

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1575 OF 2019

- | | | | |
|----|---------------------------------|---|----------------|
| 1. | Shabiya Babool Kazi |] | |
| | Aged: 40 years, Occ: Housewife |] | |
| | R/at: Gobindpur, Nowapara |] | |
| | Bhebla, North 24 Paragansas, |] | |
| | West Bengal- 743 456. |] | |
| | |] | |
| 2. | Shampa Amol Mujumdar |] | |
| | Aged: 28 years, Occ: Housewife, |] | |
| | R/at: Jagajibanpur, Nandagar |] | |
| | Malda, West Bengal- 732 122 |] | |
| | |] | |
| 3. | Kajal Majil Shaikh |] | |
| | Aged: 30 years, Occ: Housewife |] | |
| | R/at: Paula Para, Bhandanga |] | |
| | Gagnath 24, Paganash Habra (M) |] | |
| | Banipur, North 24 Parganas, |] | |
| | West Bengal- 743 233. |] | |
| | |] | |
| 4. | Rehana Shohid Gazi |] | |
| | Aged: 30 years, Occ- Housewife |] | |
| | R/at/ Nakuadaha, Sadarpura |] | |
| | Mondalpara, Karmakarpara |] | |
| | Paraganas, Bashirhat-1 |] | |
| | North 24 Paraganas, |] | |
| | West Bengal- 743 456 |] | |
| | Presently at Navjeevan Mahila |] | |
| | Vastigraha Chembur, Mumbai. |] | ...PETITIONERS |

VERSUS

- | | | | |
|----|-------------------------------|---|---------------|
| 1. | The State of Maharashtra |] | |
| | (At the instance of D.B. Marg |] | |
| | Police Station, Vide LAC No. |] | |
| | 71/2018) |] | ...RESPONDENT |

Mr. Aarif Ali M. Ali for petitioners.

Mr. A.R. Patil, APP for Respondent/State.

CORAM : **S. S. SHINDE J.**
RESERVED ON: **9th August 2019.**

JUDGMENT

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2 At the outset it is required to be noted that since the crime registered by the Police is under the Immoral Traffic (Prevention) Act, 1956 (for short “the said Act”) so also under the Indian Penal Code and Victims are alleged to have been compelled to involve themselves in prostitution, the identity of the victims needs to be concealed, and hence they are referred to as Victims - XYZ. The Registry is directed to maintain the record accordingly.

3 This Writ Petition takes exception to the order dated 02/03/2019 passed by the Additional Sessions Judge, and City Civil & Sessions Court, Greater Mumbai by which order Criminal Appeal No.728 of 2018 filed by the Petitioners-Victims against the order dated 22/10/2018 of the learned Metropolitan Magistrate, 54th Special Court for ITPA, Mazgoan, Mumbai came to be dismissed. By order dated 22/10/2018 the learned Magistrate directed the Superintendent of Navjevan Mahila Vasti Griha to send the Victims to Government Organizations run by the State for a period of one year from the date of said order.

4 Brief facts leading to filing of the present Writ Petition, in brief, can be stated as under :-

The Petitioners herein are Victim Nos. 1, 3, 6 and 8 in LAC No.71 of 2018 lodged with D B Marg Police Station. It is the case of the prosecution that on 29/09/2018, the D B Marg Police laid a trap in the premises No.14, 2nd Floor, Krishna Building, Pavwala Street, Grant Road (East) with the help of two panchas and bogus customers and thereafter conducted a raid in the said premises. During the said raid, the police arrested the accused viz. Sahay Buddhu Yadav, Rambrij Jageshwar Yadav and Mabiya Rejavun Mulla for the offences punishable under Sections 3, 4, 5, and 7(1)(b) of the said Act and registered the FIR vide LAC No.71 of 2018 and rescued 8 victims from the said brothel house. The said victims were produced before the learned Magistrate. The learned Magistrate directed to initiate an enquiry under Section 17(2) of the said Act and called for the reports from the Probation Office as well as NGO. The learned Magistrate has also gone through the medical report and, did not find detection of any sexual transmitting disease. The learned Magistrate has personally made inquiry with the victims, and thereafter as stated herein above, passed the order dated 22/10/2018 thereby directing the Superintendent of Navjevan Mahila Vasti Griha to send the Victims to Government Organizations for a period of one year from the date of the said order. It appears that during the course of inquiry

before the learned Magistrate, nobody has claimed the custody of victims and all the victims have admitted that they are being indulged into said activity due to poverty. The learned Magistrate therefore held that if the victims are released, then there is every possibility to re-engage of them with flesh trade, and all victims are in need of counseling as well as vocational training. The learned Magistrate therefore deem it appropriate to send all the victims to the government organization run by State.

