

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5127 OF 2022

Shakuntala Karamveer Sarsath @	]	
Shakuntala Karamveer Manaath	]	
Age 37 years, Occ. Beautician,	]	
Residing at 705, Nakoda Building,	]	
A-Wing, Fun Fiesta, Nalasopara (West),	]	
Taluka Vasai, District Thane	]	... Petitioner

V/s.

1. Atul Mohite	]	
Age, 43 years, Inspector of Police,	]	
Kandivali Police Station.	]	
2. The Deputy Commissioner of Police	]	
Zone 11.	]	
3. The Commissioner of Police, Mumbai	]	
having his Office at Crawford Market,	]	
Mumbai.	]	
4. The State of Maharashtra	]	
Through its Principal Home Secretary,	]	
Home Department, Mantralaya, Mumbai.	]	... Respondents

Mr. Ankush Dhokale i/b. Ms. Anita Marbhal for Petitioner.
Mrs. M. H. Mhatre, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
SHARMILA U. DESHMUKH, JJ.**

DATE : 25th September 2023.

JUDGMENT (Per : A. S. Gadkari, J.) :-

1) Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties herein, taken up for final hearing.

2) Petitioner has invoked extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, for alleged violation of her fundamental right to practice the profession or to carry on any occupation, trade or business as contemplated under Article 19 (1) (g) of the Constitution of India, by the Respondents and for declaration that the action of Respondents against the Petitioner amounts to illegal detention, in violation of her fundamental right of the Beauticians guaranteed under Article 19 (1) (g) of the Constitution of India.

3) Heard Mr.Dhokale, learned counsel for Petitioner and Mrs.Mhatre, learned A.P.P for Respondent-State. Perused entire record annexed to the Petition.

4) It is the case of the Petitioner that, she is a family oriented woman having responsibility to maintain her two children aged about 20 and 15 years and an old aged ailing father. In order to maintain her family financially, the Petitioner has pursued a course of Beautician, enabling to earn for her livelihood. She has worked as professional beautician for various Salons and Spas for the past several years. At the relevant time, the Petitioner was working as 'Beautician' in a Salon known as 'Destiny Salon and Spa' situated at Kandivali (West). She had joined the said Salon as a professional beautician on 7th February 2022.

4.1) That, on 11th February 2022 at about 17.45 hours (5.45 p.m.) the Police Officer attached to Kandivali Police Station i.e. the Respondent

No.1 herein accompanied with the police team purportedly entered into the said Salon and conducted a raid at its premises without any warrant or Order and took the Petitioner and three other woman Beautician/Therapists working therein from a police van to Kandivali Police Station. They reached Kandivali Police Station at about 20.00 hours (8.00 p.m.). During the said raid Petitioner's mobile and other belongings were taken into custody by the police and she neither allowed to contact nor to speak with any of her family members.

5) It is stated that, at that time a woman Police Officer told the Petitioner and other women at the said spot, that whoever would pay Rs.1,00,000/-, shall be released from the custody immediately or else a case under The Immoral Traffic (Prevention) Act (for short, "PITA Act") would be lodged against them. As the Petitioner did not comply with the said demand, she had to spend entire night in the Police Station, even though she was not involved in such crime. That, a Crime No. 106 of 2022 came to be registered by Respondent No.1 under Sections 370(3) read with 34 of Indian Penal Code and Sections 3, 4, 5 & 7(1) of PITA Act. The Petitioner has been shown as a victim of prostitution, working in a brothel in the said crime. On the next date i.e. on 12th February 2022 the Petitioner along with other three Beautician women were produced before the learned Magistrate at Esplanade Court, Mumbai. The Petitioner pleaded before the learned Magistrate to be innocent. However, the learned Magistrate directed the said

women to be sent in Kandivali Rescue Home, S.V. Road, Kandivali (W.) till 14th February 2022. That on 14th February 2022 Petitioner was thereafter produced before the learned Magistrate, 54th Court, Sewree, Mumbai, when she again pleaded and requested the learned Magistrate that, she has not committed any crime, is innocent and is not in the vocation of prostitution. However, the learned Magistrate issued directions to the Respondent No.1 to keep the Petitioner and other three beautician women at Navjeevan Female Corrective Institution, Deonar, Mumbai for rehabilitation.

5.1) It is the further case of the Petitioner that, the Respondent No.1 did not inform her family members after she was lodged to the said Female Rescue Home or Navjeevan Female Corrective Institution. That, after her son got the knowledge of her incarceration at the said Corrective Institution as a prostitute, he was devastated to hear the said fact. Her son was only once allowed to visit her at Navjeevan Female Corrective Institution at Deonar. At the Corrective Institution, she was treated and hammered presumably being as a prostitute. It is the contention of the Petitioner that, the learned Magistrate sent her to the said Corrective Institution mechanically by ignoring the various Orders passed by this Court in similar type of cases.

