

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 3276 OF 2019**

Arif Shaffi Farooque

....Applicant.

Vs.

The State Of Maharashtra

....Respondent.

Ms. Shabana Syed Ali for the Applicant.

Smt. Rutuja Ambekar, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 28th JUNE, 2021.****(Through Video Conferencing)****P.C.:-**

This is a successive Application for Bail under Section 439 of the Code of Criminal Procedure in CR No.17 of 2017 registered with Anti Robbery and Dacoity Cell, Crime Branch, Kurla, Mumbai (Sessions Case No.607 of 2017) under Sections 370(5), 419, 420, 465, 467, 468, 471, 170, 201 and 120-B of the Indian Penal Code (for short, "*the IPC*") read with Section 12(1)(2) of the Passport Act.

2 The earlier Bail Application No.2707 of 2017 filed by the Applicant was dismissed as withdrawn, by an Order dated 15th February, 2018, by granting liberty to the Applicant to file a fresh Application for bail before the Trial Court, if the trial pertaining to CR No.17 of 2017 registered with Anti Robbery and Dacoity Cell, Crime Branch, Kurla, Mumbai (Sessions Case No.607 of 2017) does not commence within a period of nine

months from 15th February, 2018.

3 Ms. Shabana Syed Ali, learned Advocate appearing for the Applicant submitted that, till date, the prosecution has not framed charge in the said case.

In view thereof, I have heard Ms. Shabana Syed Ali, learned Advocate for the Applicant and Smt. Ambekar, learned APP for the Respondent-State. Perused entire charge-sheet and Affidavit-in-reply dated 20th May, 2021 filed by Shri. Nagesh Puranik, API, attached to Property Cell, DCB, CID, Crime Branch, Mumbai.

4 The prosecution case in nutshell is that, on 20th April, 2017, the police received a secrete information that, some minor children were being trafficked to abroad and some persons were likely to bring the said children. The said children were to be transported from Chhatrapati Shivaji Maharaj, Airport (Terminal-2) by Ethiopian Airlines plane. After receipt of information, police laid trap at about 8.30 p.m. at the Airport. The police noticed near International Departure Junction Gate No.4, two men and one woman along with 4 minor children. Their description was tallied with the information given by the informer. The movements of the said 3 persons were found to be suspicious and therefore, the said persons were accosted. The said three persons revealed their names as Arif Shaffi Farooque (Applicant), Rajesh Balaram Pawar and Smt. Fatima Farid Ahmad. Shri. Ulhas V. Parab, a police Havaldar attached to Anti Robbery and Dacoity Cell,

Crime Branch, Kurla, Mumbai, lodged First Information Report on 20th April, 2017.

During the course of investigation, it was revealed that, co-accused Bikramjit Singh Joginder Singh used to contact parents of minor children from Punjab with an assurance that, if the said children would be sent to foreign countries they would get proper education and subsequently would get handsome jobs there. It is the prosecution case that, Bikramjit Singh Joginder Singh used to charge Rs.8 to 10 lakhs per child for sending them abroad. It is also the prosecution case that, the Applicant arranged carriers, prepared bogus documents for obtaining passports and air-tickets in the fake name of minor children. That, after carrier used to come back by dropping the minor children at abroad, he used to hand over the victims passports to the Applicant, who used to dispose off those passports to destroy the evidence. During the course of investigation, it was revealed that, in all 30 persons were involved in the present crime.

After completion of investigation, the police have submitted charge-sheet. As noted earlier, the trial of Sessions Case No.607 of 2017 has still not commenced.

5 Ms. Shabana Syed Ali, learned Advocate for the Applicant submitted that, co-accused Bikramjit Singh Joginder Singh, who has played equal role as that assigned to Applicant, has been released on bail by this Court by its Order dated 9th October, 2017. She submitted that, out of total

30 accused persons, 28 accused persons have been released on bail either by the Trial Court or by this Court. She further submitted that, it is only the Applicant and his wife who are languishing in Jail for last more than 4 years without trial. She pointed out pleadings from the Affidavit-in-reply dated 20th May, 2021 of the concerned Police Officer and in particular para 4 thereof, wherein the said fact of non-framing of charge till today, has been admitted. She submitted that, since the date of passing of Order dated 15th February, 2018, in last 3 years, the prosecution has not framed charge against the Applicant and this is the substantial change in circumstances and therefore, the Applicant may be granted bail.

6 Per contra, Smt. Ambekar, learned APP submitted that, the concerned Police Officer has filed detailed Affidavit dated 20th May, 2021 and has placed the necessary facts showing complicity of the Applicant in the present crime. She also pointed out relevant statements from the charge-sheet. She submitted that, role of Applicant in the present crime is much higher than that of Bikramjit Singh Joginder Singh and therefore, the principle of parity is not applicable to the present Applicant. She further submitted that, the Applicant is also an accused in two other crimes under Sections 463, 467, 420 read with Section 34 of the Indian Penal Code. She however, fairly conceded the fact that, in para No.4 of the Affidavit, the prosecution has admitted that, the said Sessions case was listed for framing of charge to 9th June, 2021.

