2008 SCC Online ALL 2036

(supra), (Para 60), a Division Bench of this Court observed that:

The prior rejection of the bail application of one of the accused cannot preclude the Court from granting bail to another accused whose case has not been considered at the earlier occasion. The accused who comes up with the prayer for bail, and who had no opportunity of being heard or placing material before the Court at the time when the bail of another accused was heard and rejected, cannot be prejudiced in any other manner by such rejection.

7. Thus, the law of parity may be applied in granting bail to a co-accused, but cannot be invoked in rejecting the bail application of another co-accused. The learned Counsel for the complainant relied upon the decision of the Supreme Court in *State v. Jaspal Singh*, 1984 SCC 441. The facts of that case were entirely different, in that case the grant of bail to the accused was held not justified in the

larger interest of the State, the accused being guilty of offending the provisions of Official Secrets Act, 1923.”

5. My attention is also drawn to observations of the Hon'ble Allahabad High Court in the matter of **Nawal (supra)** made in Paragraph 10 of the judgment to demonstrate that rejection of bail application of the co-accused is not a ground for refusal of bail of the applicant.

6. The learned counsel for the applicant drew my attention to the order releasing co-accused Rajesh Pawar on bail by the learned Additional Sessions Judge vide order dated 25th October 2017. It is further argued that after withdrawing the Bail Application bearing No.2707/2017 moved by the co-accused Aarif Farooque on 15th February 2018 before this Court, time of nine months have already elapsed. The embargo is now lifted. My attention is drawn to the fact that the applicant is behind the bars from 20th April 2017. It is submitted that no case for the offence punishable under Section 370 of the IPC is made out as there is no exploitation of any of the child.

7. The learned APP opposed the application by contending that earlier bail application of the applicant is rejected on merits and fact of withdrawal of bail application of co-accused Aarif Farooque was also considered in the earlier order dated 15th June 2018 passed by this Court in Bail Application No.2599/2017. With this, the learned APP submitted that entertaining fresh application for bail would amount to review of the earlier order, which is not permissible.

8. I have considered the submissions so advanced.

9. Bail Application No.2599/2017 moved by the applicant Fatima Ahmed was rejected by this Court on 15th June 2018. At that time, order granting bail to the co-accused were considered by this Court. Similarly, order withdrawing the bail application of the co-accused was also kept in mind. Case against the applicant was also considered. Even judgment in the matter of *Nanna Vs. State of UP*³, which is relied in both the judgments cited by the learned counsel for the applicant was also considered and the application was rejected.

10. As of now, there are no changes in circumstances and

³ 1993 CUJ 938

allowing the present bail application would certainly amount to reviewing the said order dated 15th June 2018 passed by this Court rejecting the earlier bail application of the applicant.

11. In this view of the matter, no case for grant of bail is made out.

12. The application is therefore rejected.

(A.M.BADAR J.)