

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.179 OF 2023
Ritesh Ghanshyam Motwani Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Gandhi h/f Shri A. Shubhan, Advocate for applicant.
Shri M.J. Khan, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.
DATE : MARCH 08, 2023.

This is an application under Section 439 of the Code of Criminal Procedure.

2. The applicant is BHMS doctor. He has been arrested on 09.12.2022 in Crime No.783/2022 registered with Police Station, Hudkeshwar, Nagpur for the offence punishable under Sections 120-B, 198, 370, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code and under Sections 75 and 81 of the Juvenile Justice Act, 2015.

3. Having heard and having gone through the material placed on record, it appears that there are in all eight accused. Accused nos.(1) Shweta alias Aaysha Khan (2) Sachin Patil (3) Makbul Khan (4) Sachin Bayas (5) Vishal Chandnani (6) Monika Sulatyani (7) Vinay Sulatyani and (8) Ritesh Motwani (present applicant). The prosecution case is that the accused -Shweta alias Aaysha Khan, Sachin Patil, Makbul Khan, in furtherance of their common intention prepared forged birth certificate of a female child,

aged 4 days, and sold the child to accused no.6 Monika Sulatyani and accused no.7 Vinay Sulatyani for total consideration of ₹2,90,000/-. Accused no.5 is said to have acted as a mediator between accused nos.1, 2 and 3 on side and accused nos.6 and 7 on the other side. Accused no.4 is the one in whose hospital sonography was done when mother of the child namely Varsha was pregnant.

4. I have with the able assistance of learned counsel for the applicant and learned APP, gone through the statement of Varsha Inwate. She states that she had four children. She got pregnant. She wanted to abort fifth child. She met with the applicant. He suggested not to abort the child. He said that child can be given to a needy person. The witness and her husband then decided to continue with the pregnancy. Her husband again met the applicant when the applicant said that the persons who intent to procure the child will bear the hospital expenses. On 04.09.2022, she delivered a female child. On 05.09.2022, the applicant had sent Rs.2,000/- towards expenses to the husband of the witness. On 08.09.2022, the accused Ayesha Khan came with one person. Witness was discharged. The witness with her mother-in-law and Ayesha Khan boarded an autorikshaw. The husband of the witness and the person who accompanied Ayesha Khan traveled on Aactiva two wheeler. They stopped at one point. The husband of the witness handed over the child to Ayesha Khan. The witness and her husband came back to their house. The applicant, after

couple of days, sent ₹10,000/- to the witness and her husband.

5. With this role of the applicant, he has been blamed to have committed offence under Section 370 of the IPC. Learned counsel Mr. Gandhi rightly pointed out that there is absolutely no material against the applicant to suggest that he has committed offence under Section 370 of the IPC. The offence under Section 370 of the IPC is said to be made out when the person, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by using threats or using force or any other form of coercion or by abduction or by practising fraud or deception or by abuse of power or by inducement etc. Explanation 1 of Section 370 is important. It states that 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.

6. When enquired with learned APP as to whether it is the case of the prosecution that the child was to be subjected to sexual exploitation, slavery or practices similar to slavery, servitude, or could have been forced to removal of organs, he answered in negative.

7. Infact what appears to have occurred in the present case is that the accused nos.6 and 7 were desperate to adopt a child to have. The accused nos.1, 2 and 3 appears to have

Corrected as per
Hon'ble Court's
order dated
30.03.2023.
Personal Assistant to
Hon'ble Judge

taken advantage of such desperate. So far as the applicant is concerned, the facts and the statements of witnesses indicates that the applicant facilitated the co-accused in transferring the child from the witness Inwate to accused nos.6 and 7, the couple who wished to adopt the child. There is nothing to indicate that the child was subjected to exploitation.

8. When asked learned APP could not point out any material to show that the child was subjected or was to be subjected for exploitation.

9. Having said so it will be highly challenging for the prosecution to prove the complicity of the applicant in the offence punishable under Section 370 of the IPC. What remains is other sections i.e. Sections 120-B, 198, 465, 467, 468, 471 read with Section 34 of the IPC and under Sections 75 and 81 of the Juvenile Justice Act, 2015, the maximum punishment for which is seven years. Even otherwise the accused nos.1 to 3, and not the applicant, is said to have committed forgery.

10. The charge-sheet is filed. The charge is not yet framed. It will take time to commence and conclude the trial. In view of above and considering the evidence against the applicant, in my considered view, no fruitful purpose will be served by keeping the applicant behind bars. The interest of the prosecution can be protected by putting applicant to appropriate terms.

11. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

12. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Ritesh Ghanshyam Motwani, be released on bail, in Crime No.783/2022 registered with Police Station, Hudkeshwar, Nagpur for the offence punishable under Sections 120-B, 198, 370, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code and under Sections 75 and 81 of the Juvenile Justice Act, 2015, on he furnishing P.R. Bond in the sum of ₹50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.
- (iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness

acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

JUDGE

Wagh