At this stage, Ms. Shabana Syed Ali, learned Advocate for the Applicant submitted that, even on 9th June, 2021 also, charge has not been framed in the matter.

Learned APP submitted that, as a matter of fact, five co-accused in the present case had preferred Writ Petition Nos. 4392 of 2018, 5107 of 2018, 5108 of 2018, 5110 of 2018 and 5865 of 2018, for dropping of Section 370 of the Indian Penal Code from the present case before the Division Bench of this Court. That, the Division Bench, by its Order dated on 5th February, 2019, had directed not to proceed with the said case and that is the reason, charge could not be framed in the matter for a substantial period.

The learned Advocate appearing for the Applicant submitted that, the co-accused therein withdrew the said Writ Petitions on 29th November, 2019. That, the Division Bench has directed to expedite the trial of the present case and to conclude it within a period of six months from 29th November, 2019.

7 It further appears that, the said directions of the Division Bench have also not been complied with till today. It may be the reason that, due to the present COVID-19 pandemic since March, 2020, the Trial Court could not proceed with the case.

May that, as it may.

The record indicates that, the role assigned to the present

Applicant in the crime is that, he arranged all illegal documents and sources to traffic minor children abroad. The statements of witnesses including the statements of the victims *prima facie* indicate that, it was the said children, who after hearing the news from the vicinity got lured to the fact of going abroad and settle there, thereafter through their parents contacted Bikramjit Singh Joginder Singh at his place in the State of Punjab. That, Bikramjit Singh Joginder Singh assured parents of the minors to sent their children abroad and accepted money for the same. It is the precise prosecution case that, the Applicant along with other accused persons conspired, aided and abetted each other and obtained passports from Regional Passport Office from Mumbai for the said minor children on fake assumed names and addresses.

8 It is to be noted here that, the co-ordinate Bench (Mr. A.M. Badar, J.) in its Order dated 9th October, 2017, passed in B.A. No.2023 of 2017, while granting bail to co-accused Bikramjit Singh Joginder Singh, in paragraph No. 5 has observed as under:-

“5. In the case in hand investigation of the crime in question is already over and the charge sheet is filed. The Investigator, no doubt can conduct the further investigation to collect additional material. Section 370 of the Indian Penal Code contemplates exploitation. Consent of the victim is immaterial while finding the guilt of the accused in respect of this offence.

Exploitation includes physical as well as sexual exploitation and exploitation by other modes. This term is made inclusive by Section 370 of the Indian Penal Code. In the light of this definition, at the time of the trial it will have to be decided whether requesting the applicant by victim minors or their parents for taking alleged victims to some foreign country amount to their exploitation as envisaged by section 370 of the Indian Penal Code.”

9 As noted earlier, till date, the trial of the present case has not commenced. Despite directions issued by this Court, the prosecution has not framed charge in the case till today. The Applicant is in Jail since 20th April, 2017 i.e. more than 4 years and 2 months. As per the submission of the learned Advocate for the Applicant, the Applicant has deep roots in the society and he will be available for trial. Apprehension of the prosecution that, Applicant may involve in similar offences in near future if he released on bail, can be taken care of by imposing stringent conditions.

10 In view of the aforestated facts, the further pre-trial detention of the Applicant after filing of the charge-sheet is not warranted and the Applicant can be released on bail.

Hence the following Order.

- (a) Applicant be released on bail in Crime No. 17 of 2017 registered with Anti Robbery and Dacoity Cell, Crime

Branch, Kurla, Mumbai (Sessions Case No.607 of 2017) under Sections 370(5), 419, 420, 465, 467, 468, 471, 170, 201 and 120-B of the Indian Penal Code read with Section 12(1)(2) of the Passport Act, on his furnishing PR bond of Rs.50,000/- with one or two solvent local sureties in the like amount.

- b) After his release from Jail, the Applicant shall attend Anti Robbery and Dacoity Cell, Crime Branch, Kurla, Mumbai on every first Monday of the month between 11.00 a.m. and 1.00 p.m. till completion of the trial.
- c) After his release from Jail, the Applicant shall furnish his residential address along with his Mobile Number to the Anti Robbery and Dacoity Cell, Crime Branch, Kurla, Mumbai within a period of one week.
- d) Applicant shall not travel abroad till completion of trial.
- e) Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.
- f) Bail Application is allowed in the aforesaid terms.

11 All the concerned to act on the basis of an authenticated copy of this Order.

(A.S. GADKARI, J.)