

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

CRIMINAL APPLICATION (BA) NO. 515/2023

Shilpa w/o Anil Badgujar and another 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 S.P. Bhandarkar, counsel with Mr G. Mate, counsel for the applicants
Mr Mr S.M. Ghodeswar, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10/07/2023.

1. Heard.
2. Present application is filed by the applicants for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Crime No. 235/2023 registered at Police Station Jaripatka, Nagpur (City) for the offences punishable under Sections 363, 370, 506 read with Section 34 of the Indian Penal Code. The applicant is arrested on 16/04/2023.
3. The crime is registered on the basis of a report lodged by the informant- Smt Jayakumari Bhuvan Pancheshwar, on an allegation that her husband is not alive, and after the death of her husband, she started residing Nagpur at her sister-in-law's house. She went to the maternal home, where she had a pregnancy, due to her relationship with one person. Thereafter,

Smt Munnibai i.e. co-accused, co-accused has assured that she will make arrangements for her delivery and the child will be handed over to the needy couple. In pursuance of the said assurance, the said co-accused Munnibai introduced her to one Rekha Pujari, who facilitated the delivery of the complainant. The complainant gave birth to a baby boy. Thereafter, co-accused Munnibai and Rekha Pujari handed over to the said child to someone, without informing her and without approaching the Police.

4. As per the allegation, the present applicants have purchased the said child for monetary consideration and therefore, committed an offence under Sections 370 and 363. The co-accused Rekha Pujari and Munnibai were arrested on 12/04/2023. The present applicants are arrested on 16/04/2023 along with Smt Sharda i.e. paternal aunt of the husband of applicant No.1.

In the month of March-2022, present applicant No.1 came to her mother's house in Nagpur, and thereafter, the applicant Nos. 2 and 5 brought a child to her, she paid some considerable amount and took the child in her custody.

5. As per the contention of the present applicants, she was issueless and therefore, she obtained custody of

the child. She is loving the child as the mother. She is not aware of the fact that the said child is brought by the co-accused from the complainant. Thus, the only allegation against the present applicant No.1 is that, she has obtained the said child for adoption and treated the child as her child. So, there was no intention to exploit physically to the child. Merely on a false allegation, she is arrested. Her mother is not concerned with the alleged offence. Now, the investigation is completed and charge-sheet is likely to be filed within two to three days, her further custody is not required and no purpose will be served by keeping her behind bar.

6. The said application is strongly opposed by the State on the ground that all the applicants, in furtherance of their common intention, took the child of the informant and the said child is purchased by the present applicant No.1. Thus, there is an exploitation of the child and thereby committed an offence punishable under Section 370 of the Indian Penal Code.

7. Heard learned counsel Mr S.P. Bhandarkar for the applicant. He reiterated the contention and submitted that at the most, the role of the present applicants is to obtain the child but the child was obtained for adoption and there was no any ill-

intention. As far as the consideration amount is concerned, the applicants were not aware that the child belongs to the present complainant. Now, the investigation is practically completed and charge-sheet is likely to be filed. No purpose will be served by keeping the present applicants behind the bar and the offence under Section 370 is not made out against the present applicant.

8. Per contra, learned APP vehemently submitted that all the applicants are involved in the Immoral Trafficking of the child, and the ingredients of Section 370 are attracted against the present applicant. If the present applicant is released on bail, there is every likelihood that she will commit such type of offence, therefore, the bail application deserves to be rejected.

9. Having heard both the sides and on perusal of investigation papers, it reveals that the child was brought from the complainant by co-accused Munnibai and Rekha. As far as the role of the present applicants is concerned, is only that she had obtained the said child for adoption purpose. Admittedly, she has paid some amount for the said child. As far as the ingredients of Section 370 is concerned, for attracting Section 370, the ingredients i.e. the child is to be obtained for the exploitation, or the person who recruits, transports,

harbors, transfers, or receives, a person or persons, by using threats, or using force, or any other form of coercion, or by abduction, or by practicing fraud, or deception, or by abuse of power, or by inducement etc., The explanation of Section 370 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.

10. Considering the above ingredients, if the role of the present applicants is taken into consideration, it is apparent that she is issueless and she has obtained the child for adoption. At this stage, there is no material to connect the present applicants to show that she has obtained the child for exploitation i.e. for transporting or for transferring or harbouring of the said child. The applicant is in jail on 16/04/2023. The investigation is already completed and charge-sheet is likely to be filed within two to three days. No purpose will be served by keeping the present applicants behind bar. As far as applicant No.2 is concerned, she is implicated only because of the mother of applicant No.1, no specific allegations were made against applicant No.2.

11. In view of the above reason, the criminal application deserves to be allowed by imposing certain

conditions. Accordingly, I proceed to pass following order:

- a) Criminal application is allowed.
- b) The applicants are released on bail in connection with Crime 235/2023 registered at Police Station Jaripatka, Nagpur (City) for the offences punishable under Sections 363, 370, 506 read with Section 34 of the Indian Penal Code on executing P.R. Bond of Rs. 25,000/- each with one solvent surety each of the applicant.
- c) The applicants shall not leave the jurisdiction of Nagpur District without prior permission of the Court.
- d) The applicants shall furnish their cell phone numbers and address with address proof.
- e) The applicants 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.

JUDGE