

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 695 OF 2022

UMESH
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Nitish Naveen Singh alias Raj,)
Age 28 years, Occ: Service,)
Residing at Room No. 4,)
Ramesh Vande Nagar, Kolshet,)
Varcha Gaon, Thane (W),)
District – Thane.) ...Petitioner

Versus

1. State of Maharashtra)
)
2. Registrar,)
City Civil Court, Dindoshi)
For)
12th Additional Session Judge,)
City Civil Court, Dindoshi,)
Mumbai.)
)
3. Investigating Officer,)
Kasturba Marg Police Station,)
at Boribli, Mumbai.) ...Respondents

Ms. R.R. Tripathi, Advocate for Petitioner.
Mrs. A.S. Pai, PP for Respondent – State.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATE : MARCH 22, 2022.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. **Rule.** Rule made returnable forthwith. With the consent of learned Counsel appearing for respective parties, matter is taken up for hearing and disposal,

at admission stage itself.

2. By way of present Petition, Petitioner principally submitted by referring to invocation of powers under Sections 482 and 439 of Code of Criminal Procedure makes following prayers:

- a. to pass the order and or directions granting the bail to the Petitioner on any appropriate terms and condition in FIR No. 1018/2021 lodged with Kasturba Marg Police Station on dated 14.03.2021 u/s 366A, 370(3), 34 IPC & u/s 8 & 12 of POCSO Act and u/s 4, 5, 7 of Human Trafficking Act, u/s 81 Commission of for protection for child Act special Case/467/2021.
- b. to pass the order and or direction to the learned Additional and Session Judge, 12th Court, Dindoshi, Mumbai, dealing with the Special Case No. 467/2021 in FIR of 1018/2021 of Kasturbamarg Police Station at Mumbai, staying the order passed dated 17.12.2021 to frame the charge on dated 11.02.2021.
- c. to pass the order and or direction directing the learned District & Session Judge, Dindoshi Court at Mumbai to give the copy of the victims medically determined of the age and is on the record of the learned Court before framing the charge.
- d. to pass the order and or direction directing learned 12th District & Session Judge, Dindoshi Court at Mumbai to provide the copy of the video recording.

- e. to pass the order and or direction for quashing section 8, 12 of POCSO act lodged against the Petitioner.

The thrust of the learned Counsel for Petitioner is for grant of prayer clause 'a'.

3. In the backdrop of the prayers and the submissions, the grievance of the Petitioner was recorded by this Court in its first order itself. We deem it appropriate to quote that detailed first order passed by us on 08th March, 2022.

2 It is initially orally submitted before this Court that the Petitioner is accused facing the proceedings arising out of FIR No.1018 of 2021 lodged with Kasturba Marg Police Station, dated 14 September 2021 for commission of offences punishable under Sections 366(A), 370(3), 34 IPC & u/s 8 and 12 of POCSO Act and u/s 4, 5 and 7 of Human Trafficking Act and u/s 81 of Commission for Protection of Child Act.

3 The submission of the learned Counsel is that the Petitioner, who had approached the Court below for his enlargement on bail, his first attempt failed as the application was rejected. The learned Counsel then submitted that the Investigating Agency by completing the investigation filed the charge-sheet. Learned Counsel then submitted that there was material in the form of medical examination report of the victims of the

crime and a pen drive.

4 It is further submission of the learned Counsel that though the Petitioner is accused and was entitled to receive the entire and complete copy of a charge-sheet, materials in the form of medical certificate as well as pen drive were not received by the Petitioner. Accordingly, the Petitioner submitted the Application to the learned Sessions Court. It is further submission of learned Counsel that on the said Application, the Order was passed by the learned Additional Sessions Judge and it is stated in the Order that the copies will be given after framing of charge and before recording evidence of the prosecution witnesses. Learned Counsel then submitted that as these materials were supporting the case of the Petitioner and it were part of the investigation, learned Court below ought to have passed the Order accordingly and withholding these materials, may adversely affect the prayer of the Petitioner for seeking his enlargement on bail and the Petitioner is desirous of filing a fresh Application for grant of bail.

5 Now this being a limited grievance made in the Petition, we have gone through the materials placed on record. On perusal of the materials, it reveals that a copy of the charge-sheet is placed on record at Exhibit 'A' (page 43) of the Petition. It shows that the act of effecting panchnama in presence of panchas was duly videographed by police machinery and pen drive was accordingly kept in a sealed

packet. The charge-sheet also refers to medical examination of the victims and it is stated in the charge-sheet that under Order of the Court, the victims were subjected to medical examination at Cooper Hospital and medical report received was submitted in Court for perusal in a sealed envelope. Now though the learned Counsel for the Petitioner made oral submission before this Court that these materials were forming part of charge-sheet and the Petitioner made Application referring to these packets, perusal of the Applications, namely, Exhibits '10' and '11' show that the Applications are silent on the aspect, namely, the submission in the Applications that these materials, i.e. medical certificate and pen drive are part of the charge-sheet. Perusal of the documents placed on record further show that on these Applications, Exhibits '10' and '11', the Order was passed by the learned Additional Sessions Judge. Reference to the Order made in the roznama finds place at Exhibit 'N', page 213 of the Petition and it reads thus :

"Daily Status

Criminal Court, Dindoshi

In the Court of : Judge Additional Sessions

Judge

CNR Number :MHCCO50059002021

Case Number : Spl. Case/0000467/2021

The State of Maharashtra Kiasturba Marg

Police Station versus Nitish @Raj Navin

Singh

Date : 17.01.2022

Business : 17/01/20 Corum- City Civil And
Additional Sessions Judge Smt. S.M.
Takalkar (C.R.No.12) Spl. Case -467/2021
Ld. APP Chauhan for the State present.
Adv. Ansari for accused present. Order
below Exh 10 and Exh 11 – The copies
will be given after framing charge and
before the recording evidence of
prosecution witnesses. Adjd. For Charge
on 11.02.2022

Next purpose : CHARGE

Next hearing

date : 11.02.2022

Judge, Additional Sessions Judge"

6 In view of these facts, we issue
notice at this stage to Respondents, making
the same returnable within two weeks.
Learned PP waives notice for Respondent
No.1-State. The Petitioner is permitted to
serve Respondent Nos.2 and 3 by any
permissible modes of service and file
affidavit of service by the next date.

7 We further direct Registry to call
for report from learned Additional District
and Sessions Judge, 12 th Court, Dindoshi,
Mumbai about verification of the fact
referred to in our Order. Such report to be
submitted to this Court before the next
date for directions.

4. In response to our order, a report is submitted to this Court. It will also be useful to refer material part of the report on the backdrop of the grievance raised in the Petition and in our order dated 08th March, 2022.

On 15.09.2021, the police attached to Kasturba Marg Police Station taken this matter on board and given application for necessary orders in respect of victim girls. The victims were produced before the court on 15.09.2021. They being victims, as per section 17 (2) of the Immoral Trafficking (Prevention) Act, the medical examination of the victim girls has been directed to be done by the registered medical practitioners for the purpose of determination of age, for the detection of any injury as a result of sexually abused or for the presence of sexual transmission disease.

Thereafter at the time of remand stage itself, on 23.09.2021, the report of probation officer has been produced. The victims were also produced with the report of medical officer that the victims have refused to undergo medical examination. The victim stated that they have completed their age of 18m years. When asked whether they have any proof about their age, but they said that there is no such proof but their age be estimated by their medical examination. Therefore, in order to decide the further custody of the victim girls, at the time of remand stage, the victim has

been asked to undergo medical examination for age estimation. That time, the victim shown their readiness and willingness for medical examination for age estimation only. Accordingly letter was given to the medical officer.

On 29.09.2021, the police of concerned police station has taken this file on board and given application for production of medical report in sealed envelop. The medical reports of the victim girls has been received to this court on 29.09.2021. Thereafter charge sheet in this matter has been submitted on 12.11.2021. The report of medical officer received to this court was in an inquiry held under section 17 (2) of the Immoral Trafficking (Prevention) Act. It is not part and parcel of charge sheet submitted by the investigating officer on 12.11.2021, therefore, it's copy was not given at that time.

So far as regard the pen-drive is concerned, at the time when the application was given, the pen-drive was not produced in the court by the concerned police station. Till today also, the police has not produced the pen-drive in the court.

Ld. APP submitted that there is practice that the muddemmal is produced after framing the charge and at the time of filing of list of documents, list of witnesses and list of articles and she will produce the said pen-drive thereafter.

Further, it is necessary to mention here that generally the accused engages one advocate for bail purpose and another

advocate for conducting the trial. The case is filed under the Immoral Trafficking (Prevention) Act and the POCSO Act. As per section 33 of the POCSO Act, in order to prevent the disclosure of identity of the victim girls, it has been asked to the advocate for the accused that the copy of pen-drive will be given to the accused after framing of charge and before recording the evidence.

5. Now, we may turn to the factual aspect of the matter. A report was lodged at Kasturba Marg Police Station bearing crime no. 1018/2021 on 14.09.2021 against the Petitioner for the aforementioned crimes. As per the first information report, the informant K.B. Sawant, Police Constable attached to the Local Crime Branch attended his duties on 13.09.2021 at about 04.10 pm. The in-charge PI Tavade called upon certain police officials named in the FIR and informed them that an action is to be initiated for the illegal acts in the jurisdiction of Kasturba Marg Police Station. Accordingly, two independent persons were requested to act as shadow customers. One of shadow customer contacted the Petitioner on his mobile phone and the Petitioner on his call assured to provide minor girls and then informed that he will have to pay Rs.

5,00,000/-. Accordingly, arrangements for trap were made. The Petitioner had also forwarded the photographs of these minor girls to the shadow customer. The police officials had taken the screenshots of chats exchanged between the shadow customers and the Petitioner. The printouts of the chats were also taken out by effecting panchnama. Then other arrangements of the trap were made. The raiding party along with shadow customers proceeded towards the place fixed by the Petitioner. It was a hotel. In the hall of the hotel, two minor girls, shadow customers, Petitioner and the panchas had the preliminary talk. The shadow customer handed over the marked currency notes to the Petitioner and gave a signal to a raiding party. On receiving the signal, raiding party immediately reached the spot.

