

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3656 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.03.11
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Smt. Meena Mahendra Singh ...Applicant

Versus

The State of Maharashtra and ors. ...Respondents

WITH

BAIL APPLICATION NO. 3733 OF 2023

Smt. Kavita Dinesh Ghadge ...Applicant

Versus

The State of Maharashtra and ors. ...Respondents

AND

BAIL APPLICATION NO. 3630 OF 2023

Dinesh Shivaji Ghadge ...Applicant

Versus

The State of Maharashtra and anr. ...Respondents

Mr. R. B. Mungekar, a/w Durgoli, i/b Kiran Varma, for the
Applicant in BA/3656/2023.

Mr. Kiran Varma, for the Applicant in BA/3733/2023.

Mr. Silvin Kale, a/w Nilesh Mohite, Sudhir Patole, for the
Applicant in BA/3630/2023.

Mr. S. R. Aagarkar, APP for the State/Respondent in
BA/3656/2023 and BA/3733/2023.

Mrs. Ranjana Humane, APP for the State/Respondent in
BA/3630/2023.

Mr. Ameya Abhay Pitale, Appointed Advocate for Respondent
No.2.

PSI Ananda Bhilare, Crime Branch, Unit 1, Thane, present.

CORAM: N. J. JAMADAR, J.

DATED: 6th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the parties.

2. The applicants, who are arraigned in CR No.127 of 2023 registered with Naupada Police Station, Thane, for the offences punishable under Sections 370(2)(3) and 376 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”), Section 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”), have preferred these applications to enlarge them on bail.

3. On 20th April, 2023, an intimation was allegedly received at Anti-human Trafficking Cell, Crime Branch, Thane, that Meena Singh, the applicant in BA/3656/2023, was indulging in the offences of human trafficking alongwith Kavita Ghadge, the applicant in BA/3733/2023, and latter’s husband Dinesh Ghadge, the applicant in BA/3633/2023. It was informed that the applicants were exploiting the victims in order to trafficking and they were living on the earnings of the prostitution.

4. A decoy customer had conversation with a lady, who identified herself as Meena Singh. After negotiations, the decoy customer was sent to the house of Meena (A2). After a while, the police party conducted a raid. A 17 year old girl and another lady victim, who was 36 years of age, were found

alongwith the applicants and decoy customer. Cash of Rs.3000/- handed over by the decoy customer to Meena (A2) was recovered. The victims allegedly stated that the applicants had forced them to indulge in sex work on the pretext of providing work to them, and that the applicants were living on the earnings of the prostitution.

5. The learned Counsel for the applicants submitted that the applicants have been falsely roped in. The alleged minor victim had not at all stated that she was forced to indulge in the alleged acts. In fact, the said victim was allegedly pregnant since prior to the alleged occurrence. Therefore, the offences punishable under the POCSO Act are not at all made out.

6. Per contra, the learned APP submitted that there is overwhelming material to show that the applicants were living on the earnings of the prostitution.

7. Mr. Pitale, the learned Counsel appointed to espouse the cause of respondent No.2, submitted that there is material to show that the applicants had made attempt to force the minor victim to have physical relations with unknown persons and that by itself is sufficient to bring the

acts of the applicants within the dragnet of Section 370 of the Penal Code.

8. I have perused the material on record. The statement of the minor victim recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code") *prima facie* does not indicate that the said minor victim was forced to have physical relations. At best, the minor victim's statement indicates that there was an attempt on the part of Kavita (A1) to persuade the victim to indulge in sex work. The history recorded by the Medical Officer during the course of Medico-Legal Examination of the minor victim also does not indicate that the victim was forced to have physical relations. In the statement recorded under Section 164 of the Code, the minor victim has not subscribed to the prosecution version that she was found with the customer in the bedroom and she was rescued by the police party. In the circumstances, the applicability of the provisions contained in the POCSO Act appears debatable.

9. The major victim, however, stated that she was asked by Meena (A2) to have physical relations with unknown persons and she had indulged in the said act on account of her situation in life. Whether the act attributed to Meena (A2)

would constitute force or inducement so as to fall within the dragnet of Section 370 of the Penal Code would be a matter for adjudication at the trial.

10. In the aforesaid view of the matter, at this stage, when the investigation is complete and charge-sheet has been lodged, further detention of the applicants seems unwarranted.

11. The applicants have been in custody since 20th April, 2023. The trial will take considerable time. The Court is not informed that there are antecedents of the applicants. I am, therefore, inclined to exercise the discretion in favour of the applicants.

12. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) Meena Singh, the applicant in BA/3656/2023, Kavita Ghadge, the applicant in BA/3733/2023 and Dinesh Ghadge, the applicant in BA/3630/2023, be released on bail in CR No.127 of 2023 registered with Naupada Police Station, Thane, on furnishing a PR Bond of Rs.30,000/- with one or two sureties in the like

amount, each.

- (iii) The applicants shall mark their presence at Naupada Police Station, Thane, on the first Monday of every alternate month between 10.00 am. to 12.00 noon for the period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicants shall not tamper with the prosecution evidence. The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicants shall furnish their contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicants shall regularly attend the proceedings before the jurisdictional Court.
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of

opinion on the guilt or otherwise of the applicants and the trial court shall not be influenced by any of the observations made hereinabove.

Applications stand disposed.

[N. J. JAMADAR, J.]