



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1099 CRIMINAL WRIT PETITION NO. 1847 OF 2023

XYZ
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for petitioner : Ms. Akshara Madake
Addl.PP for the respondent – State : Mr. M.M. Nerlikar
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 10 APRIL 2024

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard both the sides extensively.

2. It is a petition by the victim of an offence registered under the Immomoral Traffic (Prevention) Act, 1956 (**Act**) who was less than 18 years of age when she was rescued, but admittedly, has become major.

3. Concerned Magistrate while acting under the Prevention of Immoral Trafficking Act (**PITA**) in connection with the crime, has referred the matter to the Child Welfare Committee (**CWC**) under the Juvenile Justice (Care and Protection) of Chidren Act, 2015 (**Juvenile Justice Act**) in the light of the directions of this Court in the matter of *Prerna Vs. State of Maharashtra and others; 2003(2) Mh.L.J. 105.*

4. The issue is as to if such a victim who was less than 18 years of age on the date of her rescue from a brothel and has been in a protective home as per the decision of the Child Welfare Committee taken in the light of section 17 of the PITA read with the directions in **Prerna** (supra), can be allowed to be subjected to any so-called welfare measures contemplated under the PITA and the Juvenile Justice Act.

5. One need not delve deep to understand the implication of **Prerna**, if it is read in the context of section 17 of the PITA which mandates a Magistrate to refer the matter of the victim for the purpose of intermediate custody and enquiry to the CWC.

6. In the present matter, the CWC has expressly stated that since the petitioner has, in the meanwhile, become major, it did not have any power to take any steps or pass any orders.

7. As can be seen from section 19 of the PITA, it is only at the instance and request by way of application of a person rescued under the provisions of the Act, being a victim, that a Magistrate gets the jurisdiction for directing it to be kept in a protective home or to provide for care and protection or rehabilitation. Independently, the PITA does not empower any Magistrate to exercise any jurisdiction much less directing such a victim who has in the meanwhile become major, to

issue any direction keeping in mind the welfare of the victim or even for his/her rehabilitation.

8. When, admittedly, the petitioner has become major and apparently is not making any application to the Magistrate, we allow the writ petition and direct her to be released immediately from the protection home where she has been lodged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/