

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**BAIL APPLICATION NO.2474 OF 2021**

Fatima Fareed Ahmed .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Subhash Jha with Mr.Siddarth Jha, Mr.Dwivendra Dubey  
i/b Law Global for the Applicant.

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

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**CORAM: BHARATI DANGRE, J.**

**DATED : 22<sup>nd</sup> JULY, 2022**

**P.C:-**

1. The applicant, being accused in C.R.No.17 of 2017 registered with Anti Robbery & Dacoity Cell, Crime Branch, Kurla (W), Mumbai (earlier C.R.No.122 of 2017 registered with Sahar Police Station), seeks her release on bail and it is fairly submitted that prior to this application, there were two applications filed by the applicant, the first being withdrawn on 02/11/2017 and the second being rejected on 15/06/2018.

2. Heard learned counsel Mr.Jha for the applicant and learned A.P.P. Mr.Gavand for the State.

Mr.Jha would submit that the present application deserves consideration despite the earlier orders, in the wake of an important aspect that the Division Bench of this Court, in a group of writ petitions filed by the accused persons for quashing of the F.I.R., by order dated 05/02/2019 has stayed the proceedings before the trial Court, on appreciating the argument that Section 370 of I.P.C. is not attracted, as there is no victim involved and there is no exploitation. He submit that the writ petitions are pending before this Court.

Mr.Jha would also rely upon a decision of this Court in case of co-accused Arif Shaffi Farooque (Bail Application No.3276 of 2019), which was also a successive bail application, which came to be entertained, in the wake of the material surfacing on record, and by taking into account the fact that at the instance of the five co-accused, the trial has been stayed. Mr.Jha, would fall, back on the observations made in the said order, which according to him, are equally applicable to the present applicant.

3. Police Constable, Mr.Ulhas Parab lodged a complaint with Sahar Police Station on 20/04/2017, which was subsequently transferred to the Anti-Robbery and Dacoity Cell, Crime Branch, Kurla (W), wherein it was informed that human

trafficking of some minor children is likely to take place and the children are likely to be taken by Ethiopian Airlines to some foreign destination. When the team of the police officers kept watch at Terminal No.2, they noticed four minor children with one female, who on inquiry, gave the names of the children, but their true identity was concealed and the four children, aged between 14 to 16, established their identity.

4. As per the F.I.R., the applicant is a lady, who was carrying two children and as per the prosecution, she was indulged in an act of attempting human trafficking.

The applicant came to be arrested on 20/04/2017 and continue to languish in jail, despite filing of charge-sheet on completion of investigation. She is charged with the offences punishable under Sections 370(5), 419, 420, 465, 467, 468, 17, 120-B of the Indian Penal Code read with Section 12(1)(2) of the Passport Act.

Alongwith the applicant, there were three persons, who are alleged to have transported the minor children and this include, one Arif Farooque and Rajesh Balram Pawar.

5. The investigation in the C.R. revealed that co-accused Bikramjit Singh Joginder Singh used to contact parents of

minor children from Punjab, and assured that, if the children are sent abroad, they would get proper education and would also be employed, bringing good income to the family. As per the prosecution, Bikramjit Singh used to charge Rs.8 to 10 Lakhs per child for sending them abroad and the necessary documentation was his responsibility. Co-accused Arif is alleged to have arranged for the carriers, prepared bogus documents for obtaining passports and air-tickets in the fake names of the minor children. It is also alleged that the carrier used to hand over the victims passports to him and he used to dispose off the same in order to destroy the evidence. The investigation led to involvement of 30 persons in the crime.

6. Section 370(5) with which the applicant is charged, according to Mr.Jha, is not attracted at all, justification being it deals with human trafficking for the purpose exploitation.

When the relevant provision is carefully perused, it is apparent that whoever, for the purpose of exploitation, recruits, transports, harbours, transfers or receives, a person or persons, by using threats or force or coercion, or by abduction or by practising fraud or deception or by abuse of power or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any

persons having control over the person recruited, transported, harboured, transferred or received is said to have committed the offence of trafficking. The expression 'exploitation', as per Explanation I appended to the Section, 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.

When the offence involves trafficking of more than one minor, it is punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

7. The offence under Section 370(5) is a serious offence and its gravity can be ascertained from the penalty which is prescribed. The investigation in the subject C.R., *prima facie*, does not reveal that the children were transported for the purpose of exploitation, as understood by Explanation I. Co-accused Bikramjit Singh Joginder Singh came to be released on bail on 09/10/2017 (Bail Application No.2023 of 2017) and the order records as under :-

“In the case in hand investigation of the crime in question is already over and the chargesheet 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 mode. 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.”

8. On completion of investigation, several other co-accused were also released on bail by the learned Additional Sessions Judge, Gr.Mumbai. Another co-accused Arif Farooque is also released on bail, by referring to the material that has surfaced through charge-sheet, being the statements of witnesses, including the statements of the victims, which indicate that it was the said children and their parents, who after hearing the news from the vicinity, got lured to an opportunity of going abroad and settling there and they contacted Bikramjit Singh, who gave assurance to their parents to arrange for their travel abroad for education purpose and accepted money for arranging the same.

Recording that the trial in the case has not commenced and even charge is not framed, long incarceration was a ground which impressed the Court to release Arif Farooque on bail.

9. There is no reason why same reasoning cannot be extended to the present applicant, as she is also arrested in the year 2017 and till date remained incarcerated. Her application came to be rejected on 28/11/2018, by recording that on earlier occasion, it was rejected on 15/06/2018 and even at that time, the orders granting bail to the co-accused were considered.

However, on account of passage of time and release of co-accused Arif Farooque, the applicant who is awaiting her trial for last five years, deserve her release, as her pre-trial detention is not warranted.

**: ORDER :**

- (a) Application is allowed.
- (b) Applicant - Fatima Fareed Ahmed shall be released on bail in connection with C.R.No.17 of 2017 registered at Anti Robbery & Dacoity Cell, Crime Branch, Kurla (West), Mumbai on furnishing P.R. Bond to the

extent of Rs.25,000/- with one or two sureties in 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 report to Anti Robbery & Dacoity Cell, Crime Branch, Kurla (West), Mumbai on first Saturday of the month between 2.00 p.m. to 5.00 p.m. till completion of trial.

(e) On release of the applicant on bail, she shall furnish her residential address and contact number to the Investigating Officer.

(f) The applicant shall not travel abroad, without the permission of the Sessions Court.

**( SMT. BHARATI DANGRE, J.)**