

Shailaja

Corrected vide order dated 8th May, 2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3258 OF 2022

Mansi Gorelal Gupta] Applicant
Vs.
The State of Maharashtra and others] Respondents

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Mr. Yusuf Khan i/b Mr. Ayub B. Khan, for Applicant.

Mr. A.A. Palkar, A.P.P, for Respondent Nos. 1 and 2 – State.

Ms. Alisha Parekh, Appointed Advocate, for Respondent No.3.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 2nd APRIL, 2024
PRONOUNCED ON : 8th APRIL, 2024

ORDER:

1. The applicant is eighteen years old girl who is being prosecuted at the instance of *Oshiwara* Police Station, Mumbai in connection with First Information Report No.134 of 2022 for the offences punishable under sections 366A, 370A (1), 372 r/w 34 of the Indian Penal Code (for short “I.P.C”) and Section 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and Section 13, 16, 17 and 18 of the Protection of Children from Sexual Offences Act, 2012

and section 61 and 87 of the Juvenile Justice (Care and Protection) Act, 2015.

2. The applicant was arrested on 10th March, 2022.

3. Briefly stated, it is the case of the prosecution that an information was received that the applicant deals in trafficking and exploitation of minor girls for the purpose of prostitution by inducement and also selling minor girls for the purpose of prostitution. A trap was laid pursuant to such information received by the complainant on 9th March, 2021. The team comprised Police Officials including ladies Police Constable and ladies Police Sub Inspector. Information was that the applicant was about to bring a minor girl at “*All Spice Kitchen and Bar*” Greenfield Society, Lokhandwala Complex, Andheri (West), Mumbai. A decoy customer namely Vijaypratap Krushnakumar Singh was also part of the team to act as a panch witness. He was given mobile number of the applicant. It is alleged that the applicant had quoted price of the girl to be sold at Rs.4,00,000/- and an amount of Rs.10,000/- was to be given to her as an advance. Conversation between the applicant and the decoy was recorded on the mobile phone.

Currency notes of Rs.2,000/- demonetization amounting to Rs.10,000/- were arranged for making payment to the applicant towards advance of the consideration. Before that the applicant alleged to have sent photograph of the victim on the Whats App number of the decoy for confirming the identity. There was a chat between the applicant and decoy. Numbers of currency notes were already noted down separately. Even photostat copies of the currency notes were taken.

4. When the team reached at “*All Spice Kitchen and Bar*”, they noticed the decoy talking with a girl who was sitting across the table in the restaurant. When the decoy signalled the team, applicant and the victim girl were caught red handed. A *panchanama* was drawn. During interrogation of the applicant, it revealed that absconding accused who is stated to be a Casting Director in the Film Industry namely Sameer Sayyed is the main culprit who is dealing in trafficking of the girls. The victim was only 15 years of age, then. The absconding accused Samer Sayed appears to be habitually dealing in sale of minor girls for the purpose of prostitution. He used to pay some amount towards commission to the applicant.

5. Accordingly, an offence came to be registered in view of the Sections hereinbefore referred against the applicant and the absconding accused – Sameer Sayed. The victim was sent to Rescue Foundation, Kandivali.

6. The trial Court rejected first application for bail. The applicant, therefore, has preferred the present application seeking her release on bail.

7. In her statement under Section 164 of the Cr. P.C recorded by 32nd Metropolitan Magistrate, Mumbai, the victim had stated that it was the accused Sameer Sayed who had called her on 8th March, 2022 at 12 o’ clock at Oshiwara and thereafter asked her to visit Chaayos Hotel. It transpires from the said statement that since the victim was in dire need of money due to extreme poverty, it was accused Sameer Sayyed who had induced her into the profession of prostitution by telling her that if she works as a Call Girl or Sex Worker, she would get plenty of money.

8. I heard Mr. Yusuf Khan, learned Counsel for the applicant and Mr. Palkar, learned A.P.P.

9. At the outset, learned Counsel would argue that the applicant who is just 18 years old girl has been incarcerated for more than two years. She has no past record of indulging in any such offence. She is a Makeup Artist who has been introduced by the main accused by taking disadvantage of her poverty. The Counsel undertakes to abide by any conditions which would be imposed by this Court.

10. Per contra, the learned A.P.P while opposing the application submits that the victim was just 15 years old girl at the time of the alleged offence and was forced into flesh trade by the applicant along with the absconding accused Sameer Sayed. The learned A.P.P, therefore, strongly opposed to release the applicant on bail contending that in case of her release, she would indulge in similar offences.

11. No doubt, offence of trafficking as well as selling minor girls for the purpose of prostitution are indeed very serious offences. It is evident from the record that the applicant herself is a girl of eighteen years age, who perhaps, due to poor economic condition of the family, appears to have been earning for her and her family's

livelihood. It also appears that she was induced and instigated by the absconding accused Sameer Sayed who is the main culprit. It is surprising as to how the Investigating Officer could not arrest the main accused. A charge has not yet been framed by the trial Court. It appears that the trial will not be concluded within a reasonable time. Pre conviction detention of the applicant would not serve any purpose, especially for the reason that prime accused has not been arrested by the Investigating Agency. It is pertinent to note that even the victim in her statement recorded by the Police stated that she has been working in the film line ever since she was six years old only to help her family and her bed ridden mother in light of the fact that her father had passed away long back. It seems that she has been working in the Film Industry and acted in some Web Serials on the Television.

12. Be that as it may. Since it is the first offence of the applicant at such a young age and was forced into the illicit business of trafficking by the prime accused, I am persuaded to release her on bail by imposing certain conditions.

13. Consequently, following order is passed :-

: ORDER :

- (a) The application is allowed.
- (b) The applicant – Mansi Gorelal Gupta be released on executing a P.R bond in the sum of Rs.15,000/- with one surety in the like amount to the satisfaction of the Special Judge, under the POSCO Act Borivali (Div), Dindoshi, Goregaon, Mumbai in connection with C.R. No.134 of 2022 registered with Oshiwara Police Station, Mumbai for the offences punishable under sections 366A, 370A (1), 372 r/w 34 of the Indian Penal Code and Section 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and Section 13, 16, 17 and 18 of the Protection of Children from Sexual Offences Act, 2012 and section 61 and 87 of the Juvenile Justice (Care and Protection) Act, 2015.
- (c) The applicant shall attend the Oshiwara Police Station on first Saturday of every month between 10.00 a.m and 1.00 p.m till the charge is framed;

(d) After framing the charge, the applicant shall attend the trial Court scrupulously, unless exempted from appearance;

(e) The applicant shall not indulge in similar offences.

(f) The applicant shall not tamper with the evidence or attempt to influence or contact any of the witnesses or persons concerned with this case;

(g) The applicant shall surrender her passport, if any, to the Investigating Officer immediately.

(h) The applicant shall furnish her residential address and contact details to the respondent and the Trial Court immediately after her release. In case of change in contact details or residential address, same shall be forthwith informed to the Trial Court and the Respondent.

(i) In case of breach of any of the conditions hereinabove, liberty to the prosecution to seek cancellation of bail of the applicant.

13. The application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]