5 Being aggrieved by the order dated 22/10/2018 passed by the learned Magistrate, the present Petitioners i.e. Victim Nos. 1, 3, 6 and 8 have preferred Criminal Appeal No.728 of 2018 before the Court of Sessions for Greater Bombay at Mumbai. The learned Additional Sessions Judge did not deem it appropriate to interfere with the order passed by the learned Magistrate. The learned Additional Sessions Judge has observed that the trial court has properly and correctly passed the said order directing the Superintendent to send the victims to government organization for a period of one year. The learned Additional Sessions Judge, by the impugned order dated 02/03/2019 has rejected the said Appeal of the Petitioners herein. It is the said order dated 02/03/2019 passed by the learned Additional Sessions Judge rejecting the Appeal filed by the Petitioners which is taken exception to by way of the present Writ Petition.

6 The learned counsel for the Petitioners submits that the Petitioners are major, capable and competent to take care of themselves, and due to poverty they are indulged in the said activity for their livelihood. It is submitted that the Petitioners are innocent and helpless women and victims of the circumstances. It is submitted that the learned Magistrate has failed to conduct proper inquiry under Section 16(1) of the said Act. The Petitioners are ready and willing to give undertaking that, they will not indulge in similar activity after their release from the detention home. It is also submitted that the relatives of the respective Petitioners are ready to take care of them. The learned counsel for the Petitioners further submitted that a person, who has attained the age of majority cannot be restricted or cannot be kept in home since he/she has a right to carry out his/her own vocation as also he/she has a right to freely move through out the territory of India and he/she has a right to reside at the place of her choice. In support of the said contention, the learned counsel for Petitioners relied upon the judgment of this Court (Coram : S S Shinde, J) in the case of Asiya Anwar Shaikh v/s. State of Maharashtra reported in Laws (Bom)-2019-7-57. He therefore submits that the Writ Petition needs consideration.

7 The learned APP relying upon the reasons assigned by the learned Magistrate, as well as the learned Additional Sessions Judge submitted that, both the Courts below upon appreciation of the material placed on record and keeping

in view the interest of victims have passed the orders sending the victims to the government organizations run by the State for a period of one year for their care, protection and rehabilitation. He further submits that investigation is in progress. He therefore submitted that the Writ Petition may be rejected.

8 I have heard the learned counsel for the parties. With their able assistance perused the pleadings and the grounds taken in the Petition as well as the annexures thereto. I have also perused material on record and the reasons assigned by both the Courts below.

9 In so far as the contention of the learned counsel for the Petitioners that, Victims being major, cannot be sent to the Corrective Institution against their wishes, and they have right to reside at the place of their choice, to move freely through out the territory of India and to chose their vocation is concerned, similar issue/contention has been raised before this Court in **Asiya Anwar Shaikh's** case (supra) and whilst deciding the said case, the Court has dealt with the said issue/contention and has observed in paragraph Nos. 11 to 15, as under :-

11 However, the important question that has been raised in this Petition is that, Respondent No.2 - Victim being major can be sent to the said Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune against her wishes. The learned

counsel for the Petitioner submits that Respondent No.2 -Victim has a right to reside at the place of her choice, to move freely through out the territory of India and to chose her vocation.

It is true that every citizen has right to chose his/her vocation, to move from one place to another through out the territory of India, and other fundamental rights enshrined in the Constitution of India. Under Clause (1) of Article 19 all citizens shall have the right ---

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form association or unions (or co-operative societies);
- (d) to move freely through out the territory of India;
- (e) to reside and settle in any part of the territory of India, and [****]
- (g) to practice any profession, or to carry on any occupation, trade or business.

12 Indisputably Respondent No.2 Victim XYZ is major, therefore it is imperative to consider her wishes. There is no doubt that the State Government within its power under the said Act, keeping in view of the interest of the victim, can seek appropriate directions from the Court to send the victim to Corrective Institution. It is true that the fundamental rights conferred upon the citizen of India in Part III of the Constitution of India are with reasonable restrictions mentioned in each Article. The fundamental rights of the citizen enshrined in Part III of the Constitution of India stand on higher pedestal vis-a-vis statutory right or any other rights conferred by the general law. Therefore I find considerable force in the submission made by the learned counsel for the Petitioner that the victim being major, her fundamental right to move from one place to another place, reside at the place of her choice and to chose her vocation has to be considered, and contrary to her wishes she cannot be asked to reside in the said Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune.

