

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

CRIMINAL APPLICATION (APPA) NO.570/2023

IN

CRIMINAL APPEAL NO.369/2023

Amit s/o Gautamrao Jogi and ors

..VS..

State of Mah., thr.PSO PS Gittikhadan, Nagpur

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

Court's or Judge's Order

.....
Mrs.M.N.Hiwase, Counsel for the Applicants.
Shri A.M.Kadukar, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 12/06/2023

PRONOUNCED ON : 15/06/2023

1. The present application is filed under Section 389 of the Code of Criminal Procedure for suspension of sentence and for grant of bail.

2. The trial court convicted the applicants/appellants for offences punishable under Section 370(4) read with Section 34 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for 10 years and to pay fine Rs.2000/- by each of them, in default, to suffer further rigorous imprisonment for 3 months by each of them.

The applicants/appellants were also convicted for offence punishable under Section 3 of the Immoral Traffic (Prevention) Act, 1956 and sentenced them to suffer rigorous

imprisonment for 1 year and to pay fine Rs.1000/- by each of them, in default, to suffer further rigorous imprisonment for 1 month.

The applicants/appellants were also convicted for offence punishable under Section 5(1)(d)(i)(ii) of the Immoral Traffic (Prevention) Act, 1956 and sentenced them to suffer rigorous imprisonment for 7 years and to pay fine Rs.1000/- by each of them, in default, to suffer further rigorous imprisonment for 2 months.

3. As per the contentions of the applicants/appellants, learned trial court has not considered evidence in proper perspective and erroneously convicted them in absence of evidence.

4. The application is filed on the ground that though the prosecution has examined as many as 10 witnesses, no evidence is produced to show that the victim girl was minor. Her age, as per the first information report, is as 22 years. She has admitted the fact that she got married to one Shatrughna in her town and is residing with him. Thus, there is no evidence on record to show that she was immorally trafficked by the present applicants/appellants. The applicant Nos.1 and 2 are having one small daughter of eight months and two school

going daughters. The applicant No.3 is having 6 years old twin daughters. They were on bail during the trial and not misused the liberty granted to them in their favour. Hence, they be released on bail by suspending the sentence.

5. I have perused the impugned judgment and evidence on record. The report is lodged by one Ashokkumar Singh with Gittikhadan Police Station who is liaison officer. He received a secret information that appellant No.1 Amit Jogi and his wife are running brothel in flat No.101, Kabir Bela Apartment, Friends Colony, Gittikhadan, Nagpur. Both of them allured girls and pushed them in a flesh trade. They called customers and offered services of girls to them. Accordingly, they carried out raid. During the raid, total amount of Rs.3000/- was recovered from accused Amit Jogi. The police also seized their mobile phones. During the investigation, the minor girl was rescued who disclosed that she is forced into the prostitution. During evidence, the victim PW6 deposed her age as 17 years. In fact, she has narrated her age as 22 years after the raid. From the evidence, it reveals that the victim is a girl who was trafficked from Uttar Pradesh to Wani. The NGO namely freedom firm works for rescue of girls and women forced into prostitution. During their enquiry, it reveals that the accused persons initially detained her at Wani and then at

Nagpur. After raid, she was rescued. Her date of birth was deposed by her as 1.1.2006. The school record also discloses her birth date as 1.1.2006. As per the ossification test, the age of victim girl is between 14 years and 16 years. The evidence of the victim shows that she is resident of Barparwababu, district Gorakhpur in Uttar Pradesh. She was residing in a joint family. She lost her father and her mother started residing with one Bharat Chauhan of Uttar Pradesh who molested the victim. She narrated the incident to her, but her mother has not believed her and, therefore, she left the house. During travelling, she got acquaintance with accused No.4 Simran Gupta. Said Simran Gupta brought her and assured her that she will send her back and brought her at Wani at the house of accused No.3 Minaxi. The victim was at Wani in Yavatmal district and, thereafter, she was brought at Nagpur in the flat of accused Amit and his wife. They both forced her for prostitution. The said charges are proved.

6. Thus, the evidence demonstrates the manner in which she was trafficked immorally for prostitution purpose. The trafficking humans is a serious offence and is a crime against humanity. There are criminal antecedents against the present applicants/appellants. This court in PIL No.4/2015 decided on 30.10.2015 (Freedom Firm vs. Commissioner of Police, Pune

and ors) observed that while deciding the applications for bail filed by the traffickers in case of ITPA, the court should consider, without fail, factors laid down by the Honourable Apex namely the nature of accusations, evidence, existence, the severity of the punishment, the character, behaviour, means and standing of the accused, circumstances peculiar to the accused, and the reasonable possibility of securing the presence of the accused at the time of trial etc..

7. The Honourable Apex Court in Criminal Appeal No.1331-1332/2023 considered the scope of Section 389 of the Code of Criminal Procedure and observed that it is evident from sub section (3) that neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage. It is further held that bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in

which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal.

8. In view of the above said guidelines, at this stage, it is apparent that the trial court has convicted the applicants/appellants on the basis of the evidence and there is no *prima facie* case which shows that the trial court has committed any error while convicting the applicants/appellants. As such, at this stage, the applicants/appellants have not made out a case to suspend the conviction and sentence and to release them on bail. Hence, the application deserves to be rejected and it is rejected accordingly.

The criminal application stands disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!