

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

CRIMINAL APPLICATION (BA) NO. 386/2023

Badal Dhanraj Madke V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr T.H. Bewali, counsel for the applicant.

Mr A.M.Kadukar, APP for the non-applicant/State.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE OF RESERVE : **16/06/2023.**
DATE OF DECISION : **03/07/2023**

1. Heard.
2. The present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in respect of Crime No.639/2022 registered at Police Station Kalmana, Nagpur for the offences punishable under Sections 363, 369, 370 read with Section 120(B) of the Indian Penal Code and 75, 81 and 84 of Juvenile Justice (Care and Protection of Children) Act. The applicant is arrested on 11/11/2022.
3. The crime is registered on the basis of a report lodged by one Rajkumari Raju Nishad. On 10/11/2022, on an allegation that co-accused Yogendra Prajapati came to her house and took her eight month old child in the shop behind her house to purchase something for

the child and not returned back. Thereafter, she searched for the said Yogendra Prajapati, however, the said Yogendra Prajapati and his wife were absconding along with her child. As she could not find her child, she approached the Police and lodged the report. During the investigation, it reveals that the co-accused Yogendra Prajapati has handed over the said child to one accused Farzana @ Anjum Qureshi by obtaining some amount. Thereafter, Farzana Qureshi, Seema Parvin, Shweta Khan, and Sachin Patil abducted the said child and sold out the said child to one Jitendra Jambhulkar for the consideration of Rs. 2,50,000/-. The alleged transaction has taken place at the house of the present applicant.

4. As per the contention of the present applicant, his mother Laxmibai is doing the work of oil massage to the children. The accused Sachin Patil met her and brought that child to their house for the massage. Thereafter, all other accused came there and it was introduced that the said child is to be given for adoption. Therefore, he called one Khobragade Kaka as he was aware that said Khobragade Kaka was searching for somebody who will give the child in adoption to his daughter. As the said Sachin Patil represented him the child is to be given in adoption, therefore, he called the Khobragade Kaka, and the child was handed over by other co-accused. He is not connected with the alleged

offence. He did not carry out any illegal activities with any intention of trafficking of a child. Now the investigation is completed and the charge-sheet is filed, his further custody is not required and hence, he be released on bail.

5. The said application is strongly opposed by the State. On the ground that the present applicant is the person who sold the child of the said Jambhulkar. The present applicant has also received the consideration amount. There is a prima-facie material against the present applicant. There are criminal antecedents against the present applicant and hence bail application deserves to be rejected.

6. The said application is strongly opposed by the State on the ground that the accused Yogendrakumar @ Monu Prabhulal Prajapati and Rita Yogendrakumar Prajapati were residing in the neighborhood of the complainant. Both the accused with an intention to kidnap the male child Jiten Raju Nishad aged about 8 months visited the house of the informant on the pretext of giving the sweets and kidnapped the child and handed it over to the accused Farzana Qureshi. Thereafter, all accused persons hatched the criminal conspiracy. Thereafter, the accused persons gave information about the child to accused Shweta Ramchandra Sawale and said Shweta had given the said

information to the accused Sachin Patil. Thereafter, accused Sachin informed the accused Badal Madke i.e. present applicant for completing the process regarding the customer for the kidnapped child. Therefore, all the accused persons with the intention of trafficking the child went to the house of the preset applicant, and in furtherance of the said criminal conspiracy, sold the said child to one Jitendra Jambhulkar. As such, all the accused have sold the kidnapped child to Jitendra Jambhulkar and the alleged transaction has taken place at the house of the present accused. There is a prima-facie material against him. The amount of Rs. One Thousand is also recovered from the house of the present applicant. There are criminal antecedents against the present applicant and hence criminal application deserves to be rejected.

