

Anand

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

BAIL APPLICATION NO. 3194 OF 2019

Nisha S. Chitnis Urmila @ Aunty Ajay Singh .Applicant
Vs.

Digitally signed by Nisha S. Chitnis
Date: 2021.01.28 16:26:48 +0530
The State of Maharashtra .Respondent
Mr. M. K. Kocharekar, Advocate, for the Applicant
Mr. S. V. Gavand, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 21.01.2021

P. C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks her enlargement on bail in connection with C. R. No. 312 of 2019 registered with the Bhiwandi City Police Station, Thane, for the alleged offences punishable under Sections 363, 372 r/w 34 of the Indian Penal Code and under Section 81 of the Juvenile Justice Act.

3. Learned counsel for the Applicant submits that the Applicant has been falsely implicated in the said case. He submits that the Applicant admits to have purchased the child, aged one year, but

according to her, it was for her sister-in-law for adoption, as she had undergone several abortions. He submits that the two co-accused – Rohit and Suraj had falsely disclosed to the Applicant that the child was of a prosecutrix and as the prosecutrix did not want the child, the child was handed over to the Applicant, for a consideration. He submits that in the facts, the ingredients of Section 372 of the Indian Penal Code are clearly not attracted. He further submits that admittedly, the Applicant is not a party to kidnapping of the child nor is it the case of the prosecution that the minor was kidnapped for the purpose of prostitution. He submitted that the other two co-accused, who kidnapped the child i. e. Rohit and Suraj have been released on bail. He submits that having regard to the facts, the Applicant may also be enlarged on bail.

4. Learned APP opposed the Application.

5. Perused the papers. According to the prosecution, a child named Ashik, aged about one year went missing, pursuant to which his father – Chandul Harjan lodged a complaint / FIR with the Bhiwandi Police Station, Thane as against unknown person. The Complainant – Chandul Harjan has alleged that on the intervening night of 02.06.2019

and 03.06.2019, his one year old child was kidnapped from his lawful custody. Pursuant thereto, the Applicant and two other co-accused – Rohit and Suraj were arrested. The child was found in Uttar Pradesh with the Applicant's family. A perusal of the remand report dated 15.06.2019 reveals that the Applicant had disclosed to the concerned police officer, that at the time of her brother's demise, his wife (Applicant's sister-in-law) was seven months pregnant, however, due to some medical problems, the child had to be aborted; that her mother, had on earlier occasion suffered two heart attacks and apprehending danger to his life, and to give purpose for her sister-in-law to live, the Applicant decided to adopt a minor child, and give it to her sister-in-law, for declaring the son as her own, the Applicant bought the child. The remand report further discloses that the Applicant disclosed her intention to co-accused – Rohit and Suraj, who were residing near the Applicant's house, pursuant to which, co-accused – Rohit and Suraj told her that one prostitute wanted to give her child on her own volition, for a consideration. Pursuant thereto, the co-accused handed over the child to the Applicant for a consideration of Rs. 10,000/- after which the Applicant took the child to Uttar Pradesh to her house. Prima facie, it appears that the Applicant was not involved in the act of kidnapping the

child. The Applicant's case is her defence, which will be tested at the time of trial. Be that as it may, the Applicant, a lady is in custody since 12.06.2019. The Applicant has no antecedents. Investigation is complete and charge-sheet is filed. The co-accused – Rohit and Suraj have already been released on bail.

6. In the peculiar facts of this case, having regard to what is stated hereinabove, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

(i) The Applicant be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 20,000/-** with one or two local sureties in the like amount;

(ii) The Applicant shall attend the concerned Police Station on the **first Sunday of every month** between **10:00 a. m. and 12:00 noon** till the conclusion of the trial;

(iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The Applicant shall inform her latest place of residence and mobile contact number immediately after being released and/or

change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The Applicant shall not leave Mumbai & Thane without the prior permission of the trial Court;

(vi) The Applicant to co-operate with the conduct of the trial and attend the trial Court on all the dates, unless exempted;

(vii) The Applicant shall file an undertaking with regard to clauses (ii) to (vi), in the Registry of the trial Court, within two weeks of her release;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the authenticated copy of this order
digitally signed by Personal Assistant / Private Secretary.

(REVATI MOHITE DERE, J.)