5.2) The Petitioner's son on 14th February 2022 filed an application for her release from the said Corrective Institution in the said crime, however the learned Magistrate passed Order of release on 5th March 2022 i.e. almost after 26 days. It is the case of the Petitioner that, Respondents i.e. Police had

treated the Petitioner in a very inhuman way and sought to detain her in the Corrective Institution for nearly 26 days by branding her as a prostitute. It is the case of the Petitioner that, she was incarcerated at the Police Station and later in the Corrective Institutions without her wish and consent, which is in breach of the guidelines issued by the Hon'ble Supreme Court in the case of *Budhadev Karmaskar Vs. The State of West Bengal & Ors., Criminal Appeal No. 135 of 2010, dated 19th May 2022* and therefore it violated her 'right to live' as contemplated under Article 21 of the Constitution of India. In this brief premise the Petitioner has prayed for the aforementioned reliefs.

6) Learned counsel for Petitioner submitted that, the Petitioner was working at the said place as a Beautician and the Police have wrongly identified her as a victim of the vocation of prostitution. That, the learned Magistrate ought to have released the Petitioner immediately after her expressing desire to be a free person and as such she was not an accused in the alleged crime. That, the Trial Court treated the Petitioner as an accused which is in utter disregard to the various guidelines issued by the Hon'ble Supreme Court and in particular in the case of *Budhadev Karmaskar* (supra). He submitted that, as the Petitioner was treated as a victim of the racket of prostitution in a brothel, not only her personal liberty was curtailed for about 26 days but her dignity in the eyes of her family members and in the Society at large is lowered and therefore her 'right to a dignified life' as contemplated under Article 21 of the Constitution is affected. He submitted

that, the Petitioner ought not to have been treated or penalized as a criminal in the said crime, but ought have been treated as a victim of the said crime. He submitted that, the Petitioner is having a right to practice the profession of Beautician as guaranteed under Article 19(1)(g) read with Article 21 of the Constitution of India and the Respondents-Police Authorities have violated it by illegally detaining the Petitioner at the said Corrective Institutions. He therefore prayed that, the reliefs as prayed for may be granted by allowing the Petition.

7) Learned A.P.P. opposed the Petition and submitted that, the raid at the said spot was conducted after receipt of confidential information that at the said place certain persons are running a brothel under the guise of a Salon and Spa. She submitted that, the Petitioner was never treated as an 'accused' in the crime but since beginning she was treated as a victim of the crime. She submitted that, the Petitioner was sent to Corrective Institutions under the Orders of learned Magistrate and after her son filed application for claiming her custody, she has been released from the Corrective Institutions. She submitted that, the Petitioner was never illegally detained by the Respondents as an accused. She submitted that, the present Petition is filed only to pressurize the police from preempting them from performing their lawful duties. She submitted that, there are no merits in the Petition and it may be dismissed.

8) Perusal of record reveals that, on 11th February 2022 the Senior Inspector of Police, Kandivali Police Station received confidential information from his informant that, at Destiny Spa, M.G. Road, Kandivali (West) under the guise of providing massage services, the owner of the said Spa is providing women for prostitution and accordingly it was decided to conduct a raid at the said Spa. Necessary permission under the PITA Act was thereafter taken from the Higher Authorities. A witness by name Mr.Akbar Hajimiya Shaikh expressed his willingness to act as a panch/bogus customer at the time of conducting the said raid. Accordingly pre-trap panchanama was recorded. A Indian currency note of Rs.2,000/- was given to the said bogus customer. The number of it was recorded and a photocopy of it was also taken. Police Inspector Mr. Mohite thereafter gave necessary instructions to the said bogus customer. The bogus customer was thereafter sent with a panch witness at the said Spa at about 5.45 p.m.. The bogus customer thereafter went inside the said massage parlor along with panch witness No.1. The raiding party along with panch witness No.2 remained outside the said massage parlor at some distance. After some time i.e. at about 6.30 p.m. the panch witness No.1 came out of the door of the said spa and gave pre-decided signal. At about 6.35 p.m. the police party entered into the said spa and conducted raid. A person by name Manikanth R. Naidu was found at the counter and introduced himself as spa center Manager. Upon inquiry with the said Manikanth Naidu, he told the police that, there are no documents

available thereof about the ownership of the said establishment and did not produce any documents. The Police Officer, Panch Witness and Manager Manikanth Naidu thereafter went towards the western side of the said premises and knocked a closed door of a room. The bogus customer along with one girl was found inside. The said girl was sitting on a bed. The said girl/woman told her name. The Police Inspector asked about her details, upon which she informed the police that if the customer/s demand girls/women for prostitution, the manager provides the said girls present there and from the amount received from the customers 20% of the amount is given to the concerned girls/women and rest of the amount was retained by the manager. At the time of conducting raid four girls/women including the Petitioner were found.

