

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

CRIMINAL BAIL APPLICATION NO.2262 OF 2021

Babita Sandeep Sharma Applicant
Versus
The State of Maharashtra Respondent

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**WITH
CRIMINAL BAIL APPLICATION NO.2264 OF 2021**

Shweta Nirpat Sharma Applicant
Versus
The State of Maharashtra Respondent

Mr. Niranjan Mundargi, Advocate i/b. Ashok Bhatia, for the Applicants in both BAs.

Mr. P.H. Gaikwad, APP for the Respondent-State in BA/2262/2021.

Smt. A.A. Takalkar, APP for the Respondent-State in BA/2264/2021.

CORAM : SARANG V. KOTWAL, J.

DATE : 14th JANUARY, 2022
[Through Video Conferencing]

P.C. :

1. Both these applications are decided by this common order as they arise out of the same investigation and same registered offence.

2. The applicants are seeking their release on bail in connection with C.R.No.28/2021 dated 5.2.2021 registered at Amboli police station, Mumbai under Sections 366-A, 370(1) (4), 372 read with 34 of the Indian Penal Code, Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and Sections 4, 16, 17 and 18 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The applicants were arrested on 5.2.2021 and since then they are in custody. The investigation is over and the charge-sheet has already been filed.

3. Heard Shri Niranjan Mundargi, learned counsel for the applicants, Shri P.H. Gaikwad, learned APP for the State in BA/2262/2021 and Smt. A.A. Takalkar, learned APP for the State in BA/2264/2021.

4. The FIR is lodged by one Police Constable Sunil Shardul. He has stated that he was working with Social Service Branch, Crime Detection, Mumbai. On 4.2.2021, when he was present in the office, he and his colleagues received information that both the applicants were providing

minor girls and forcing them in prostitution. They were exploiting those girls. The police arranged to conduct a raid. A bogus customer was arranged. Similarly panchas were called. The bogus customer made a phone call to the applicant Shweta and asked for supply of a minor girl. At that time, the applicant Shweta told him that she had one minor girl and one adult girl. She had quoted the price of Rs.2 Lakhs for the minor girl and Rs.50,000/- for the adult one. The customer was asked to come near a show-room at Andheri at about 6:45 p.m.

5. The bogus customer was given Rs.2 Lakh in fake currency. The details were noted. Photo-copies were taken. The police party went near the spot. After some time, the applicants approached the bogus customer and panch No.1 with two girls. After that, all of them entered a nearby hotel. At about 6:55 p.m., the bogus customer gave a pre-arranged missed called. The police party entered that hotel. They saw that the bogus customer, panch No.1, two applicants and two girls were sitting there. The bogus customer pointed out to

both the applicants and informed that the fake currency-notes bundle was taken by the applicant Shweta. The girls gave their names and details. Search of the applicants' persons was carried out. The applicant Babita was having Aadhaar card of one of the victims, wherein the date of birth of that girl was mentioned as 18.4.2005. She told the police party that Aadhaar card was kept as the age proof for giving to the customers to show that the girl was a minor girl. The police party made enquiries with both the victims. One of the victims, who was 15 years of age as per the Aadhaar card that was with the applicant Babita, informed the police that the applicant Babita was her close relative from maternal side. The victim had come to Mumbai on 4.1.2021. On the day of raid, both the applicants had brought her to that hotel for supplying her to a customer for prostitution. The other victim informed the police that the applicant Babita was her mother and both the victims were brought to the hotel by both the applicants for prostitution. She was to get Rs.50,000/-. Further enquiries made by the police revealed that the

applicant Babita was to keep Rs.25,000/-. Other share of Rs.25,000/- was to be given to one Sujata and remaining Rs.1,50,000/- was to be taken by the applicant Shweta. The police party also took screen-shots of the photos sent by these applicants. Recording all this, the FIR was lodged.

6. Learned counsel for the applicants submitted that Section 370 of IPC is not attracted. Both the victims were adults and they had willingly participated in these acts. He submitted that the school record shows that one of the victims who was allegedly a minor, was an adult and she was born in the year 1998 as is reflected in her school record. He submitted that it is a concocted story. In any case, since the victims were adult, provisions of the POCSO Act are not attracted. The victims have not stated that they were forced to come there by both the applicants.

7. Learned APP relied on the charge-sheet. She submitted that the FIR has recorded everything explicitly. The offence is very serious. She also relied on the screen shots as well as copy of the Aadhaar card annexed to the charge-sheet.

She submitted that the minor girl was exploited and apart from that also the offence is serious and, therefore, bail should not be granted to them.

8. I have considered these submissions. Perusal of the Aadhaar card of one of the victims shows that the date of birth of that victim girl was 18.4.2005. If her school record shows something else, it would be a matter of trial. However, the applicant Babita herself was carrying Aadhaar card showing the date of birth of one of the victims as 18.4.2005. Therefore, at this stage, there is sufficient material with the investigating agency to show that one of the victims was a minor and, therefore, it assumes seriousness. To make the matter worse, it transpired that the applicants are the close relatives of the victims and they were forcing these young girls into prostitution. This is nothing short of 'sexual exploitation' as contemplated under Section 370 of IPC. Section 370 of IPC reads thus :

“370. Trafficking of Person. – (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e)

receives, a person or persons, by--

First-- using threats, or

Secondly-- using force, or any other form of coercion, or

Thirdly-- by abduction, or

Fourthly-- by practising fraud, or deception, or

Fifthly-- by abuse of power, or

Sixthly-- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1--The expression "exploitation" shall 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.

Explanation 2--The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) xxxxx

(6) xxxxx

(7) xxxxx”

As can be seen, the definition is quite wide. Explanation 1 mentioned that ‘exploitation’ would include any act of physical exploitation or any form of sexual exploitation. Explanation 2 thereof mentions the consent of the victim is immaterial in determination of the offence of trafficking.

9. As is provided under Section 370(1) sixthly, the applicants were enjoying benefits of the payments received by exploitation of the victims. Inducement to the victims is included in the definition. Sub-section (4) of Section 370 of IPC provides that where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may

extend to imprisonment for life. All these offences are quite serious. One of the victims is shown to be minor at this stage. The FIR is supported by the victims' screen shots, Aadhaar card seized in the hotel and the statements of other raiding party members.

10. Considering the seriousness of the offence, no case for grant of bail is made out. The applications are rejected.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

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(SARANG V. KOTWAL, J.)

Deshmane (PS)