

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 112 OF 2022

Deepa Premkumar Raj

.....Applicant

Vs.

The State Of Maharashtra

.....Respondent

Mr. Ashok M. Bhatia for the Applicant.

Mr. H.J. Dedhia APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 30th AUGUST, 2022.

P.C.:-

1) This is an Application for bail under Section 439 of Criminal Procedure Code (for short, "*Cr.P.C.*") in C.R. No.0392 of 2016, registered with Kashimira Police Station, District Thane (Rural) dated 13th August, 2017 under Sections 363, 365, 366(A), 370(1)(5), 372, 373, 328, 342 read with Section 34 of the Indian Penal Code (for short, '*IPC*') and under Sections 81 and 84 of Juvenile Justice (Care and Protection) Act, 2015 and Section 18 of Protection of Children from Sexual Offences Act, 2012 (for short, (*POCSO Act*)).

2) Heard Mr. Bhatia, learned Advocate for the Applicant and Mr. Dedhia learned App for the State. Perused charge-sheet.

3) This is a successive Application for bail. The earlier Application for Bail bearing No.2441 of 2017 preferred by the Applicant was dismissed

as withdrawn by an Order dated 13th December, 2017.

4) The first information report is lodged by Mr. Abhijit Tailor, Police Sub-Inspector, Local Crime Branch, Kashimira Unit, Thane (Rural) on 13th August, 2017.

It is the prosecution case that, on 12th August, 2017 at about 2.25 p.m., the Assistant Police Inspector Mr. Sanjay Bangar then attached to Anti Human Trafficking Cell received a confidential information that, a minor girl was trafficked and sold at the address of Accused No.1 namely Gapchu @ Bhagyakumar Premkumar Raj. Accordingly police conducted raid at Room No.202, Building No.346, Phase-II, Srushti Complex, Mira Road, District Thane at about 4.10 p.m.. The said raid was conducted in presence of panch witnesses affiliated to a Non-Government Organization (“NGO”) namely Transforming Lives Foundation. Accused No.1, Gapchu @ Bhagyakumar Raj was present in the said flat. After entering into the said flat, police noticed that one woman was sitting on a sofa along with one small girl. The said woman disclosed her name as Applicant and informed the police that, she is sister of Accused No.1, Gapchu @ Bhagyakumar Raj. The girl/woman (Mahi Raj/Khan), who gave information to the police, identified the victim as the girl who was brought from Amritsar (Punjab) and sold it to the Applicant and her brother. The victim girl disclosed her name and age of about 11 years. She also disclosed to the police that, she originally hails from Amritsar (Punjab) and her mother expired when she

was very young. That, she got acquainted with one woman by name Bindu when she was residing with her grand-mother. That, in the company of Bindu, the victim girl had been to watch cinema near Piplisa Gurudwara. That, on one day she had been with Bindu to see cinema and thereafter Bindu gave her a cold drink. After drinking the said cold-drink, she become unconscious and when she regained consciousness, she was informed that she was at the place of residence of Bindu at Delhi. Thereafter Applicant and her brother Gapchumama brought her to the house of the Applicant and since then she was residing with the Applicant.

5) During the course of investigation, it was revealed that, the person by name Pramodkumar Mohanraj, an Advocate and Notary by profession residing at Mira Road acted as an mediator for sale of the said victim girl to Applicant and her brother. That, Bindu i.e. a woman from Delhi brought the said victim girl to Pramodkumar Mohanraj, who *inter alia* sold the said victim girl to the Applicant and her brother. After completion of investigation, police have submitted charge-sheet.

As noted above, the earlier Bail Application bearing No.2441 of 2017 preferred by Applicant was dismissed as withdrawn by this Court by its Order dated 13th December, 2017.

6) Mr. Bhatia learned Advocate for the Applicant submitted that, the Applicant is in jail for about 5 years. He submitted that, Applicant had legally adopted the said victim through the mediation of Mr. Pramodkumar

Mohanraj, an Advocate and Notary by profession and the documents of adoption were being prepared by the concerned Advocate. That, before the legal procedure for adoption could be completed, police raided the premises of Gapchu @ Bhagyakumar Raj where Applicant was staying with him and have arrested her. He submitted that, Applicant has nothing to do with the crime as contemplated under Sections 370 or other Sections of the Indian Penal Code. That, the minor girl/victim was never ill-treated by Applicant and therefore the application of provisions of POCSO Act to the present crime are unwarranted. He therefore prayed that, Applicant be released on bail during the pendency of trial of present case.

7) Perusal of evidence on record indicates that, the statement of victim girl has been recorded by the learned Judicial Magistrate First Class, (7th Court) Thane on 29th August, 2016, wherein the victim girl who as per the prosecution was aged about 11 years at the relevant time, has initially stated that, a boy with whom she went to see a cinema gave her a cold-drink and after drinking the same she got unconscious and found her to be in a house of a married woman. The said woman thereafter brought her at Kalpsrushti at Mira-Road. That, where she was residing at Mira Road, the persons therein used to force her to do the household work and whenever she was unable to do it, they beat her with a rolling pin (*Belan*). It appears from record that, there is also a statement of Ms. Mahi Raj/Khan recorded by Judicial Magistrate First Class, apart from the statements recorded by

police in presence of the members of NGOs. It is thus apparent from the statement of victim girl that, Applicant and co-accused Gapchu @ Bhagyakumar Raj had illegally detained her at their residence.

8) The statement of father of victim girl which is at page No.95 of the present Application indicates that, victim girl found to be missing from Amritsar two months prior to the date of lodgment of its missing report with the police. It is thus clear that, a victim girl was not taken in adoption by the Applicant and a safe inference can be drawn that she was removed from the lawful custody of her parents by co-accused Bindu and subsequently with the mediation of Mr. Pramodkumar Mohanraj, was given in possession of Applicant.

9) The defence adopted by Applicant that, the victim was in her custody by following due process of adoption, has no substance in it. Till today there is no document on record even to remotely indicate that, as a matter of fact, the Applicant had directed the concerned Advocate Mr. Pramodkumar Mohanraj to initiate and complete the process of adoption as per the provisions of law. It *prima facie* appears that, through the mediation of Pramodkumar Mohanraj the Applicant paid Rs.1,25,000/- to the woman from Delhi namely Bindu. It further appears to this Court that, the defence adopted by Applicant is totally sham and cannot be accepted in the eyes of law. That, all the accused persons with common intention abducted victim girl from Delhi and in furtherance thereof, Applicant

confined her at her residence. Therefore, according to me, *prima facie* the provisions of Indian Penal Code coupled with the provisions of POCSO Act as applied to the present crime are proper.

10) As noted earlier, Applicant also used to beat the victim girl for not doing the household work. It thus appears that, Applicant was forcing the minor girl /victim to do the household work, which is also against the law. There is more than sufficient material on record to show the clear complicity of the Applicant in the present crime.

11) After taking into consideration the serious allegations against the Applicant and the gravity of the offence, this Court is of the considered view that, Applicant does not deserve to be released on bail.

Application is accordingly dismissed.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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MASHALKAR
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