8.1) Police inspected the said bedroom which was ad-measuring about 8 feet x 10 feet. Upon inspection police found one intact condom packet of Kamsutra company below the bed. The police seized the said condom packet in presence of panch witnesses and sealed it. The police complied with necessary legal formalities of recording panchanama and thereafter returned to Police Station. Police constable Mr.Akash Yadav lodged F.I.R. on behalf of the State with Kandivali Police Station and the same is numbered as CR No. 106 of 2022.

8.2) After conducting panchanama of scene of offence, police conducted inquiry with the Petitioner and other three women, victims.

During the inquiry, the Petitioner informed police that, she was working at the said massage center for last about 15 days and was maintaining her family out of the income received therefrom. That, under the directions of the owner of the said massage center and Manager Mr.Manikanth Naidu, she was indulging into vocation of prostitution. That, the said two persons on demand from customers used to provide girls to them and out of the amount received therefrom the said two persons used to pay 20% of the amount to her and the other victims and rest of the amount was being retained by them. As her financial condition was not sound and as her husband had deserted her, she was forced to indulge into the vocation of prostitution at the said spa center. The other three victims have also given similar type of statements to the police during the inquiry.

9) The Petitioner and other three victims were produced before the learned Metropolitan Magistrate, Holiday Remand Court, Esplanade, Mumbai on 12th February 2022. The learned Magistrate directed that, the victims be produced before the regular Presiding Officer on 14th February 2022 and in the meantime they be forwarded to Kandivali Rescue Home, S.V. Road, Kandivali (W.). Accordingly, the Petitioner and other victims were sent to Kandivali Rescue Home.

9.1) The Petitioner was produced before the learned Metropolitan Magistrate, 54th Court, Sewree, Mumbai on 14th February 2022. The learned Magistrate after perusing the record directed that, the Petitioner and other

victims be kept at Navjeevan Female Corrective Institution at Deonar, Mumbai for rehabilitation. Record further reveals that, at Navjeevan Female Institution the Probation Officer had detailed conversation and/or counseling with the Petitioner and thereafter submitted her Confidential Report to the learned Magistrate. In her report the Probation Officer has observed that, as the husband of the Petitioner had deserted her and she was having the responsibility to maintain her children, the possibility that she adopted the vocation of prostitution could not be ruled out.

10) In the meantime the son of Petitioner filed an application for her custody before the learned Magistrate. The learned Magistrate after perusing the report of Probation Officer, Report from N.G.O. Vipra and Medical Officer, after making personal inquiries with the Petitioner and other victims, was pleased to handover her custody to her son. During the course of inquiry, it was revealed to the Magistrate that, the Petitioner or other victims did not indulge into sex work to earn their livelihood and to support their family. The learned Magistrate found that the claimants have sufficient income source to lead their life properly. The learned Magistrate by its Order dated 5th March 2022 handed over the custody of the Petitioner in favour of her son.

11) The facts mentioned herein above disclose that, after receipt of specific confidential information that a racket of prostitution was being run at the said spa, police conducted raid and found the articles mentioned herein above at that place. In her inquiry by the Police, the Petitioner had

told that, she was indulging in the vocation of prostitution to maintain her family. The Probation Officer in its confidential report submitted to the learned Magistrate has observed that, the possibility of Petitioner indulging into the vocation of prostitution could not be ruled out. The Petitioner since beginning was treated as a victim in the said crime by the police and according to us she was never illegally detained by them. As during the inquiry conducted immediately after the raid, the Petitioner had informed the police that, she was in the vocation of prostitution for maintaining her family, the police thereafter adopted necessary steps as contemplated under the provisions of law and as directed by the various decisions of this Court and the Hon'ble Supreme Court. According to us, the Petitioner was never treated as an accused in the crime and was not illegally detained. The steps adopted by the learned Magistrate are within the conformity of the settled principles of law and according to us, there is no violation of fundamental rights of the Petitioner.

12) As noted earlier and at the cost of repetition, we are of the opinion that, there was no illegal detention of the Petitioner by the Respondents.

In view of the above discussion, we find no merits in the Petition and is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)