13 It is pertinent to mention at this stage that the police machinery has not brought on record any material suggesting that Respondent No.2 Victim XYZ is suffering from disability or her case is covered by reasonable restrictions under Article 19 of the Constitution of India, and setting her free would cause danger to the society. It is also required to be noted that nothing is placed on record by the police which would show that her right to move from one place to another place or reside at the place of her choice is hampered due to restrictions imposed in Article 19 of the Constitution of India.

14 In the facts of the present case, Respondent No.2 - Victim XYZ was sent and/or kept in the Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune for her care and protection, by order dated 23/01/2019 passed by the learned JMFC. Prior to passing the order by the learned JJMC, a raid was conducted by the Taluka Police Station Pandharpur at Hotel Sangam Lodge, Pandharpur and during the said raid, the victim was found in the said lodge and, as alleged by the concerned Police Department, Respondent No.2 - Victim XYZ along with other victims was involved in the prostitution. The accused are being prosecuted by registering Crime being C.R.No.19 of 2019 under Sections 370, 343 of the Indian Penal Code and, under Sections 5, 6, 7 of the Immoral Traffic (Prevention) Act, 1956, and in the said Crime Respondent No.2 – Victim XYZ is treated as victim and sent in Corrective Institution for her care and protection. Therefore, it can be said that she was sent in the said Corrective Institution for her care and protection.

15 Respondent No.2- Victim XYZ is in the said Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune. for more than six months. Therefore considering the report of probation officer and also considering the fact that Respondent No.2 - Victim XYZ has spent a period of more than six months in the said Corrective Institution, the ends of justice would be met in the present case, if the directions are given to release

Respondent No.2 - Victim XYZ from the said Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune.

10 It is required to be noted that in the present case, the learned Magistrate personally conducted the inquiry with the victims. The learned Magistrate has also called the reports from the probation officer as well as the NGO and the medical reports. After considering the reports and the material placed on record, the learned Magistrate held that if the victims are released then, there is every possibility again of indulging/re-engaging of said victims with flesh trade, and therefore all victims are in need of counseling and vocation training, and it is possible when they are sent to government organizations where they can get adequate vocational training. The learned Magistrate therefore deemed it appropriate to direct the Superintendent to send the Petitioners to Government Organizations for a period of one year. It is also required to be noted that the victims have admitted before the trial court that they are indulged in the said work due to poverty. The Appellate Court upon appreciating the reasoning given by the trial court and after considering the pleadings in the Appeal and material on record, came to a conclusion that the trial court has properly and correctly passed the order sending the victims to the government organization for one year so as to facilitate their rehabilitation by providing vocational guidance to them. The Appellate Court did not deem it appropriate to interfere with the order

of the trial court and rejected the appeal filed by the victims.

11 Though there are concurrent findings recorded by both the courts below, it is required to be mention at this stage that the victims have stated in the Petitions that they are major and having permanent residential addresses in India. They have also stated that they are not suffering from any sexual transmitting disease. They have also stated that they are ready and willing to give the undertaking not to indulged in the similar activity in future. It is also required to be noted that husband the Petitioner No.1 is claiming the custody of Petitioner No. 1, so also the sisters of Petitioner Nos. 2, 3 & 4 are claiming custody of Petitioner Nos. 2, 3 & 4.

12 This Court has already in the case of *Asiya Anwar Shaikh* (supra) has taken a view that the victim being major, her fundamental right to move from one place to another place, reside at the place of her choice and to chose her vocation has to be considered, and contrary to her wishes she cannot be asked to reside in the Corrective Institution. As stated herein above, the victims are major, some of they are married women and one of them are having four children. They are also ready and willing to give undertaking that they will not indulge in the similar activity in future. It appears that they are in corrective institution for more than 10 months.

13 In the light of the discussion in foregoing paragraphs, the ends of justice would be met, if the impugned orders passed by the Courts below are modified/curtailed to the extent mentioned herein below. Hence, the following order is passed :-

1. The directions issued by the Court of Metropolitan Magistrate 54th Special Court for ITP, Mazgaon, Mumbai, sending/keeping the four victims XYZ in the corrective institution i.e. Navjeevan Mahila Vastigriha, Deonar, Mumbai, for one year stands modified/curtailed to the period already spent by the petitioners who are victims presently in aforesaid corrective institution, however, subject to clause 2 mentioned herein under and upon completion of usual procedural formalities.

2. The petitioners shall be set at liberty and to be released forthwith, however, after ascertaining their wishes, whether they desire to continue their stay in the said corrective institution for remaining period or want to set at liberty/freed from the said corrective institution.

3. With the aforesaid direction, writ petition is dispose of. Rule made absolute to the aforesaid extent.

[S.S. SHINDE, J.]