

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4391 OF 2019

|                              |                    |
|------------------------------|--------------------|
| XYZ....                      | ]..... Petitioner. |
| Versus                       |                    |
| The State of Maharashtra     | ]                  |
| (At the instance of D B Marg | ]                  |
| Police Station,              | ]                  |
| Vide C.R. No.48/2019         | ]..... Respondent. |

Mr. Aarif Ali M Ali for the Petitioner.  
Mrs. G P Mulekar, APP for the Respondent/State.

CORAM : S. S. SHINDE J.  
DATE : 27<sup>th</sup> September 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 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 Victim - XYZ. The Registry is directed to maintain the record accordingly.

3            This Writ Petition takes exception to the order dated 15/07/2019 passed by the Additional Sessions Judge, Greater Mumbai by which order Criminal Appeal No.488 of 2019 filed by the Petitioner against the order dated 05/04/2019 of the learned Metropolitan Magistrate, 54<sup>th</sup> Special Court for ITPA, Mazgaon, Mumbai came to be dismissed. By order dated 05/04/2019 the learned Magistrate directed that Victim No.2 XYZ be detained for a period of one year from the date of the said order and sent the Victim-XYZ to Jabala Institute, Kolkotta or any state run institution of West Bengal for a per period of one year for her care, protection, shelter and vocational training from the date of order (herein after referred to as “the Corrective Institution”). By the said order the learned Magistrate further directed the Superintendent of Navjeevan Mahila to take necessary steps for shifting of the victim XYZ to Kolkotta at the earliest in the escort provided by D B Marg Police Station.

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

             It is the case of the Petitioner that she is made victim No.2 in the CR No.48/2019 registered at D B Marg Police Station, Mumbai. It is the case of the prosecution that on 14/03/2019 the police laid a trap in the premises Room No.312/314, 2<sup>nd</sup> Floor, Shish Mahal Building, V P Road, Grant Road (East) Mumbai with the help of two panchas and bogus customers and arrested

the accused named Vinod Suraju Paswan as Manager and Sanjay Kumar Nandu yadav as Agent for offence u/s. 370(3) r/w 34 of the Indian Penal Code and u/sec. 3, 4, 5, 7 (1)(B) of IPTA Act and registered the FIR vide Cr No.48/2019. Two victims were rescued from the said room premises. The said victims were produced before the court of learned magistrate. The learned magistrate called the reports from the probation officer and NGO, and after going through the medical report, no sexually transmitted diseases were detected. Thereafter the learned magistrate personally made enquiry. As indicated herein above, the learned Magistrate by order dated 05/04/2019 issued directions to detain the victim xyz for a period one year and sent her to Jabala Institute, Kolkotta or any state run institution of West Bengal. Being aggrieved by the said order dated 05/04/2019, the Petitioner filed Criminal Appeal No.488 of 2019 before the Sessions Court for Greater Bombay. The Additional Sessions Judge rejected the said Appeal by impugned order dated 15/07/2019. The said order dated 05/04/2019 passed by the learned Magistrate and the order 15/07/2019 passed by the learned Additional Sessions Judge, are taken exception to by way of the above Writ Petition.

5           It is the case of the Petitioner that Petitioner is originally from Mumbai. She is 25 years old, major and not suffering from sexual transmitting disease. The Petitioner is ready and willing to give the undertaking not to do the said work in future. Moreover the mother of the Petitioner is claiming the

custody of the Petitioner. The Petitioner has produced on record copies of her aadhar card and her mother.

6           During the course of inquiry it is revealed that the victim xyz is very much active in use of social media, and while chatting on social media, she met with one Santosh of Mumbai. Both of them felt in love of each other. The victim xyz was very much passionate about dance, so she decided to come to Mumbai with her friend. She came to Mumbai without informing her parents and joined dance bar. But she felt that it was not comfortable for her. Then her friend's husband took her to Kamathipura and offered her work there. It was brothel. She compromised herself and stayed there about a month. Then by taking opportunity, she fled away from there, as per plan of her social media friend Santosh. Then Santosh took her to Panvel and kept her in one room. They both got married in temple and stayed there for few days. Thereafter the victim came to know that Santosh is already married and father of kids. Therefore, she ran away without informing Santosh to her parents place. But thereafter she realized that at her parents place there is too much poverty and therefore she decided to rejoin the said activity and returned to Mumbai and started her journey from Shashi Mahel Grant Road, from where she came to be rescued in the police raid.

7           Before the learned Magistrate, the said Santosh showing himself

her husband claimed her custody. However, the said victim clearly denied to go with him. Therefore learned Magistrate did not deem it appropriate to hand over the custody of victim xyz to the said Santosh.

7           The learned Magistrate, as indicated herein above, has made inquiry with the victim, called her various reports from NGO, Probation Officers and Medical Officer etc and after satisfying the information which was produced by the police, found that victim xyz is in need of care and protection and it is necessary to detain her for period of one year, and accordingly sent her to Jabala Institute, Kolkotta or any state run institution of West Bengal.

