

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2599 OF 2017

Fatima Farid Ahmed **Applicant**

V/s.

The State of Maharashtra **Respondent**

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Mr.Subhash Jha with Ms.Sanjana Pardeshi with Mr.Harekrishna Mishra i/b. Law Global Associates, Advocate for the Applicant.

Ms.Anamika Malhotra, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 15th JUNE 2018.

P.C. :

1 This is an application for grant of bail by a lady accused in Crime No.17 of 2017 for offences punishable under Sections 370(5), 465, 467, 468, 471, 419, 420, 17, 120(B) of the Indian Penal Code read with Sections 12(1)(2) of the Passport Act registered with Anti-Robbery and Dacoity Cell, Crime Branch, Kurla (West), Mumbai (Mumbai Sessions Case No.607 of 2017) (Crime No.122 of 2017) of Sahar Police Station, Mumbai.

2 This application is placed before this Court as earlier similar Bail Application bearing No.1789 of 2017 moved by the applicant was decided by this Court on 02/11/2017.

3 Heard the learned Counsel appearing for the applicant at sufficient length of time. He argued that accused persons against whom similar allegations are made by the prosecution are even granted anticipatory as well as regular bail by the learned Session Court as well as by this Court. The learned Counsel placed reliance on Orders in Anticipatory Bail Application No.1147 of 2017 in respect of co-accused Manohar Sunke, in A.B.A.No.1148/2017 in the matter of co-accused Ayesha Rafiq Shaikh, Order in A.B.A.No.1165/2017 in the matter of co-accused Rashida Kashvi and Order in A.B.A.No.1931/2017 in the matter of co-accused Ruksana Salim Deraiya. Relying on these Orders, the learned Counsel argued that the prosecution cannot pick and chose amongst the accused persons and these co-accused were granted anticipatory bail by the learned Additional Sessions Judge, Mumbai as their custody was not sought for by the prosecution as investigation was nearing completion and charge-sheet was to be filed within short time. Hence, in submission of the learned counsel for the applicant, her bail application ought not to have rejected in the wake of grant of anticipatory bail to the co-accused. Reliance is also placed on Orders granting bail to co-accused Shah Gulam Mainuddin and Rajesh Pawar by the learned Additional Sessions Judge, Mumbai and it was argued that co-accused Rajesh Pawar is having same case as against the present applicant. My attention is also drawn to the Order dated 9th October 2017 passed by this Court in Bail Application 2023 of 2017, whereby co-

accused Bikramjit Singh Joginder Singh came to be released on bail. The learned Counsel further argued that as now the charge-sheet has been filed further pre-trial detention of the present applicant, who is woman, is not at all warranted. The learned Counsel drew my attention to statements of two alleged victims found with the present applicant, so also statements of their parents to submit that the case is not falling under Section 370 of the Criminal Procedure Code. The alleged victims of the crime in question with consent of their parents had admitted to come to foreign country. The learned Counsel relied on several Judgments to buttress his contention that on the principle of parity, the present applicant is also entitled for bail.

4 As against this, the learned Additional Public Prosecutor opposed the application by drawing my attention to the Order dated 15th February 2018 passed by coordinate Bench of this Court (Coram : A.S.Gadkari, J.) in Bail Application No.2707 of 2017 and argued that as this application moved by co-accused Arif Shaffi Farooque has been withdrawn, when the co-ordinate Bench of this Court had shown its disinclination to grant bail, the applicant cannot be released on bail. The learned Additional Public Prosecutor further argued that role ascribed to the co-accused, who are released on bail, except that of co-accused Rajesh Pawar, is totally different. She, therefore, insisted for rejection of the instant application.

5 I have carefully considered the rival submissions and also perused the record of investigation made available.

6 According to the prosecution case, investigating agency received secrete information that some minors are being trafficked to foreign countries from Chhatrapati Shivaji Maharaj International Airport, Terminal-II. The trap was laid and during the course of that trap present applicant along with co-accused namely Arif Shaffi Farooque and Rajesh Balaram Pawar came to be apprehended along with some children. Co-accused Rajesh Pawar disclosed that two children found with him are his biological children and has stated their names as Sachin Pawar and Jitendra Pawar. Present applicant has disclosed that two children found with her are her own children and their names are Rafiq and Kasam. FIR does not show that any child was found with co-accused Arif Shaffi Farooque. Further investigation ensued in which it is transpired to the prosecution that hundreds of children were being trafficked to foreign countries on the pretext of educating them by using fake passport etc. Many of them are to be traced out.

