

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4374 OF 2021**

Visirikapally Raja Rao .. Appellant
Versus
The State of Maharashtra .. Respondent

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Mr.Aabad Ponda, Sr. Advocate i/b Apoorv Singh for the applicant.

Mrs.Anamika Malhotra, APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 27th SEPTEMBER, 2022**

P.C:-

1 The natural instinct to become parents which gradually shaped into an obsession, has resulted in the applicant indulging in the act of which he is accused of in C.R.508/2021, registered on 1/9/2021 with Bandra Police Station.

 The subject C.R invoke Sections 363, 368, 370, 201 r/w Section 34 and 120B of IPC. The applicant came to be arrested on 3/9/2021 in the said C.R and thereafter he is charge-sheeted and he seek his release on bail on the ground that he is a Government Servant by profession and enjoy reputation in the Society.

2 The case of the prosecution which could be discerned from the charge-sheet is the complainant, a lady and a beggar who continue to stay on a footpath under a bridge, near Traffic Police Chowky, at Mahim Causeway with her two sons Kaif Nasir Khan, aged 10 months and Ahmed aged 13 years, lodged a report that on 31/8/2021 when she went to sleep, with her two children, at 2.30 am she found her child aged 10 months missing.

 The case of the prosecution is, on a tip received by the police on 2/9/2021, from an informer one lady Ms. Farhana Qurban Shaikh had stolen the child and on 2/9/2021 itself, she was arrested. In the investigation, it transpired that the child has been sold to the applicant for a sum of Rs.2,15,000/- and the money has been divided between accused no.1, 2 and 3. The police proceeded to Telangana and arrested the present applicant on 3/9/2021 and filed a charge-sheet against the accused persons.

3 The learned Senior counsel Mr.Ponda would submit that the applicant is a Government servant and is serving in NPDCL in Telangana State. He would submit that he along with his wife were genuinely interested in adopting a child as despite 30 years of marriage, no child was born out of the wedlock, as his wife was unable to conceive and suffered from miscarriages on account of certain ailments. The couple even attempted to adopt a child through various agencies, but the same could not be materialized and that is why, according to Mr.Ponda, the applicant felt into the trap laid by the co-accused with a hope that he can

some bring some happiness to his wife, who was desperate to have a child.

Mr.Ponda admit that a document executed on a stamp paper was delivered to him, reflecting that the child belong to one Ms.Soni Solanki who wanted to give in adoption, as she was unable to raise a child and a copy of the Adoption Agreement which is compiled in the charge-sheet, which is subsequently found to be forged one was the basis for parting with the sum with a presumption that it is a genuine document. Ultimately, Mr.Ponda would submit that since now the child is traced back and handed over to the mother and since the applicant had no intention to buy the child illegally, but he walked into the trap inadvertently, he should be released on bail.

4 I have also heard the learned APP who vehemently opposed the application.

Mr.Ponda may be justified in submitting that the subject C.R may not justify invoking Section 370 IPC, which prescribe penalty for trafficking of a person and necessarily involve transporting, harboring or receiving a person for the purpose of 'exploitation', and with a definite meaning assigned to the term 'exploitation', since prima facie, the prosecution has failed to attribute any ingredients of the said section, 370 IPC, I record that it is wrongly invoked.

The charge-sheet compile other material which include the statement of the mother of the victim boy who was

kidnapped, on the basis of which the FIR was registered against unknown person. After the police machinery was alerted and photographs of the abducted boy was widely circulated on social media, and also posted on the walls of building/public place, when it was noticed that one lady was continuously giving food to a child on different times since last one month, the co-accused was trapped and she came to be arrested. Police recorded statement of one Reshma Shaikh, who has stated that one woman was after her to hand over the child who would be born out of her pregnancy and had assured her that she would be adequately compensated. The lady was also repeatedly asking for the child after the birth, and at that very time, the mother of the abducted child informed her that her child was stolen. Reshma disclosed the incident to Sameera and Sameera led the investigating agency to the lady who had abducted the child. The co-accused who was arrested led the investigating agency to the spot where she stayed with the abducted child in the house of Paramdham and with whom she entered into transaction and obtained money and delivered the child. A sum of Rs.1,50,000/- was recovered at her instance from the house. The investigation also led to transmission of the picture of the boy on the mobile of Paramdham. It further revealed that on 1/9/2021, the kidnapped boy was handed over to one Raju and the applicant. Raju is the accused who was in touch with co-accused Farhana and he was the one who conveyed the message to the child who was

kidnapped. On arrest of Param dham, at his instance, there is recovery of an amount of Rs.1,05,000/-.

5 The chain of events clearly establish the contact being established by Farhana with Raju, with whom the photo of the child is shared and that Paramdham was in touch with Farhana and Raju.

Ultimately, after all this aforesaid rigmarole, the child was handed over to the applicant, who paid money for them. Though the applicant may not be the actual person, who has kidnapped the child, but the kidnapped child was kept with him after being removed from the lawful custody. The applicant being a Government Servant, ought to have been diligent in following the proper procedure in form of a Adoption Deed, if he was keen to have a child. Merely submitting that he is a victim of the entire episode, do not absolve him as the necessary ingredients of Section 368, which involve kidnapping of a person, and the accused knowing that the person has been kidnapped and having such knowledge have confined the said person. The applicant is one of the person who is accused of Section 368 and since the charge-sheet has sufficiently compiled the material to establish the charge, the application do not deserve any consideration and is rejected.

(SMT.BHARATI DANGRE,J)