

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

ANTICIPATORY BAIL APPLICATION NO.1931 OF 2021

Mangesh Gopinath Chichakar .. Applicant

Versus

State of Maharashtra .. Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1933 OF 2021

Santosh Kashinath Warik .. Applicant

Versus

State of Maharashtra .. Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1938 OF 2021

1) Rushikesh Vinayak Govekar

2) Megha Rushikesh Govekar .. Applicants

Versus

State of Maharashtra .. Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1963 OF 2021

Abhijeet Suresh Malwade .. Applicant

Versus

State of Maharashtra .. Respondent

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Mr. Vishal Kolekar a/w. Mr. Kiran Jadhav and Mr. Shubham Kadam
i/b. Mr. Randhir Ankush Kale, Advocate for the Applicants in all ABA.

Mr. S.R. Agarkar, APP for the Respondent – State.

Ms. Manisha Pawar, (API) DCB/CID Unit-1, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 7th SEPTEMBER, 2021

PER COURT:

1. The applicants in all these applications are apprehending arrest in C.R. No.7 of 2021 registered with Kherwadi Police Station, Mumbai for offences under Section 370(4) r/w Section 34 of Indian Penal Code (for short "IPC") and Section 81 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The investigation was then taken over by DCB/CID Unit-1, Mumbai vide C.R. No.13 of 2021.

2. The complaint was lodged by the Police Head Constable attached to Crime Branch, Mumbai. It was alleged that the women named Ruksar Shaikh, Rupali Verma, Gulshan Khan, Nisha Ahire and others had conspired with each other and children born to Ruksar Shaikh were sold to unknown persons and indulged in act of human trafficking. Shahajahan Shoukat Jogilkar, Sanjay Shantaram Pandam and their associates had acted in connivance with each other and the child born to Shahajahan Jogilkar was sold to Sanjay Pandam and committed act of human trafficking. The investigation proceeded. Some of the accused involved in this case were allegedly purchasers of new born babies. Some of the accused were the parents of the children.

3. The applicants had preferred an application for anticipatory bail before the Sessions Court. Their applications were rejected by order dated 22nd July, 2021.

4. The applicant Mangesh Gopinath Chichkar had allegedly purchased the child from Ruksar Shaikh without following due process of law. The applicant Santosh Kashinath Patil is also purchaser of the child from Ruksar Shaikh without following due process of law. The applicants Rushikesh Vinayak Govekar and Megha Rushikesh Govekar were the parents of the child. Applicant Abhijeet Suresh Malwade is the purchaser of child.

5. On 22nd January, 2021 notice was issued to applicant Mangesh Chichkar and other persons having custody of the child to produce the child before Child Welfare Committee. The notice was challenged by the said persons to whom the notices were issued by preferring various writ petitions and the said notices were stayed by this Court after receiving the notices from Child Welfare Committee. Aggrieved persons had applied to competent Court seeking their appointment as guardian of child. The petitions are pending before the concerned Court. Several accused including biological mother, doctor, nurse have been granted bail and charge-sheets have been filed against them.

6. The co-accused Shailesh Vasudeo Waigankar, Mushtaq Abdul Malik Waghoo, Samir Suresh Patil, Rahul Shashikant Kawite had preferred applications for anticipatory bail before this Court viz. Anticipatory Bail Application Nos. 1924 of 2021, 1925 of 2021, 1929 of 2021 and 1930 of 2021. All those applications were allowed vide order dated 24th August, 2021. The said applicants were purchasers of child. While allowing the said application it was observed that primary evaluation of the First Information Report (for short “FIR”) implied their complicity for offence punishable under Section 81 of Juvenile Justice (Care and Protection of Children) Act, 2000. Considering the fact that in all the cases their custodial interrogation would not further the prosecution case. They had filed petitions for appointment as guardian under the Guardians and Wards Act, 1890 and since 2019 they are nurturing children.

7. The contention of the applicants is that investigation in respect to the co-accused is completed and the charge-sheet is filed. The applicant Mangesh Chichakar had preferred Guardian Petition bearing Civil Miscellaneous Application No.4 of 2021 before District Court at Ratnagiri under Section 7(1)(a)(b) and Section 151 of Guardians and Wards Act, 1890 for declaring him as legal guardian of minor child. He had performed naming ceremony of the child. The provisions of Section 370(4) r/w Section 34 of IPC are not

attracted as there was no mensrea to commit offences. There was no exploitation of the children. The notice dated 23rd January 2021 directing the said applicants to produce the child before Child Welfare Committee is challenged and the said notice has been stayed by this Court. The minor child is in custody of the applicant since last 7 years. The applicant has been taking due care of the minor child.

8. Applicant Santosh Kashinath Warik has contented that the child is in his custody and he has preferred Guardianship Petition bearing (St.) No.50 of 2021 before City Civil Court Mumbai under Section 7(1)(a)(b) and Section 15 of Guardianship and Wards Act, 1890 for declaring as the legal guardian of the child. The applicant has taken due care of the child. The notice was issued to produce the child before Child Welfare Committee is challenged and the said notice has been stayed by this Court

9. Similarly, the contention of the applicant Abhijeet Suresh Malwade is also similar. The child is in his custody. He has taken due care of the child. There was no mensrea. Applicants Rushikesh Govekar and Megha Govekar are the biological parents. Child was born in December, 2020. The prosecution case is that they had sold the infant to Mushtaq Abdul Malik Waghoo for consideration. The contention of the applicant is that there is no evidence to show that

the child was sold for consideration. Mushtaq Waghoo has been granted anticipatory bail by this Court vide order dated 24th August, 2021.

10. Learned APP submitted that the investigation is in progress. Some of the accused are arrested and charge-sheet has been filed against them. The arrested accused were granted bail.

11. The accused, who were similarly placed were granted relief under Section 438 of Cr.P.C. vide order dated 24th August, 2021. Several persons were arrested and charge-sheets were filed. The arrested persons are granted bail and several accused who are having custody of the child were granted anticipatory bail by this Court. It is debatable whether Section 370(4) is attracted in this case. On analyzing the factual of this matter, custodial interrogation of the applicants is not necessary.

12. Hence, I pass the following order.

ORDER

(i) Anticipatory Bail Application Nos. 1931 of 2021, 1933 of 2021, 1938 of 2021 & 1963 of 2021 are allowed;

(ii) In the event of arrest of the applicants in connection with C.R. No. 13 of 2021 investigated by DCB/CID, Unit-1, Mumbai, the applicants be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(iii) The applicants shall appear before the investigating officer as and when called for till filing of charge-sheet.

(iv) Anticipatory Bail Applications are disposed of accordingly.

(PRAKASH D. NAIK, J.)