7 This Court had granted regular bail to co-accused Bikramjeet Singh Joginder Singh on 9th October 2017 by observing that his pre-trial detention is not warranted and he has deep roots in the society, he being holding the elective post. Co-accused

Rajesh Pawar with whom two children were found is granted bail by the learned Additional Sessions Judge, Mumbai. Other co-accused mentioned by the learned Counsel for the applicant are also released on bail or anticipatory bail by the learned Additional Sessions Judge, Mumbai.

8 As pointed by the learned Additional Public Prosecutor, co-accused Arif Shaffi Farooque, who came to be apprehended along with the present applicant and co-accused Rajesh Pawar, had moved Bail Application bearing No.2707 of 2017 before this Court and on 15th February 2018, the co-ordinate Bench of this Court has passed the following Order :

“1 After hearing the learned Counsel appearing for the Applicant at length, when this Court was not inclined to grant any relief, the learned Counsel on instructions seeks leave to withdraw the application with liberty to file a fresh application for bail before the Trial Court, if the trial pertaining to C.R.No.17 of 2017 registered with Anti Robbery Cell, DCB, CBI, Mumbai and culminated into Sessions Case No.607 of 2017 does not commence within a period of nine months from today

2 Leave and liberty granted.

3 Application is dismissed as withdrawn with the aforesaid liberty”

9 Perusal of this Order goes to show that co-accused Arif Shaffi Farooque with whom no child was found at the Airport, is not granted bail by this Court.

10 At this juncture, it is apposite to quote observations of Honourable Allahabad High Court in the matter of *Nanha s/o. Nabhan Kha v. State of U.P.*¹ found in paragraphs 36 and 37 relied by the learned Counsel for the applicant. Those reads thus :

“36. The argument of the learned State Counsel is that it is open to different Judges to reject or grant bail to accused even if their cases stand on same footing. I am unable to persuade myself to accept this submission of the learned State Counsel. The High Court is one Court and each Judge is not a separate High Court. It will be unfortunate if the High Court delivers inconsistent verdicts on identical facts. If the argument of the learned State Counsel is carried further it would mean that even the same Judge while deciding bail application moved by several accused, whose cases stand on the same footing, is free to reject or grant bail to any one or more of them at his whim. Such a course would be wholly arbitrary.

37. The public, whose interests all judicial and quasi-judicial authorities ultimately have to serve, will get a poor impression of a court which delivers contrary decisions on identical facts. Hence for the sake of judicial uniformity and non-discrimination it is essential that if the High Court

1 1993 Cri.L.J. 938.

granted bail to one co-accused it should also grant bail to another co-accused whose case stands on the same footing. Alexis de Toqueville remarked that a man's passion for equality is greater than his desire for liberty.”

11 Principle of parity is also explained in the Judgments and Orders in following matter relied by the learned Counsel for the applicant.

- (i) Judgment of the Honourable Apex Court in the matter of ***Pogula Komuraiah v. State of Andhra Pradesh.***¹
- (ii) Judgment of the Honourable Apex Court in the matter of ***Jaya Simha v. State of Karnataka.***²
- (iii) Judgment of the Honourable Apex Court in the matter of ***Kamaljit Singh v. State of Punjab & Anr.***³
- (iv) Judgment of Division Bench of this Court in the matter of ***Menino Lopes v. State of Goa.***⁴

12 It is thus clear that if the co-accused with similar accusations is granted bail, then another co-accused whose case stands on same footing needs to be given equal treatment. However, in the case in hand, Bail Application of co-accused Arif Shaffi Farooque came to be withdrawn when the co-ordinate Bench of this Court had shown its disinclination to grant bail to

1 (2008) 3 Supreme Court Cases 686.

2 (2007) 8 Supreme Court Cases 145.

3 (2005) 7 Supreme Court Cases 226.

4 (1994) 2 Mah. L.J.1803

him on 15/02/2018. Thus, grant of bail to the present applicant in the wake of not granting similar relief to co-accused Arif Shaffi Farooque by the co-ordinate Bench of this Court would be against the principle of judicial uniformity and non-discrimination.

13 In this view of the matter, the instant application is rejected.

(A.M.BADAR J.)