7. Heard learned counsel Mr. T.H.Bewali for the applicant. He submitted that as far as the criminal antecedents are concerned, the offence is registered against the present applicant under section 12-A of the Prevention of Gambling Act. The present applicant is totally innocent in the alleged incident. The ingredients of Section 377 are not applicable as the child was not abducted for the purpose of extortion etc. As his mother was involved in doing the work of massaging the children, the child was brought to the house, he was not

aware about the connection of the co-accused. He is arrested merely on suspicion. Now, the investigation is completed and charge-sheet is filed, his further custody is not required and hence he be released on bail.

8. Learned APP reiterated the contention and submitted that considering the criminal antecedents against the present applicant if he is released on bail, he would involve in such type of activities, and hence bail application deserves to be rejected.

9. Heard both the sides. Admittedly, the allegation against the present applicant is serious in nature. Trafficking of humans is the heinous crime. It is crime against humanity resulting in human rights violations. The trafficking of minor children is a more heinous crime. The children of a tender age are soft targets at the hands of the accused. Releasing the accused on bail, who are involved in such types of offences was the subject matter of the Criminal Public Interest Litigation No. 4/2015 before the Principal Seat. This Court has considered the gravity of the offence and it is held that the case of trafficking under the Immoral Trafficking (Prevention) Act, 1956 read with Section 370 of the Indian Penal Code, 1860 is a serious crime. While considering the application for bail, it is required to be considered that human trafficking is a heinous crime and laid down the guidelines for the grant of bail. It is held

by this Court that while considering the bail application, the Court must take into account the fundamental rights of the victim not to be trafficked. The incidents of the accused and the gravity of the offence, the Court has to consider the economic position of the accused if a trafficker etc. It is further held that the Court may proceed to consider the application for bail by considering the general principle and shall refuse bail to an accused who is shown as a trafficker in human beings as such accused persons pursue a career in such crime, which is prone to reputation, which is expected to have antecedents and which is generally indisposed to intimidation and threats.

10. By considering the same, here in the present case from the investigation papers it reveals that on 10/11/2022, the co-accused Yogendrakumar Prajapati and Rita Prajapati have kidnapped the child aged eight months and took him to the accused Farzana and accused Seema Parvin. They have circulated the information about the child to another accused Shewata Ramchandra Sawale and said Shewta, circulated the said information to the accused Sachin Patil. Thereafter, the accused Sachin Patil has informed the present applicant and the present applicant has searched the customer for the kidnapped child. Thereafter, all the accused persons with the intention of trafficking the

child and in furtherance of their conspiracy came to Awalebabu Chowk and went to the house of the present applicant. As far as the conspiracy, the accused Badal Madke had called the customer Ravindra Khobragade, thereafter the accused Ravindra Khobragade along with his wife Sujata Khobragade, daughter Ujawala Jambhulkar, and Jitendra Jambhulkar came to the house of present applicant Badal Madke wherein the child was sold to the said Jambhulkar. Out of the said amount, the applicant has also received some amount which was recovered from him during the investigation.

11. Thus, the role of the accused is revealed from the investigation papers. Not only the role of the present accused in the present crime but there are criminal antecedents against the present applicant as the total six crimes are registered against the present applicant excluding the present crime. The crime is registered under Section 399 of the Indian Penal Code read with Section 4/25 of the Indian Arms Act. The present applicant is also involved in the serious crime like crime under Sections 302, 201 of the Indian Penal Code registered at Pachpaoli Police Station vide crime No. 212/2014. The 12 crimes have been registered against the present applicant under the provisions of the Prevention of Gambling Act. Thus, it is apparent that the present applicant is the person who played a vital role in

the commission of the crime, and the small child of eight months was attempted to be trafficked and was sold to other accused.

12. Thus, *prima-facie* case is made out against the present applicant. Considering human trafficking is a serious crime and considering the apprehension that if the applicant is released on bail, it would commit similar type of offence. Now, the charge sheet is already filed and trial can be commenced. Considering the criminal antecedents against the present applicant application deserves to be **rejected**. Accordingly, I proceed to pass the following order;

Criminal Application is **rejected**.

JUDGE