6. Then the further formalities of drawing various panchnamas took place. The statement of these minor girls were recorded. The minor girls in presence of panchas submitted that the Petitioner was forcefully engaging them in illegal activities and pay them Rs. 20,000/- per occasion and rest of the amount is distributed between the Petitioner and another person,

namely, Anil Singh. All the necessary activities such as recording the statement, drawing panchnams were video recorded. The pen-drive of said video recording was kept in sealed envelope. The panchnama of keeping the pen-drive in sealed envelope was also drawn.

7. It may not be out of place to state that after completing the entire exercise of investigation, the charge-sheet was filed. The copy of the charge-sheet is also placed on record including the pre-trap panchnama, photocopies of currency notes, the printouts of certain chats, post trap panchnamas, the statement of as many as 28 witnesses including the panch witnesses, medical officer, investigating officer etc.

8. Perusal of the statement of lady police constables discloses that in the trap minor girls apprehended and then they were kept in rescue home. When they were produced before the learned Magistrate, the Magistrate directed the medical examination of those minor girls. Accordingly, these minor girls were brought for medical examination in Dr. Babasaheb R. Ambedkar Hospital, Kandivali, Mumbai, but these girls refused to undergo medical examination. Accordingly,

the medical officer recorded their refusal and handed over medical forms to the lady police constables. Then there is a statement of the shadow customers. Perusal of charge-sheet further show that on 24.09.2021 again these minor girls were referred to medical examination and medical examination was conducted at Cooper Hospital, Mumbai. On 27.09.2021 the medical reports were collected. Necessary orders passed by the Magistrate directing the investigating agency to subject the minor girls, who were kept at rescue home, for medical examination are also placed on record. The copies of medical certificates forms part of the charge-sheet. State of these minor girls are also annexed to the charge-sheet.

9. Perusal of material placed on record further shows that the Petitioner submitted his application for grant of bail to the learned Special Judge and by detailed order dated 07.01.2022 the learned Special Judge, rejected the application. The grounds raised in the Petition were also pressed in the Application, namely the statement of victim girls is absolving the Petitioner. It was also the submission of learned

Counsel for Petitioner before this Court as well as before learned Special Judge that there is no material against the Petitioner and the material in the form of chats is not sufficient to attract the criminal provisions against the Petitioner. Learned Special Judge dealt with these submissions and assigned the reasons for rejecting the Application. For ready reference we may quote those observations as under:

10. Further, I have gone through the charge sheet. There is WhatsApp chat and the photographs sent by the accused to the bogus customer. There is demand chart of Rs. 5 Lacs and 5 Lacs. The Aadhar card of the victim girls is also produced. Further, it appears that the trap was arranged. One original currency note of Rs. 500/- was kept on the top of the bundle. Such type of two bundles were prepared. Immediately the accused was arrested on the spot with the victim girls. On his personal search, the cash which was given to bogus customer was found in his possession and it was seized from him. Therefore, there is prima facie material against this applicant/accused in the form of panchnama, statements of the police witnesses. Hence, I find substances in the argument of Id. APP that in case the applicant is released on bail, then there are chances of absconding the reaming absent at the time of trial, there are also chances of repetition of crime and threatening the victim girls. Hence, in my opinion, the applicant/accused has not made

out just, proper and reasonable grounds of release of bail.

10. Learned Counsel for the Petitioner vehemently submitted that out of these two victim girls, one victim girls is not the minor girls as per her Aadhar Card and another girls who is subjected to medical examination, the report was not made available to the Petitioner.

11. Learned PP appearing for the Respondent – State vehemently opposed the Petition on the ground that there is not merit in the Petition.

12. In so far as the first submission that one of the girl is not minor as per her Aadhar Card is concerned, it cannot be accepted at this stage as it cannot be conclusive proof so as to ascertain the age of the girl and as there is a medical evidence available on record the Petitioner during the course of trial may establish his case. We are unable to accept the submission of Counsel to treat this ground as a ground for grant of interim bail to the Petitioner. Similarly, the same opinion we can form and observation in respect of the other material.

On the contrary, on perusal of material in the form of charge-sheet, we find that there is substantial material against the Petitioner and the learned Special Judge committed no error in rejecting the Application for grant of bail.

13. Learned Counsel for Petitioner also placed heavy reliance on the judgment of the Apex Court in the matter of Arnab Manoranjan Goswami Vs. State of Maharashtra and Others¹. Though, there cannot be any dispute on proposition of law expressed by the Hon'ble the Apex Court. In view of the facts of the present case, in our opinion, the judgment in the matter of Arnab Goswami is of no help to the Petitioner.

14. Considering the discussions in foregoing paragraphs, we are of the opinion, that there is no merit in the Petition and accordingly, Writ Petition is dismissed. Rule is discharged.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)

1 (2021) 2 SCC 427