

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.905 OF 2022

Anandkumar Nagarajan .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Mahesh Vishwakarma with Ms.Ranjeet Chauhan,
Ms.Janhavi Khare and Mr.S.Balaji i/b Mr.Akshay Chavan for
the Applicant.

Mr.S.V.Gavand, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 22nd JULY, 2022

P.C:-

1. The applicant came to be arrested on 10/01/2022
alongwith other accused persons in connection with C.R.No.03
of 2022 alleging the offences punishable under Sections 363,
370(4) read with Section 34 of the Indian Penal Code and
Sections 81 and 87 of Juvenile Justice (Care and Protection of
Children) Act, 2015.

2. The C.R. came to be registered on a complaint filed by one Smt.Anwari Abdul Rashid Shaikh informing that one lady with her two years' old daughter sought shelter from her on the premise that she will pay the rent. Accordingly, she started residing in one of the rooms of the chawl, belonging to the informant. It was revealed that she was a prostitute and accused No.1-Ibrahim used to visit her house.

One fine day, she left the daughter in the care of the informant and left the home and never returned. Accused No.1 kept on visiting the child, who was cared by the informant and on 27/12/2021, he took the child, but did not return.

This is the background in which the F.I.R. came to be lodged.

3. During the course of investigation, it was revealed that for heavy monetary benefit, the child was kidnapped and was transported via Karnataka and sold to one unknown person in Tamilnadu. The accused persons came to be arrested and on confession from one of the co-accused of selling the child for a sum of Rs.1,80,000/- with accused No.1, the investigation proceeded further. It then reached a stage when it revealed that one Vijaykumar was acquainted with one Dr.Jaykumar,

since last one year and he used to consult him for family issues. It was disclosed to him that Anand (present applicant) was consulting him, since he was not having a child and when the contact was established, he expressed his desire to have one child. The conversation took place between the three on conference call on 18/12/2021 and Dr.Jaykumar suggested the applicant to adopt a child and make arrangement for carrying out the procedural formalities.

On 27/12/2021, Dr.Jaykumar forwarded a photograph of child on the WhatsApp of Vijaykumar and also intimated that it would incur expenses to the tune of Rs.4,80,000/- and all the legal formalities would be completed. The photo of the child was forwarded to the applicant and he expressed his desire to adopt the said child, on completing the necessary formalities. Accordingly, a sum of Rs.4,80,000/- was handed over to one Tamil and Priya, who came with the little girl. This is the entire investigation, which was initiated on the complaint of the informant. Ultimately it was established that the girl was kidnapped and was sold for a consideration.

4. The learned counsel for the applicant, on the basis of the charge-sheet and the accusations faced by him, would submit that the applicant had expressed his consensus to adopt the

child and since, it was informed that the expenses will be incurred for completing all the legal formalities, he parted with sum of Rs.4,80,000/- with Vijaykumar.

5. In the present C.R., Sections 370(4) and 363 have been invoked. Offence of kidnapping is not alleged against the present applicant and as far as the charge of trafficking is concerned, it contemplates exploitation and the term 'exploitation' has been defined to include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

The learned A.P.P., on perusal of the charge-sheet, fairly admit that there is no material in the charge-sheet to reflect that trafficking of the minor child was for the purpose of exploitation, as understood by Explanation I to Section 370.

6. The applicant is, therefore, only charged for Section 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which prescribes punishment for sale and acquisition of child for any purpose. The punishment prescribed is imprisonment for a term, which may extend to five years and the person guilty is also liable to pay fine of Rs.1,00,000/-.

The applicant ultimately will face the charge during the course of trial, in the wake of the defence that he was given an impression that the child will be legally adopted by him on completion of all legal formalities and the charge-sheet does not show anything to the contrary. In any case, the child is in custody of children home. In the wake of the above, the applicant deserve his release on bail, subject to the following conditions.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Anandkumar Nagarajan shall be released on bail in connection with C.R.No.03 of 2022 registered at V.P.Road Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

(d) The Applicant shall mark his attendance to the V.P.Road Police Station on first Monday of trimester, till framing of charge.

(SMT. BHARATI DANGRE, J.)