8           Being aggrieved by the order of the learned Magistrate, the Petitioner filed Criminal Appeal No.488 of 2019 before the Sessions Court, Greater Bombay. The Appellate Court observed that the victim xyz is adult and can decide her way of life, but in this case it is not so, as she has not joined the said activity on her own, but the circumstances forced her to join it. The Appellate Court came to a conclusion that the victim xyz is in need of care and protection and there is no one for her to take care of as her so called husband and mother cannot be trusted looking to the past events. The Appellate Court therefore did not deem it appropriate to cause interference in the order passed by the learned Magistrate and accordingly dismissed the said Appeal.

9           I have heard the learned counsel for the parties. The learned counsel for the Petitioner submitted that the impugned orders passed by the Trial Court as well as the Appellate Court are improper, incorrect and illegal. He submits that the victim xyz is falsely implicated in the case and she is victim of circumstances. He further submitted that the victim xyz is 25 years of age and had good wisdom to take her proper care. Her mother is ready to take her care and she may be given one opportunity for improving herself. The learned counsel for the Petitioner submits that the petitioner is ready and willing to give an undertaking not to do the said activity in future. The learned counsel for the Petitioner contended that it is the bounden duty of the State to protect the interest of the victim having organizations such as protection homes, but at the same time in absence of the willingness of an adult victim she cannot be kept in a protection home. He also submitted that Article 19 of the Constitution of India guarantees the right of freedom and Article 23 provides for abolition of beggar or slavery or forced labour. He also submitted that under the Constitution of India every citizen has right to move freely through out the territory of India as also has a right to choose a vocation and victim has a right to reside at the place of her choice, but the said rights are conferred with reasonable restrictions. The learned counsel for the Petitioner 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. It is the contention of the learned counsel for the Petitioner that, the fact that the mother of victim is ready to take care of victim as the victim is a major, has to be considered, however, both the Courts below have ignored the said fact. In support of his aforesaid contention, the learned counsel for the Petitioner sought to place reliance on the judgment of this Court in *Writ Petition No. 2050 of 2019 (Asiya Anwar Shaikh v/s. State of maharashtra and anr.)* He therefore prays that writ petition may be allowed.

10           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 victim has passed the orders sending/keeping the victim to the Corrective Institution for a period of one year for her care, protection and rehabilitation. He therefore submitted that the Writ Petition may be rejected.

11           Having heard the learned counsel for the parties, I have bestowed my anxious consideration to the rival contentions. I have perused the grounds taken in the Writ Petition and the annexures thereto as also the reasons assigned by both the Courts below and the material placed on record. It is required to be noted that both the Courts below considering the fact that the

victim xyz returned to Mumbai because of poverty at her parents place and started doing the said activity, did not deemed it appropriate to hand over the custody of the victim xyz to the mother. Though the said Santosh, who is claiming to her husband, claimed the custody of victim xyz, but the victim xyz herself refused to go with him. It is also required to be noted that in the Petition there is no prayer for handing over the custody of the victim xyz. In that view of the matter, the question of handing over custody of victim xyz is not required to be considered.

12            In so far as the contention of the learned counsel for the Petitioner that, Victim-XYZ, being major, cannot be sent to the said Corrective Institution against her wishes, and she 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 is concerned, the similar issue/contention has been raised before this Court in Asiya Anwar Shaikh's case (supra) and this Court by order dated 11<sup>th</sup> July 2019 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

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- (g) to practise 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.

13 In the present case, the victim XYZ is 25 years of old i.e. major.

She stated that she is capable and competent to take care of herself. From the medical report it is disclosed that the Petitioner is not suffering from any sexually transmitted disease. It appears that she is detained for a considerable period of 5 months. It appears that the Petitioner is residing at the address given in the cause title of the Petition. This Court, in the aforesaid Writ Petition No.2050 of 2018, has already 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. The Petitioner has stated in her Petition that she has spent 5 months in the Corrective Institution.

14            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 the following order is passed :-

1]            The direction issued by the Metropolitan Magistrate, special Court for ITPA, 54<sup>th</sup> Court at mazgaon, Mumbai sending/keeping the Victim XYZ in the Jabala Institute, Kolkotta or any state run institution of West Bengal for a period of one year stands modified/curtailed to the period already spent by - Victim XYZ in the Corrective Institution, however, subject to clause (2)

mentioned herein under, and upon completion of usual procedural formalities.

2]           Victim XYZ should be set at liberty and to be released forthwith, however, after ascertaining her wish, whether she desires to continue her stay in the said Corrective Institution for remaining period or wants to be set at liberty/free from the said Corrective Institution.

3]           With the aforesaid directions, the Writ Petition is disposed of. Rule is made absolute to the aforesaid extent.

**[S.S. SHINDE, J.]**