

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3859 OF 2023

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2024.03.16
10:46:25 +0530

Raziya Suleman Patel ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Prabhanjay Dave, a/w Ashray Dave, and Pradeep
Kumawat, for the Applicant.

Mr. Tanveer Khan, APP for the State/Respondent No.1.
API Jaydip Jadhav, DCB CID Unit-5, present.

CORAM: N. J. JAMADAR, J.
DATED: 14th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. The applicant, who is arraigned in CR No.81 of 2018 registered with DCB CID, Mumbai, for the offences punishable under Sections 370(1)(3), 341 and 506 read with 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 5 and 6 of the Immoral Traffic (Prevention) Act, 1956, has preferred this application to enlarge her on bail.
3. The first informant is a junior artist. Accused No.1 Agnes (A1) made a representation to the first informant and other girls that she would send them for dance performance

to Nairobi, Kenya. They would get monthly remuneration of Rs.1,20,000/-, apart from all the expenses of traveling and alighting and boarding at Nairobi. The first informant and other girls were received at Nairobi by the applicant. The applicant took away their passports. It is alleged, initially, the applicant made them to render dance performances. Later on, the applicant threatened and attempted to force the first informant and other girls to have physical relations with other men. The first informant and the victims resisted. Thereupon, the applicant threatened to falsely implicate them in drug trafficking cases and cause harm to them. Eventually, the Nairobi police conducted a raid at Hotel Ajure West Land, Nairobi. The first informant, other victims and 13 girls from Nepal were rescued. They were sent back to India on 29th September, 2018.

4. The first informant alleged, after returning to India she met Agnes (A1). The latter declined to pay the remuneration, as agreed, and threatened the first informant with dire consequences. Hence, the first informant lodged report on 15th November, 2018.

5. Agnes (A1) was arrested. Agnes (A1) was released on bail by the learned Additional Sessions Judge by an order

dated 13th December, 2018. A Look Out Circular was issued against the applicant. On 18th December, 2022 the applicant arrived at Ahmedabad Airport and she was taken into custody and came to be arrested in this crime.

6. Mr. Dave, the learned Counsel for the applicant, submitted that the first informant made the allegations of harassment and human trafficking after two months of her arrival in India. The first informant and the victim had gone to Nairobi, Kenya, voluntarily. As disputes arose between the first informant and the victims, and the accused, who had facilitated their performances at Nairobi, the accused have been falsely implicated. The statements of the first informant and the victims do not indicate that the applicant had in fact forced the first informant and the victims into sex work.

7. As against this, Mr. Khan, the learned APP, submitted that there are clear and categorical allegations of human trafficking against the applicant. Emphasis was laid on the statements of the first informant and the victim recorded under Section 164 of the Criminal Procedure Code, 1973 ("the Code"). The applicant has no permanent place of abode. There is a strong possibility that the applicant will abscond.

8. I have carefully considered the material on record. Evidently, the first informant and the victim had gone to Nairobi out of their own volition. The prosecution alleges that they were induced to go to Nairobi on the pretext of rendering dance performances. From the perusal of the statements of the victims, the gravamen of indictment against the applicant appears to be that she had taken away their passports and made one of the victims to agree to have physical relations with a man.

9. *Prima facie* it appears that the victims were sent to India in the month of September, 2018. The FIR came to be lodged in the month of November, 2018. There is an element of delay in lodging the report. The first informant alleges that after she arrived in India, she met Agnes (A1) and demanded the remuneration as agreed. Upon her refusal to pay the due amount, the matter seems to have been reported to police. It is imperative to note that the allegations of forcing the victims into sex work, *prima facie*, appear to be in the realm of an attempt. The elements of delay and dispute over the non-payment of their remuneration, as agreed, in the backdrop of the aforesaid nature of the accusation, make out a *prima facie* case.

10. The applicant is a woman. She has been in custody since 18th December, 2023. It is unlikely that the trial can be concluded within a reasonable period.

11. The apprehension on the part of the prosecution that the applicant poses a flight risk and will abscond if released on bail, can be taken care of by imposing appropriate conditions.

12. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.81 of 2018 registered with DCB CID, Mumbai, on furnishing a P.R. Bond of Rs.30,000/- with one or more sureties in the like amount to the satisfaction of the learned Magistrate.
- (iii) The applicant shall mark her presence at DCB, CID, Mumbai, on the first Monday of every 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 applicant shall not tamper with the prosecution evidence. The applicant 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 applicant shall furnish her contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall surrender her passport.
- (vii) The applicant shall not leave the limits of Mumbai, Suburban Mumbai, Thane and Navi Mumbai Districts without prior permission of the Court of Session.
- (viii) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (ix) 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 applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]