

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Writ Petition No. 4466 / 2021

ABC

Age : 31, Occ: Business,
Address : D-4, Surya Kiran Chs,
Sawarkar Nagar Road,
Near Shivesena Shakha,
Mahatma Phule Nagar,
Thane (W), 400 006.

.. Petitioner

Versus.

The State of Maharashtra
(At the instance of Airport Police Station).

.. Respondent

Mr. Ganesh Gole i/by Aarif Ali M. Ali for the Petitioner.

Mr. Manoj Satarkar, P.I., Airport Police Station.

Mrs. P.P. Thakare, Probation Officer and Dr. N.N. Rajpathak,
Medical Officer- Navjeevan Mahila Vasatigruha, Deonar.

Mr. A.R. Patil, APP for State.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 20th DECEMBER, 2021.
PRONOUNCED ON : 22nd DECEMBER, 2021.

ORDER : -

1. In exercise of powers under Section 17(4) of the Immoral Traffic (Prevention) Act, 1956 (PITA for short), the learned Magistrate vide order dated 20th August, 2021, directed to detain the Petitioner-person, in a Protective Home for a period of two years. In appeal under Section 17(6) of the said Act, order of the learned Magistrate was confirmed. These orders are assailed in the instant petition.

2. Briefly stated Prosecution case is that, upon a receiving secret information that one Ankush Yashwante and Ankita Sanchuri were inducing person, to carry on prostitution and living on the earnings of Prosecution, a trap was laid, at Sahara Star Hotel near Airport Ville-Parle. Ankush and his associate Smt. Ankita, were apprehended while they were found in the company of three persons (victims), who have

been sexually exploited or abused for commercial purposes. The offence under Section 370(3) read with 34 of the Indian Penal Code and Section 4 and 5 of the Immoral Traffic and Prevention Act, 1956 came to be registered. The Petitioner and two other persons (victims) were produced before the learned Magistrate by the Police Officer for their intermediate custody under Section 17 of the PITA Act. When the person is produced before the Magistrate, he is enjoined to hear the victim (person); enquire into the age, character and antecedents of the person and suitability of his parents or husband or guardian, who seek intermediate custody of such a person. Upon making enquiry and after assessing conditions in the home of such person, Magistrate after recording the reasons, is empowered to detain such person in a Protective Home or pass such other order of custody.

3. In the case on hand, the learned Magistrate subjected Petitioner to medical examination. Whereupon she was tested positive for HIV – Anti-bodies. In view of this fact, the

learned Magistrate after considering the report, submitted by the Superintendent of the Protective Home, directed to detain the Petitioner in the Protective Home, for a period of two years for her care, protection, shelter and vocational training. Operative part of the order reads thus;

“Victim No.2 (Petitioner) be detained for a period of two years in The Navjeevan Mahila Vasatigruh, Mumbai from the date of this order for her care, protection, shelter and vocational training. After the detention period of victim is completed, she be given in the custody of her relative by police escorts through NGO Save the Children India on giving undertaking by victim that she will not indulge herself in any immoral activities in prescribed Form I as per Rules at The Navjeevan Mahila Vasatigruh, Mumbai and save the children India to report compliance to this Court.”

4. In appeal against this order, the learned Additional Sessions Judge, Dindoshi, Mumbai, held that; although Petitioner was not found involved in prostitution, but since she was suffering from HIV, which is easily transmitted disease, the setting of victim at large may pose danger to the society. The Appellate Court in Paragraph No. 8 held thus;

“Though it is sought to be canvassed from the side of the appellant that the victim was not involved in prostitution, the perusal of the FIR prima-facie reveals otherwise, due to which, she was considered to be a

victim. As the victim is indisputedly suffering from HIV, which can be easily transmitted through sexual intercourse, the setting of the victim at large is likely to pose danger to the society, due to which, the factual scenario in the case at hand is different from the factual scenario in the above authority relied upon. The care and protection of the victim can also be ensured, by detaining her, as directed by the learned Magistrate, so as to ensure that the victim leads a normal life in future, after getting necessary brainwash."

. These orders are assailed in this Writ Petition.

5. Mr. Gole, learned Counsel for the Petitioner, vehemently submitted that the learned Magistrate, as also Appellate Court failed to appreciate the suitability of the Petitioners' parents for the intermediate custody of the Petitioner. Additionally, Mr. Gole submitted, that Petitioner herself is capable of taking her own care, having regard to her age, education and financial independence. Mr. Gole submitted that the trial Court and Appellate Court, having observed that Petitioners' involvement was not found in the prostitution, the order detaining her in Protective Home simply because she was tested HIV positive, is contrary to scheme and object of Section 17 of the PITA. Mr. Gole, in

support of the submissions, largely relied Home enquiry report and report submitted by the Superintendent of Protective Home. Mr. Gole would therefore urge that the impugned orders be quashed and set aside and the learned Magistrate, be directed to hand over intermediate custody of the Petitioner to her parents on such terms and conditions, as the Magistrate would deem fit and appropriate.

6. Mr. Patil, learned APP, produced on record, reports of the Counselor and of Superintendent of the Protection Home. Relying on these reports, Mr. Patil submitted, since after Petitioner's intermediate custody in Government Protective Home, her health has improved. He further submitted that Petitioner is regularly taking treatment in the Government Hospital and if her intermediate custody is given to her parents or husband, possibility of neglecting her health and additionally Petitioner indulging into the similar acts cannot be ruled out, which according to Mr. Patil, would neither be in the interest of the Petitioner, nor in the interest of the society. Mr. Patil, thus supported the impugned orders.

7. I have perused the reports including the Home inquiry report of the Petitioner. In consideration of which, in my view, solely because, the Petitioner has been tested HIV positive and it being sexually transmitted disease, that itself would not be a ground available for detaining her in the Protective Home. Particularly when her family background is sound and members of family are capable of taking her care. Petitioner is 31 year old person. She is graduate and income tax payer. Her father is Police Officer. Her two brothers are Accountants. Her husband is in the land development and his monthly income is around Rs.50,000/-. Report submitted by the Superintendent, Protective Home, shows that Petitioner's parents and husband are willing to take her intermediate custody. The family monthly income is around Rs, 85000/-. The family is well educated and having good economic status. Having regard to these facts, I am satisfied that Petitioner's parents are "suitable", to take care of the Petitioner. Thus, having regard to these facts and circumstances, in my view, both, trial and Appellate Court, failed to appreciate the 'suitability' of Petitioner's parents for

her intermediate custody. The reasoning of the Courts below that AIDS being sexually transmitted disease and therefore Petitioner's detention in a Protective Home is inevitable and her release would not be in the interest of the society, is faulty and erroneous. That being since Courts below have failed to exercise the powers under Section 17(4) read with (2) read with 17A of the PITA, interference is called for.

8. As a result, the Writ Petition is allowed. The orders impugned are quashed and set aside. For this reason, the Respondent shall forthwith produce the Petitioner before the learned Jurisdictional Magistrate, who shall thereupon pass the 'intermediate custody order' in favour of the Petitioner's parents,, Mr. Anil Arjun Jadhav and Maya Anil Jadhav on such terms and conditions, as he thinks fit and proper.

9. The Petition is allowed and disposed of in the aforesaid terms.

(SANDEEP K. SHINDE J.)

Najeeb..

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QAYYUM

Digitally signed
by MOHAMMAD
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MOHAMMAD
QAYYUM
Date: 2021.12.22
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