

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1929 OF 2018
IN
CRIMINAL APPEAL NO.1477 OF 2018**

Mamata Shambhunath Das Applicant
Age : 36 years, Occ.: Nil,
R/o : Room No. 35/B, 5th Floor,
Jamana Mansion, 14th Galli,
Khetwadi, Mumbai
(At present Yerwada Cental Prison)
Pune

Vs.

The State of Maharashtra Respondent
At the instance of D.B. Marg Police
Station.

Mr. Aniket Vagal for the Applicant.

Mr. Y.M. Nakhwa, APP for State.

Mr. Valmik Dhorkule, PSI D.B. Marg Police Station, Mumbai.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 5th February 2019

P.C.:

1 Heard the respective counsel.

2 This is an application under Section 389 Code of Criminal Procedure seeking suspension of substantive sentence imposed upon the applicant. The applicant herein is convicted by the Additional Sessions Court, City Civil and Sessions Court, Greater Mumbai in Special Case No.369 of 2014 vide judgment and order dated 25th July, 2017. The applicant has been convicted for the offences under Sections 370(3), 342 read with 34 of Indian Penal Code and Sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 and sentenced to suffer rigorous imprisonment for 10 years, 1 year, 1 year, 2 years, 3 years and 7 years and fine of Rs.5,000/-, Rs.500/-, Rs.2000/-, Rs.500/-, Rs.2000/-, Rs.1,000/-, in default to suffer rigorous imprisonment for 6 months, 15 days, 2 months. 15 days, 2 months and 1 month respectively. It is pertinent to note that the applicant has been acquitted of having committed an offence under Section 370(A) of the Indian Penal Code.

3 Learned counsel for the applicant has rightly submitted that the applicant has undergone the sentences under Section 342 read with 34 of Indian Penal Code, Sections 4 and 5 of the Immoral

Traffic (Prevention) Act, 1956. The applicant has also undergone the default sentences in all three Sections.

4 The applicant has been convicted for the offence punishable under Section 370, Sub-Clause 3 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 10 years and fine of Rs.5,000/-. Section 370, Sub-Clause 3 of the Indian Penal Code reads as follows :

“370. Trafficking of person – (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by--

First. -- using threats, or

Secondly – using force, or any other form of coercion, or

Thirdly – by abduction, or

Fourthly – by practising fraud, or deception, or

Fifthly – by abuse of power, or

Sixthly – by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking”.

Sub-Clause (3) reads as follows :

“(3) Where the offence involves the trafficking of

more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.”

5 In the present case, it is necessary to note that there is no material nor evidence to even remotely indicate that the applicant was involved in an offence where there is a trafficking of more than one person. It is further pertinent to note that in the present case, once again the criminal prosecution is initiated at the behest of the International Justice Mission. It is stated that the said mission assists the Police in conducting raids on the brothel. It is further pertinent to note that the whole building i.e. Jamana Mansion, 14th Galli, Khetwadi, Mumbai comprises of five floors and the whole building is a brothel. It is further pertinent to note that the police station is at a distance of less than 600 mtrs. from the said building, however, this Court has noticed that in several cases, the Social Services branch of the police has conducted raids only at the behest of International Justice Mission, which provides with decoy witness, panchas and every other machinery for investigation of the cases under the

Immoral Traffic (Prevention) Act, 1956 and 370 of Indian Penal Code.

6 Perused the substantive evidence of the victim, which does not even remotely indicate that the present applicant has either kidnapped, abducted, recruited, transported, transferred the said victim. The victim has specifically stated that her neighbour namely Alam brought her to India. Another accused, Saidul's younger sister had taken her to Jamana Mansion. She had left the victim in the custody of the present applicant and another person, whom the victim believed, to be the husband of the applicant. The victim has been repatriated to Bangladesh and her evidence was recorded through Video conferencing. Besides the evidence of PW-8, there is no material on record to indicate that the applicant has committed an offence under Section 370, Sub-Clause 3 of the Indian Penal code. In fact, the conviction of the applicant ought to have been under Section 370, Sub-Clause (A) of the Indian Penal Code, which reads as follows :

“370A. Exploitation of a trafficked person – (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished With rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

7 Upon perusing the entire evidence, this Court is of the opinion that the applicant deserves to be convicted for the offence punishable under Section 370(A), Sub-Clause (2) of the Indian Penal Code besides the offence punishable under the provisions of ITPA 1956. Learned APP, upon instructions and the report from the Police has submitted that the applicant has no criminal antecedents and that she is not convicted by any other Court except in the present case.

8 Learned counsel for the applicant has submitted the Ration Card of the applicant, which clearly indicates that she is the

original resident of Burdwan, West Bengal. Learned counsel for the applicant has further submitted upon instructions that ever since she has come to India, she has been residing in Jamana Mansion. When she was in custody, her son has expired. Accused no.1 is not her husband. Her mother is on death bed and therefore, it is prayed that since the applicant is in custody for more than 5 years of actual imprisonment, she deserves to be enlarged on bail under Section 389 of Code of Criminal Procedure.

9 Upon perusing the records and proceedings and after considering the submissions of the learned counsel for the applicant as well as the submissions advanced by the learned APP, this Court is of the opinion that this would be a fit case for suspension of the substantive sentence. Hence, the following order.

ORDER

- i) The application is allowed and stands disposed of.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 25th July, 2017 is hereby suspended.

- iii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.15,000/- with one or more solvent sureties in the like amount.

- iv) The applicant shall report to the Sessions Court once in six months on the date assigned by the Sessions Court (Special Court).

- v) Upon failure to attend any two consecutive dates, the Sessions Court shall make a report to the High Court and the prosecution would be at liberty to file an application for recalling of the order passed under Section 389 of Code of Criminal Procedure.

- vi) The applicant be enlarged on provisional cash bail for a period of eight weeks, within which she shall furnish sureties in the sum of Rs.15,000/- to the satisfaction of the Special Court.

- vii) It is made clear that the applicant shall not leave Mumbai till she furnishes solvent sureties.

- viii) Within one week from the date of release, the applicant shall furnish the place of residence and the contact numbers of the sureties.

ix) The Police shall co-operate in the eventuality she chooses to reside in Jamana Mansion, in any case no order is passed under Section 18 of the ITPA till now.

x) Parties to act on authenticated copy of this order.

(Smt. Sadhana S. Jadhav, J)