

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

CRIMINAL BAIL APPLICATION NO.441 OF 2020

Pushpa Jadhav	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Abbas Mookthiyar a/w. Aditya Salve i/b. Sabah Khan,
Advocate for the Applicant.

Mr. S. H. Yadav, APP for State/Respondent.

CORAM :SARANG V. KOTWAL, J.

DATE : 03rd DECEMBER, 2020

P.C. :

1. The Applicant is seeking her release on bail in connection with C.R.No.130/2016 registered with Charkop Police Station, Mumbai on 3.5.2016 under sections 370(3), 370(4) read with 34 of Indian Penal Code, under Sections 3, 4 & 5 of the Immoral Traffic (Prevention) Act, 1956 and under Sections 4, 8 and 17 of Protection of Children from Sexual Offences Act. The Applicant was arrested on 03.05.2016 and since then she is in custody.

2. Heard Shri Abbas Mookthiyar, learned counsel for the Applicant and Shri S.H. Yadav, learned APP for the State.

3. The FIR is lodged by police constable Uttam Chavan on 3.5.2016. He has stated that, on that day, he reported to his duty at the Social Branch. At that time, they received an information that the Applicant and her husband were indulging in the prostitution racket and they were providing minor girls for that purpose. The police arranged to conduct raid. A bogus customer was called. The Panchas were called. The bogus customer called the phone number, which was mentioned in the information. It was received by a lady who gave her name as Pushpa and she quoted the charges of Rs.3,000/- for that purpose. The bogus customer was called in a MHADA building at Ekta Nagar, Kandivali. The bogus customer was given six currency notes of Rs.500/- each. Their numbers were noted and photo-copies of the same were taken. The panchas signed these photo-copies. The bogus customer and one of the Panchas' were sent to that particular flat, where the bogus

customer was called. A signal was pre-arranged which was to be given by the pancha. After some time, the pancha gave the pre-arranged signal. The police party raided the place. The bogus customer was found in one of the rooms with a minor girl. The Applicant and her husband were present in the hall. The currency notes given to the bogus customer by the police were found with the Applicant. The minor girl, who was found with the bogus customer, showed her Aadhaar Card on which her date of birth was mentioned as 18.12.2000. Thus, at the time of raid, she was less than 16 years of age. One more victim was also found in the flat. The Applicant and her husband were arrested. The panchnama was carried out. After completion of investigation, the charge-sheet was filed. The charge-sheet mainly consists of the statements of panchas, the bogus customer and the members of the police party who had raided that place. Their statements are consistent. The medical papers in respect of examination of the minor girl show that the age of the victim was more than 17 years and less than 18

years. The statements of the minor victim and other victim were recorded under Section 164 of Cr.P.C.. The copies of the 164 statements of the victims were shown to this Court.

4. Learned Counsel for the Applicant submitted that as per the medical papers, the age of the girl was between 17 and 18 years and, therefore, it was not correct to say that she was below 16 years. He submitted that the prosecution case, as mentioned in the charge-sheet, is that the Applicant had telephonically called the minor girl to the flat. However, no CDR is produced in the charge-sheet to support these allegations. He submitted that none of the offences mentioned under POCSO Act are made out because even as per the police case, the police reached at the spot before anything further could take place. The CDR of the bogus customer is also not part of the charge-sheet.

5. Learned Counsel for the Applicant referred to the order passed by this Court (Coram: Sandeep K. Shinde, J.) on 22.11.2019 in Criminal Bail Application No.2379/2019 where

in a similar case when the age of the victim was mentioned between 17 to 18 years, this Court had granted bail to the Applicant in that application.

6. He submitted that the Applicant is in custody since May, 2016 and as of today the charges are not framed. He, therefore, prayed for release of the Applicant on bail.

7. Learned A.P.P, on the other hand, submitted that there is clinching evidence against the present Applicant as the minor girl was found with the bogus customer and the currency notes given by the police to the bogus customer were found with the Applicant. He submitted that the statements under Section 164 of Cr.PC. implicate the present Applicant.

8. The statement of the minor victim is reflected in the order dated 3.10.2019 passed by this Court (Coram: Revati Mohite-Dere, J.) in Criminal Bail Application No.359/2019. By that order, the co-accused i.e. the Applicant's husband was granted bail mainly because the rescued girls, including the minor victim, had not named the Applicant's husband. On that

ground, the bail was granted to him. The same order records that the rescued minor girl was taken by the Applicant for doing household work. When the girl asked for money, the Applicant told her that she would have to sleep with one person. The victim further stated that the Applicant called one person and that person had forcible sexual relations with her. In that background, bail was granted to the Applicant's husband. Learned A.P.P. submitted that the Applicant's case stands on a different footing and a specific role is attributed to her. He submitted that there is one similar antecedent against the present Applicant. He, therefore, submitted that the present application for bail be rejected.

9. I have considered all these submissions. As recorded by the earlier order granting bail to the Applicant's husband, a specific role is attributed to the Applicant of forcing the minor girl to have sexual relations. At the time of raid, the bogus customer was in fact found with the minor victim. He has supported the prosecution case. The currency notes which

were given by the police and whose numbers were noted, were actually found in possession of the present Applicant. Thus, it is more than clear that the Applicant is directly involved in the offence.

10. As far as the contention that the medical certificate shows that the victim's age was between 17 and 18 years of age is concerned, it is hardly material because the victim was a minor girl even as per that examination. The FIR mentions Aadhaar number of the victim, which shows that she was less than 16 years of age at the time of incident.

11. Looking at the things from any angle, the fact remains that the Applicant had procured a minor girl for the purpose of prostitution.

12. The offence will definitely fall within the meaning of Section 370(4) of IPC for which the punishment is not less than ten years but which may extend to imprisonment for life in case of trafficking of a minor. Section 370 of IPC reads thus :

“370. Trafficking of a 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.

Explanation 1.--The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.--The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(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.

(4) Where the offence involves the trafficking of a minor, 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) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”

13. The allegations against the Applicant squarely fall within the definition of Section 370 of IPC. *Explanation 1* provides that "exploitation" includes any form of sexual exploitation; and *Explanation 2* provides that the consent of the victim is immaterial in determination of the offence of trafficking. Sub-section (4) of Section 370 of IPC provides that where the offence involves the trafficking of a minor, 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. The offence is very serious. The order cited by the learned Counsel for the Applicant does not help the Applicant because it does not deal with the ingredients of Section 370 of IPC.

14. In this view of the matter, though the Applicant is in custody since May, 2016, she deserves no sympathy as she has exploited a minor girl. I am not inclined to grant bail to the Applicant. However, considering the fact that the Applicant is in custody since then, the trial is expedited.

15. Hence, the following order :

ORDER

- (i) Bail Application is rejected.
- (ii) Trial is expedited.

(SARANG V. KOTWAL, J.)

Deshmane (PS)