

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2452 OF 2019

- | | | | |
|----|------------------------------|---|--------------------|
| 1. | Ruma Mohirhusen Shaikh |] | |
| | Age : 35, Occu. Nil. |] | |
| | |] | |
| 2. | XYZ |] | |
| | |] | |
| | Both R/o North Shivajinagar, |] | |
| | Sangli, District – Sangli |] | Petitioners. |

VERSUS

- | | | | |
|----|----------------------------------|---|--------------------|
| 1. | The State of Maharashtra |] | |
| | (C.R. No.492 of 2018 registered |] | |
| | with Vishrambaug Police Station) |] | |
| 2. | Lata Rajendra Gavade |] | |
| | Age : 41, Occu. Housewife, |] | |
| | R/o. Vishrambaug, Sangli, |] | |
| | District – Sangli. |] | Respondents. |

Ms. Rati Sinhasane, i/b. Mr. Umesh R. Mankapure, Advocate for
Petitioners.

Mr. A.R. Patil, APP for Respondent No.1-State.

CORAM : S. S. SHINDE J.
RESERVED ON : 24th June, 2019.
PRONOUNCED ON : 16th July, 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 so also under the Indian Penal Code and Victim is alleged to have been compelled to involve herself in prostitution, the identity of the victim needs to be concealed, and hence she is referred to as Petitioner No.2 - XYZ. The Registry is directed to maintain the record accordingly.

3 Brief facts as disclosed in the Petitioner are as under :

It is the case of the Petitioner that, Petitioner No.1 herein is the sister of Petitioner No.2, who is the victim in the aforesaid First Information Report. The Petitioners herein are challenging order dated 25.03.2019 passed by District Judge – 4, Sangli in Criminal Appeal No. 31 of 2019 arising out of Order dated 02.02.2019 passed by learned Judicial Magistrate First Class, Sangli in Criminal Misc. No. No. 621 of 2018 rejecting the application of the present Petitioner for the custody of Victim XYZ.

4 It is the case of the Petitioner No.1 that, the First Information Report was filed at the behest of Lata Rajendra Gavade wherein it is stated that the Complainant received an information that there is immoral trafficking going on in Sangli District. As per the information the panchas police and punter reached the spot and a trap was set. Thereafter, fake customer (punter)

was sent inside wherein he saw one girl. There were four girls in the room. When the panchas and the police staff went inside the said rooms, they saw that the four girls seating in the said room. The said girls disclosed that they are from Bangladesh and have been brought here for prostitution wherein they received Rs.500/- per customer. Thereafter the First Information Report in question came to be filed for offences punishable under Sections 370 read with 34 of the Indian Penal Code, and under Sections 3,4,5 and 6 of Prevention of Immoral Traffic Act against Mala Madar and Goda Awale Paraganda.

5 It is further the case of the Petitioner that, Victim XYZ along with other girls were taken into custody and have been sent to Bhagini Nivedita Protection Home, Sangli. Thereafter the charge-sheet came to filed on 27.12.2018. Petitioner No.1 herein filed an application for the custody of Petitioner No.2 – Victim XYZ on the ground that Victim XYZ is having one daughter who is 7 years old, and Victim XYZ is the only person to look after her daughter, and due to the absence of Victim XYZ her daughter is suffering huge loss. Petitioner No.1, being sister, is the legal guardian of Petitioner No.2 Victim XYZ who is entitled for the custody of Victim XYZ.

6 It is further submitted that, the Learned Judicial Magistrate First Class, Sangli by its order dated 02.02.2019 rejected the application filed by Petitioner No.1 herein on the ground that prima facie involvement of Victim

XYZ can be seen from the material on record and that she has no permanent address and sent the Victim/XYZ Asha Kiran, Mahila Shasakiya Nivas Sthan, Karve Naka, Opposite to Market Yard, Karad, Dist. Satara (herein after referred to as "Corrective Institution"). There is no documents to show that the petitioner is sister of the victim. Petitioner No.1 preferred an appeal under Section 17 (6) of Prevention of Immoral Traffic Act, against the order passed by the Judicial Magistrate First Class, Sangli. The learned District Judge – 4, Sangli by its order dated 25.03.2019 did not deem it appropriate to interfere with the order passed by the Trial Court and rejected the appeal filed by the Petitioner No.1 herein.

7 Being aggrieved and dissatisfied by the judgment and order dated 25.03.2019 passed by the learned District Judge – 4 Sangli in Criminal Appeal No. 31 of 2019 arising out of order dated 02.02.2019 passed by the learned Judicial Magistrate First Class, Sangli in Criminal Misc. Application No. 621 of 2018, Petitioner No.1 filed this Writ Petition challenging the legality, validity and propriety of the same.

8 Heard the learned counsel for the parties. The learned counsel for the petitioners submitted that the courts below have failed to consider the fact that Victim has one daughter who is only 7 years old, and since the victim is in custody of the said Corrective Institution, there is no one to look after the

daughter of the Victim. He further submitted that due to absence of Victim, her daughter is suffering huge loss. The learned counsel for the Petitioners submitted that Petitioner No.1, being a sister, is the legal guardian of the Victim and therefore is entitled for custody of the Victim. He also submitted that the Victim being major can earn and think for her betterment, and therefore, there is absolutely no need to keep the Victim in the custody of the said Corrective Institution. He further submitted that a person, who has attained the age of majority, cannot be restricted or cannot be kept in protection home. He therefore submitted that the present Petition may be allowed by quashing the impugned orders passed by both the Courts below and the custody of the Victim may be handed over to the petitioner in the interest and welfare of the Victim.

