

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.243 OF 2023

Rajashri Ranjitsingh Sen

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station, Tirora,
District Gondia

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

Court's or Judge's orders

Shri P. K. Sathianathan, Counsel for applicant.
Shri A. M. Kadukar, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 08/06/2023

1. The present application is filed by the applicant for grant of anticipatory bail in the event of her arrest in respect of Crime No.1222/2022 registered with Police Station Tirora, District Gondia for the offence punishable under Sections 120B, 370(4), 420 of the Indian Penal Code and 75, 80 and 81 of Juvenile Justice (Care and Protection of Children) Act, 2015.

2. The applicant is apprehending arrest at the hands of police as crime is registered on the basis of report lodged by Police Constable Gopichand Gajanan Ninave on an allegation that the applicant had trafficked a new born baby of an unwedded mother and had trafficked the said child to a couple at Hyderabad. It is further alleged that, during the investigation of the said crime a mobile was seized from the possession of the

present applicant and while verifying the said mobile with the help of Cyber expert, a screenshot of a photo of a female named Shraddha Agrawal with a baby was found from the WhatsApp chat of the same mobile. It is further alleged that from the said screenshot the Investigating Officer has suspected and during investigation, the involvement of the present applicant is revealed. After investigation, the Investigation Officer further came to know that co-accused Nos.2 and 3 had illegally adopted the minor child by notarizing before the Notary.

3. As per contention of the applicant that the mother of the child herself has handed over her child to the present applicant for adoption as she was unmarried and give a birth to a child and was not ready to keep the child along with her. Thus, child was obtained by the present applicant for giving in adoption as per the consent of the mother. There is absolutely no material on record to show that present applicant has obtained the child for illegal trafficking or for exploitation. Thus, ingredients of the offence punishable under Section 370(4) are not at all attracted. Thus, *prima facie* case is not made against the present applicant. The physical custody of the present applicant is not at all required. As per the direction of this Court the present applicant has attended the Police Station and cooperated with the investigating agency. The applicant is thoroughly

interrogated by the Investigating Officer in respect of the crime. Now, physical custody of the present applicant is not required and hence, she be released on anticipatory in the event of her arrest.

4. The said application is strongly opposed by the State on the ground that Investigating Officer has recorded the statements of the witnesses namely mother of the child and one Fulchand Dhurve and it revealed that present applicant purchased the said new born baby for giving in adoption. The Investigating Officer has also recorded the statement of Machhindra Girhepunje which also shows that the child was taken by the present applicant for giving in adoption by incurring some expenses. The procedure adopted for adoption is also not legal one. Thus, *prima facie* involvement of the present applicant is revealed. Similar types of offences are already registered against the present applicant. Considering the same, application deserves to be rejected as custodial interrogation of the present applicant is required for the investigation purpose.

5. Heard learned Counsel Shri Sathianathan for the applicant. He reiterated the contentions and invited my attention towards the observations of this Court while releasing the applicant on interim anticipatory bail. This Court has already observed that *prima facie*, it appears that allegations against the

present applicant is of selling of child for adoption. The 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. Here in the present case the allegations are not which are fulfilling the ingredients of Section 370(4). It is further observed by this Court at the time of passing interim order that the ingredients of Section 370(4) are not attracted and remaining offences registered under Sections 75, 80 and 81 of the Juvenile Justice Act, 2015, for which the maximum punishment is said to be five years. He submitted that in view of the order of this Court present applicant has already attended the Police Station and cooperated with the investigating agency. She was thoroughly interrogated and now physical custody is not required and hence, she be released on anticipatory bail in the event of her arrest.

6. Per contra, learned APP Shri Kadukar for the non-applicant/State vehemently submitted that the procedure adopted by the present applicant for adoption is illegal. Moreover, the criminal antecedents against the present applicant shows that she is involved in similar types of the crime. He further submitted that the applicant has obtained the child by incurring some expenses shows her *prima facie* involvement. Hence bail application deserves to be rejected.

7. Heard both the sides. Perused the investigation papers. It is apparent that investigation is practically completed. During investigation, the Investigating Officer has recorded the statement of the mother of the child. From the statement of the mother of the child it reveals that mother of the child got acquaintance with the present applicant through one Machhindra Yeshwantrao Girhepunje. She has handed over the child to the present applicant for giving in adoption. She specifically stated that she is unmarried and she was not ready to keep the child along with her and therefore, she decided to give the child in adoption. The applicant approached to her and therefore, she given the child in her custody. The statement of the grand father of the child is also in the similar line. The Investigating Officer has also recorded the statement of Machhindra Yeshwantrao Girhepunje who also stated that as the grand father of the child disclosed before him that his daughter is unmarried and they don't want to keep the child and want to handover the child in adoption therefore, he communicated with the present applicant and asked her to approach the mother of the child and therefore, the child was handed over to the applicant. Thus, from the statements, it reveals that the child was handed over to the applicant for giving in adoption. Admittedly, the legal procedure is not adopted by the applicant for giving in adoption that itself is not sufficient to held that the child was obtained by the

present applicant for the purpose of exploitation i.e. (a) recruits, (b) transports, (c) harbours, (e) transfers, or (e) receives. In view of the Section 370 of the Indian Penal Code when the person for the purposes for 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. the offence is committed. The explanation 1 of Section 370 states that the “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.

8. The present case appears to be registered under Section 370(4) however all these ingredients are absent. The investigation papers nowhere reveals that present applicant by using threats, or using force or by using any other coercion obtained the child. Thus, *prima facie* material is not sufficient to show the present applicant in the involvement of procuring the child for the purpose of exploitation. As far as the offence punishable under Section 75, 80 and 81 under the Juvenile Justice (Care and Protection of Children) Act, 2015 is concerned, the punishment provided is imprisonment of five years. Considering all these aspects, the applicant was protected by interim

protection. During investigation, she has cooperated with the investigating agency and she was interrogated by the Investigating Officer.

9. Considering the above observations that ingredients under Section 370(4) are completely absent and no case is made out, *prima facie* against the present applicant to attract the above said provisions. In view of that, interim protection granted to the present applicant deserves to be confirmed. In view of that, I proceed to pass following order:-

(i) The application is allowed.

(ii) In the event of her arrest in Crime No.1222/2022 registered with Police Station Tirora, District Gondia for the offence punishable under Sections 120B, 370(4), 420 of the Indian Penal Code and 75, 80 and 81 of Juvenile Justice (Care and Protection of Children) Act, 2015, the applicant namely, Rajashri Ranjitsingh Sen is hereby released on bail on furnishing PR bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall attend the Police Station, Tirora as and when required for investigation purpose.

(iv) The applicant shall not indulge herself in a similar type of crime when on bail in the present crime.

(v) The applicant shall submit her mobile/phone number along with her address with address proof, before the Investigating Officer.

(vi) The applicant shall not threat, promise or induce any of the witnesses who are connected with the present crime by any means.

Application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate