

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

BAIL APPLICATION NO. 837 OF 2021

Dr. Nita Kamlakar Kulkarni ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. V. M. Thorat a/w Mr. M. V. Thorat i/b. Ms. Ketaki V. Thakare,
Advocate for the Applicant.

Mr. A. R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th MARCH, 2021

PER COURT:

1. This is an application for bail in C.R. No. 13 of 2021 investigated by D.C.B., C.I.D. Mumbai. The First Information Report (for short ‘FIR’) was initially registered with Kherwadi Police Station, Mumbai vide C.R. No. 17 of 2021 on 10th January, 2021 for offences under Section 370(4) r/w Section 34 of Indian Penal Code (for short “IPC”) and Section 81 of Juvenile Justice (Care and Protection of Children) Act, 2015. Subsequently, Sections 465, 466, 467, 468, 471 r/w Section 34 of IPC were invoked. The applicant was arrested on 2nd February, 2021.

2. The applicant was produced before the Court of Additional Chief Metropolitan Magistrate Court for remand on

3rd February, 2021 and she was remanded to police custody till 5th February, 2021. Thereafter, the applicant was produced for further remand on 5th February, 2021.

3. The case of the prosecution as emanates from the FIR dated 13th January, 2021, is that on 5th January, 2021, the police received information that one Rukhsar Shaikh had delivered a male child at V. N. Desai Hospital, Santacruz and had sold the child. Even, previously she had delivered and sold the child. Shahjahan Jogilkar had delivered and sold the child. Police Visited hospital and on enquiry it was learnt that Rukhsar Shaikh and Shahjahan Shaikh had sold their child. In enquiry with Rukhsar Shaikh, she stated that about one and half year ago she delivered child at V. N. Desai Hospital and sold the child through Rupali Varma. On 1st December, 2020 she again delivered child and sold the same with the help of Rupali Verma. Shahjahan Jogilkar stated that she had delivered child and sold the same to person from Dharavi. FIR was registered against Rukhsar Shaikh, Rupali Verma, Gulshan Khan, Nisha Ahire, Shahjahan Jogilkar and Sanjay Pandam. Investigation was taken over by D.C.B. C.I.D. The accused were arrested on 14th January, 2021. Nisha Ahire disclosed involvement of Geetanjali Gaikwad. She was arrested on 16th January, 2021. On the same day Aarti Singh was arrested. Dr. Dhananjay Boga was arrested on 17th January, 2021.

Geetanjali Gaikwad disclosed that, while she was working as nurse at Patkar Nursing Home, Shivaji Park, she sold three babies with the help of applicant by alteration in record of Patkar Nursing Home to Mangesh Chinchkar, Rahul Kavitate and Santosh Varik. Hence, Sections 465, 466, 468, 471 of IPC were added. Applicant was arrested.

4. The case of the applicant is that she is qualified medical practitioner having completed her M.B.B.S. from Mumbai University. She is reputed physician having practiced since last 30 years in the city of Mumbai. She is attached to various nursing homes, clinics and hospitals. Her husband is also doctor. She is not involved in trafficking of minor. The only overt act attributed to the applicant is that she is involved in making alteration in documents to indicate that the children were delivered at Patkar Nursing Home. Investigation is completed and the charge-sheet is filed. There are no criminal antecedents against the applicant. Section 370(4) of IPC cannot be applied to the applicant. She is in custody for substantial period of time. The entire case is based on the statement of the co-accused which is not admissible in evidence. To substantiate the charge of fabrication of documents, the investigating agency has collected specimen handwriting. Police have not recovered any documents from applicant. Applicant have not received money from

Rukhsar Shaikh, Rupali Verma, Gulshan Khan, Nisha Ahire, Shahjahan Jogilkar, Sanjay Pandam. It is not the case of the prosecution that the applicant was in any way involved in trafficking the child. The allegation that some amount was paid to the applicant emanates from the statement of the co-accused Geetanjali Gaikwad which is not admissible in law. There is no independent evidence in that regard. The allegation against applicant is that despite wives of Mangesh Chinchkar, Rahul Kavitate and Santosh Varik have not delivered any child at hospital, birth report was submitted to Municipal Corporation.

5. Learned APP submitted that the offence is of serious nature. In connivance with the applicant the co-accused were involved in the offences of trafficking children. The accused had sold children by obtaining amount. The applicant had shared amount through co-accused Geetanjali Gaikwad. The applicant is involved in commission of offence under Section 370(4) of IPC and forgery of document. In spite of knowing that the child was not delivered at Patkar Nursing Home, report was sent to Corporation about birth of child.

6. I have perused the documents on record. The case proceeds with the information by the Police about trafficking of children. The applicant was not named in the FIR. However, during

the course of investigation co-accused Geetanjali Gaikwad was arrested. During interrogation of the co-accused complicity of the applicant was allegedly disclosed. Apparently, the role attributed to the applicant is about creating documents. It is not the case of the prosecution that the applicant at any point of time had any interaction with the person, who had sold child or with the person, who had purchased the child. None of the witness have stated that applicant had taken part in sale of newly born children to Mangesh Chinchkar, Rahul Kavitate and Santosh Varik. The applicant cannot be said to have used any threats, force for transportation harbouring receiving child for exploitation. The documents are not in custody of applicant. She is aged about 62 years. There are no criminal antecedents against her. It is doubtful whether Section 370(4) of IPC can be applied to the applicant. The learned Sessions Judge has rejected the application primarily on the ground that the investigation is in progress. However, the investigation is now completed and the charge-sheet is filed. The documents are already collected. Specimen handwriting of applicant is already collected. Statement of Vinod Davrung Mentions that he is working as ward boy at Patkar Nursing Home. Geetanjali Gaikwad is working as Nurse. After birth of child, he used to visit Municipal corporation for registration. He has not referred to applicant's involvement. Smt.

Rekha Sawant is working with Patkar Nursing home. She stated that Geetanjali Gaikwad was working as Nurse. Applicant and other doctors were visiting hospital. She stated that she had filled up information in hospital record about birth of children at the instance of applicant. She has recorded information in her handwriting. The applicant has signed the report. This witness has not referred to involvement of applicant in human trafficking. Smt. Shital Barsinge was working with Patkar nursing home. She stated that, Geetanjali Gaikwad was working as nurse. She used to record information of patient. Applicant and other doctors were working at Patkar Nursing Home. Dr. Anant Patkar has stated that applicant and other doctors used to bring Patients to Patkar Nursing Home. He is the owner of said nursing home. He had no information about patients. Applicant is not shown to have connected with sale of children at the instance of accused named in the FIR. There is no evidence to show that applicant has participated in human trafficking. Hence, further detention of the applicant is not necessary. On certain terms and conditions bail can be granted to the applicant. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No.837 of 2021 is allowed;
- (ii) The applicant is directed to be released on bail in

connection with C.R. No. 13 of 2021 investigated by D.C.B., C.I.D. Mumbai, on executing PR. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

(iii) The applicant shall report concerned Police Station once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;

(iv) The applicant shall not visit Patkar Nursing Home, Shivaji Park, Mumbai till further order.

(v) The applicant shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court for some reason.

(vi) The applicant is permitted to furnish provisional cash bail security in the sum of Rs.50,000/- for a period of eight weeks in lieu of surety.

(vii) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)