

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

BAIL APPLICATION NO. 2612 OF 2022

Mrs. Salma Mohammad Rafique Shaikh
@ Salma Tanvir Shaikh
v/s.
The State of Maharashtra and anr.

.... Applicant
.... Respondents

Mr. Shambhu M. Jha for the Applicant.
Mr. A.A. Palkar, APP for the State.

CORAM : G.A. SANAP, J.

DATED : 29th NOVEMBER, 2023.

P. C. :-

. The Applicant/accused no.1 has made this Application for bail under section 439 of the Code of Criminal Procedure in C.R.No.127/2022 registered at Waliv Police Station, Mira-Bhayander, Vasai-Virar Police Station for the offences punishable under Sections 366, 370, 370-A(1) of the Indian Penal Code and Sections 4, 16, 17 and 18 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. The learned advocate for the Applicant/accused no.1 submitted that the Applicant is behind bars for 02 years. The learned advocate further pointed out that there is no iota of evidence to substantiate the allegations. He drew my attention to the statements of the victims

recorded under section 164 of Cr.P.C. and submitted that the victims have not stated about the exploitation or illicit trafficking. He further submitted that the cash allegedly handed over by the decoy customer to the accused no.1 was not recovered. He submitted that the trial may take its own time and as such, further incarceration of the accused is not necessary. He submitted that the accused no.1 is ready to abide by the conditions that may be imposed by this Court.

3. The learned APP for the State submitted that a raid was conducted on the basis of the prior information. It is pointed out that the accused no.1 had called the victim girls for being provided to the decoy customer. The learned APP further submitted that the deal was settled and a sum of Rs.2,500/- for each victim was to be paid. The learned APP submitted that one of the victims is minor and as such, the offence committed by the accused is punishable with imprisonment for life. Learned APP submitted that the possibility of tampering with the prosecution evidence and threats to the victim girls cannot be ruled out if the accused is enlarged on bail.

4. In order to appreciate the rival submissions, I have gone through the record and proceedings.

5. As far as the statements of the victim girls and particularly the minor victim girl is concerned, it *prima facie* indicate that on the given date, the money was not paid to them before raid or at the time of raid. As far as one victim is concerned, she has made general statement about indulgence of the accused no.1 in trafficking. The statement recorded under section 164 of Cr.P.C. is silent on the payment of money by decoy customer to the accused no.1. I am conscious of the fact that at the stage of bail application, the evidence cannot be tested on the touchstone of the credibility. However, for the purpose of deciding the fate of the accused, *prima facie*, analysis of the evidence is permissible. It is seen that the statements of the victims recorded under section 164 of Cr.P.C. and recorded by the police during the course of the investigation, are self-contradictory. The prosecution, at the stage of trial, will be required to prove the charge against the accused. Charge sheet was filed long back. No statement has been made with regard to the possible time that would be taken for completion of the trial.

6. In the facts and circumstances, it appears that the chances of the completion of the trial in near future, are bleak. If all these aspects are taken into consideration, particularly in the teeth of the available

material, in my considered view, the accused, who is a woman, cannot be kept behind bars for indefinite period. The detention is not necessary for further interrogation. The apprehension put forth by the learned APP can be taken care of by imposing appropriate conditions. On the basis of the apprehension, bail cannot be denied to the accused. Accordingly, I proceed to pass the following order :-

(a) The Bail Application is allowed.

(b) The Applicant/accused no.1 - Mrs. Salma Mohammad Rafique Shaikh @ Salma Tanvir Shaikh be released on bail in connection with C.R.No.127/2022 registered at Waliv Police Station, Mira-Bhayander, Vasai-Virar Police Station, on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or two solvent sureties in the like amount.

(c) The Applicant/accused no.1 shall not enter the entire Thane District till the completion of the trial except for attending the case at Sessions Court on the given date and that too by reporting her appearance at Waliv Police Station,

in advance.

(d) The Applicant/accused no.1 shall not in any way tamper with the prosecution evidence.

(e) The Applicant/accused no.1 shall not pressurize or threaten the prosecution witnesses and the victim.

7. Bail Application stands disposed of in above terms.

(G.A. SANAP, J.)