

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

CRIMINAL BAIL APPLICATION NO. 2420 OF 2019

Kumari @ Beenu Shyambahadur Tamang ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Sanjeev Kadam a/w S.R. Phanse i/by Ravi S. Kotian,
Advocates for the Applicant.

Mr. S.R. Agarkar, APP for Respondent-State.

Mr. Yogesh Dabhade, P.S.I., Bhiwandi City Police
Station.

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CORAM : SANDEEP. K. SHINDE, J.
DATE : 12th FEBRUARY, 2020.

P.C.

Heard.

1. Applicant is seeking her enlargement on bail in Crime No. I - 352 of 2018 registered with Bhiwandi City Police Station for the alleged offences punishable under Sections 366-A, 376, 370-A, 370(2), (3), (4), 372 r/w 34 of the Indian Penal Code, 1860

("IPC" for short) and Sections 3, 4, 5 of the Immoral Traffic (Prevention) Act, 1956 ("PITA" for short) and Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act 2012 ("POCSO" for short).

2. On 20th October, 2018, officer attached to Anti-human trafficking Cell raided on the premises allegedly owned by one Zahid Akhtar (co-accused) and rescued six 'victims' including a minor victim who were allegedly forced in the prostitution. The applicant came to be arrested on the spot and recorded the statement of victim. Except one, remaining five victims were, 'major', as on the date of the incident. Prosecution has alleged this applicant had forced the victims into prostitution and was living on the earnings of prostitution. Learned APP has relied on the provision of 370 (3) and (4) of IPC. Subsection 3 of 370 prescribes the punishment shall not be less than ten years if the offence involves a trafficking of more than one person and the Subsection 4 says if the offence involves in trafficking of a minor, it shall be

punishable with term shall not less than 10 years.

3. Learned APP therefore, submits the evidence on record suggests the applicant was involved in trafficking of minor for the sexual exploitation and additionally since more than one victims were involved, the applicant may not be released on bail.

4. I have perused the statement of victim minor who had stated at the relevant time she was 17 years old. However, on her radiology examination her approximate age was certified between 17-18 years. I have also perused her statement recorded on 21st October, 2018, wherein she had disclosed that in the year 2015, she was kept in the protection home, however thereafter she had again indulged into the similar activities in the year 2016. So far as the statement of other victims who were "major", are concerned, prima facie, their statements do not suggest that they were forced by the applicant into the prostitution.

5. Be that as it may, the fact remains as on the date of the incident, there is no definite evidence to indicate that alleged minor victim had not completed the age of 18 years and same can be seen from medical report submitted after her radiology examination. Even otherwise when age of the victim/prosecutrix based on ossification examination margin of 2 to 3 years on the either side is permissible and in criminal case margin will go in favour of the accused.

6. In this case, protection has been granted to alleged owners of the brothel by the learned trial Court and the charge has not been framed till date. The applicant lady is in custody since October, 2018. In my view, after assessing the evidence on record and for the reasons stated, the case is made out for releasing the applicant on the date by ensuring her presence for the trial. Additionally, the prosecution also could not point out the criminal antecedents against the present applicant. That for the reasons stated herein above, the applicant is directed to be released on bail

on the following conditions.

ORDER

(i) The applicant is directed to be released on bail on executing P.R. Bond for the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) The applicant shall report to the concerned Police Station, once in a month on Monday of 4th week commencing from February 2020 between 11:00 am to 01:00 pm. and shall continue to report till the charge is framed;

(iii) The applicant shall furnish the particulars of her residential address as well as permanent address and contact details to the investigating officer within seven days from the date of her release on bail;

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the

complainant, witnesses or any person concerned with the case;

7. The application is allowed in the aforesaid terms and disposed off.

8. It is made clear that observations made hereinabove shall be construed as an expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP. K. SHINDE, J.)_