

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5653 OF 2018

- 1] Sunita Devi Samarjit Singh ]  
Aged about 39 years, Occ : Housewife ]  
Residing at 214, Kumpura, ]  
Post-Koomppura, Tah. - Fatehabad, Agra, ]  
Uttar Pradesh – 283125 ]  
]  
2] Samarjeet Patiram Singh ]  
Aged about 40 yrs, Occupation : Business ]  
Residing at 214, Kumpura, ]  
Post-Koomppura, Tah.-Fatehabad, Agra, ]  
Uttar Pradesh – 283125 ]..... Petitioners

versus

State of Maharashtra ]  
at the instance of D B Marg Police ]  
Station, Mumbai ]..... Respondent

Mr. Dilip H Shukla for the Petitioners.

Mrs. Rutuja Ambekar, APP, for the Respondent/State.

CORAM : S. S. SHINDE J.  
Reserved on : 16<sup>th</sup> September 2019  
Pronounced on : 19<sup>th</sup> September 2019

**JUDGMENT :**

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

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 Petition takes an exception to the order dated 19/05/2018 passed by the Designated Court under Protection of Children from Sexual Offences Act, 2012, for Gr. Bombay by which order, the application filed by the mother of victim for custody of her daughter i.e. victim came to be rejected, and custody of victim was ordered to be handed over to CWC, Chembur Children’s Home Campus, Mankhurd, Mumbai, till attaining the age of 18 years of victim. It is also directed by the impugned order that after attaining the age of 18 years of victim, the CWC shall handover the custody of victim to her mother and while handing over the custody of victim, Superintendent of CWC, Mankhurd, to verify the documents of claimant.

4           The Petitioners are the mother and father of the victim girl. The victim girl was taken into custody by D B Marg Police Station under a trap and at present in CWC, Chembur Children’s Home Campus, Mankhurd, Mumbai. It is the case of the Petitioners that the victim girl was rescued by police in C R No.41 of 2017 registered with D B Marg Police Station under Section 366-A, 370 (1)(A) r/w 34 of the Indian Penal Code, Sections 3, 4, and 7(1)(b) of

Prevention of Immoral Trafficking Act, and Sections 4, 8 and 17 of the Prevention of Child from Sexual Offences Act. According to the victim girl, she came to Mumbai to meet her sister at her sister's working and staying place at Guest House, Mumbai Central. She stated that in the mid-night of 7<sup>th</sup> of March, police took her and shown her as victim. She showed her willingness to go back to her mother and she does not know more about the said place. The Petitioners therefore filed an application before the learned Metropolitan Magistrate, 54<sup>th</sup> Special Court for ITPA, Mazgaon for custody of the victim girl. The learned Magistrate by order dated 24/03/2017 decided the said application and directed that victim girl be released in custody of her mother. It is further directed that while handing over the custody, the Superintendent of Child Welfare Committee, Deonar to verify the documents of claimant. However, the CWC refused to hand over the custody of the victim girl to her mother. The mother of victim girl therefore preferred Misc. Application bearing No.447 of 2017 before the Special Court for Protection of Children from Sexual Offences, Greater Bombay. The Special Court by order dated 19/05/2017 rejected the said Misc. Application No.447 of 2017 and directed to hand over the custody of victim to CWC, Mankhurd, Mumbai till attaining the age of 18 years of victim. By the said order the Special Court also directed that after attaining the age of 18 year of victim the CWC shall handover the custody of victim to her mother and while handing over the custody of victim, Superintendent of CWC, Mankhurd, to verify the documents of claimant. It is

the said order dated 19/05/2017 passed by the Special Court which is taken exception to by way of this Writ Petition.

5           The learned counsel for the Petitioners submits that the Petitioners are permanent residents of Agra and the victim girl will reside with them. It is also submitted that the investigation is completed and charge sheet has been filed before the Sessions Court. It is also submitted that the medical report of the victim is also nil in connection with sexual relation. It is submitted that the learned Magistrate has rightly observed that the victim is required to be released in custody of the Petitioners. The learned counsel for the Petitioners further submitted that the impugned order passed by the Special Court is ex-facie illegal. It is also submitted that the Special Court failed to appreciate that the learned Magistrate released the victim in custody of the Petitioner. The learned counsel for the Petitioners therefore submits that this Petition deserves consideration.

6           On the other hand, the learned APP submits that the victim is minor. It is submitted that the Special Court upon appreciation of the material placed on record and keeping in view the interest of victim has rightly directed to keep the victim in the custody of CWC, Mankhurd. It is further submitted that if the victim is released, there are chances that she will again continue in the said activity. The learned APP therefore submits that the impugned order

passed by the Special Court is proper and legal, and needs no interference at the hands of this Court. She therefore submits that the Petition deserves no consideration.

7            Heard learned counsel for the parties. With their able assistance, perused the grounds taken in the Writ Petition and the annexures thereto. I have also perused the reasoning assigned by the Special Court.

8            The Petitioners are the mother and father of the victim who was rescued by the police in connection CR No.41/2017 registered with D B Marg Police Station. The victim girl at present is in CWC, Mankhurd, Mumbai. The learned Magistrate by order dated 24/03/2017 directing to release victim in custody of her mother, however, subject to verification of the documents of the claimant by the Superintendent of CWC, Deonar. It appears that the CWC filed their detailed report before the Special Court and, the Special Court directed the Metropolitan Magistrate to inquire with the victim as per Section 17 of ITPA Act. The Special Court in the impugned order has observed that the learned Magistrate after making inquiry with the victim girl and applicant, without any direction from the Special Court passed order dated 24/03/2017 releasing the victim in the custody of her mother. However, the said order of the learned Magistrate came to be stayed by the Special Court. Thereafter CWC produced on record report of their probation officer along with the report

of NGO regarding the case study of victim. The Special Court after going through the said report and material on record has observed that the victim along with her mother came to Mumbai to meet the sister of victim who is residing at Congress House in March 2017 and who is working at the dance bar. The Special Court also observed that though the medical report of present victim about the sexual intercourse is not possible, but the victim seems to be vulnerable as her real sister is in the business of flesh trade. Perusal of the statement of facts submitted by police would reveal that during the course of investigation the police obtained medical report wherein the medical officer has mentioned the age of victim as 16 to 17 years. It is required to be noted that during the course of investigation the police recorded the statement of the mother of victim, and the mother of victim has produced the birth certificate of victim wherein the date of birth of victim is mentioned as 15/01/2003. From the perusal of the material placed on record it is clear that the victim girl is minor. The fact that the victim girl rescued by the police under a trap cannot be lost sight of. The Special Court has therefore rightly directed the CWC to arrange counseling programme as the victim is in need of counselling. Though the Petitioners have claimed the custody of victim girl on the ground that they are permanent residents of Agra and they have sufficient means of earning of their livelihood, and moreover the victim girl is not involved in any illegal activities/immoral activities, the fact that if victim is released in custody of Petitioners, there is a possibility of victim involving herself in prostitution,

cannot be lost sight of. Therefore the Special Court has rightly held that it is necessary to handover the custody of the victim with CWC till she attains the age of 18 years.

9           In the light of the aforesaid discussion, the impugned order dated 19/05/2017 passed by the Special Court rejecting the application filed by the Petitioner-mother for the custody of victim is legally sustainable and proper. There is no reason for this Court to interfere in the said order passed by the Special Court. In that view of the matter, the Writ Petitioner stands rejected. Rule stands discharged.

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