9 The learned Additional Public Prosecutor relying upon the reasons assigned by both the Courts below submitted that, both the Courts below upon appreciation of the material placed on record and keeping in view of the interest of victim have passed the orders sending the victim to the said Corrective Institution for her care, protection and rehabilitation for a period of one year. The learned APP further submitted that not only the victim but also other females were also found on the spot of incident and the Police have arrested the accused. He further submitted that the victim was taken in the custody by the police from the spot of incident. He therefore submitted that

the Petition may be rejected. The learned APP submits that, except oral contentions of the Petitioner there is nothing on record to show that Petitioner No.1 is the sister of Victim. It is submitted that, if the custody of Victim XYZ is given to the Petitioner, there may be chances of encouraging the victim by the Petitioner to indulge in similar activities in future as well. Therefore, he prays that the petition may be dismissed.

10 With the able assistance of learned counsel for the parties perused the material placed on record, the reasoning assigned by the Courts below and considered the submissions advanced by the learned counsel for the respective parties. It is required to be noted that the Trial Court has conducted inquiry about the character, whereabouts of the family of the victim and antecedents of Petitioner No.1 from the Probation Officer. It is noted by the Trial Court that the Probation Officer has not conducted detail inquiry about the victim by visiting her native place and it appears from his report that he has conducted inquiry merely by putting questions to the victim. It is also required to be noted that in order to ascertain the age of victim, the learned Magistrate has referred the Victim for medical examination to Padmbhushan Vasantdada Patil General Hospital, Sangli. The learned Magistrate after going through the material on record, the report of the Probation Officer and the Say of the Investigating Officer, observed that there is prima facie involvement of victim. The Trial Court observed that there is no latest address proof of the victim as to the place

where from she hails. It is further observed by the Trial Court that the family of the Applicant/Petitioner No.1 herein is poor and has no sufficient means to take care of the victim and her daughter. The Trial has observed that no documentary evidence is placed on record by the Applicant/Petitioner No.1 to prove her relation with Victim XYZ. The Trial Court observed that it seems that the Victim was residing with the Applicant/Petitioner No.1 and indulged in the prostitution activities, and therefore her possibility in indulging in the similar activities in future cannot be ruled out. The Trial Court therefore deemed it appropriate to send the victim to the said Corrective Institution for her care, protection and rehabilitation. Upon careful perusal of the reasons assigned by both the Courts below it can be safely stated that the Trial Court, keeping in view of the interest of the Victim XYZ, has passed the order sending her to the said Corrective Institution for her care, protection and with a hope of rehabilitation of the victim.

11 It is pertinent to mention at this stage that when the police, pursuance to the information received, conducted a raid and the police arrested the accused, at the same time, the police have taken the custody of XYZ along with other victims on the spot. When inquiry was made, the victim disclosed the police that they are from Bangladesh and have been brought here for prostitution wherein they received Rs.500/- per customer. Though the victim XYZ along with other victims have disclosed the police that they are

from Bangladesh, the address of Victim XYZ mentioned in the statement dated 28/10/2019 before the police is at Kokatta, West Bengal. Perusal of the FIR and the certificate of age issued by the Medical Officer P.V.P.G.H. Sangli dated 31/10/2018, which is annexed at page 59 of the Writ Paper Book, shows the address of Victim XYZ as Kolkatta, West Bengal and the age of the Victim shown therein is 25 years. The Trial Court has rightly observed that the victim has no permanent residence in Sangli and there are no latest address proof of the victim as to the place where she belongs. Prima facie it appears that Victim has no permanent residence. It is pertinent to mention that during inquiry it reveals that Victim XYZ was doing prostitution. The learned Magistrate after considering the probation officer's report and Say of the investigating officer, has observed that there is prima facie involvement of the victim. The learned Magistrate also noted in the impugned order that the family of the Applicant is financially poor and they have no sufficient means to take care of the victim. It is also noted that the no documentary evidence was placed on record by the applicant to prove her relation with victim as sister. It appears that the victim was residing with the applicant and indulged in the prostitution activities. Both the Courts below, in the interest and welfare of the Victim XYZ, did not deem it appropriate to hand over the custody of the Victim XYZ to the Applicant/Petitioner. During the course of investigation the Victim XYZ along with other victims disclosed the Police that they are from Bangladesh and have been brought here for prostitution. The Victim XYZ herself before the police,

during the course of investigation, stated that she is indulged in prostitution.

12 Considering the material placed on record, the reasoning assigned by both the Courts below, and the statements of the Victim before the Police, this Court is of considered view that if the custody of the Victim XYZ is handed over to the Applicant/Petitioner, her possibility of indulging in similar activities in future cannot be ruled out. From perusal of record it appears that the Victim XYZ has no permanent residence in Sangli and there is no latest address proof of the victim as to the place where she belongs. The learned Magistrate has rightly observed that if the Victim resides in an institution, where she can generate means of income and earn for her livelihood and hence in the interest and welfare of the Victim XYZ, the rehabilitation of the victim is necessary. In that view of the matter, no case for interference is made out. The Writ Petition is rejected. Rule stands discharged.

[S.S. SHINDE, J.]