

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4104 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Nisha Tushar Maghiwal ...Applicant
Versus
State of Maharashtra and anr. ...Respondents

Mr. Kamlesh Gujar, for the Applicant.
Mr. Tanveer Khan, APP for the State/Respondent.
Ms. Manasi Bandiwadekar, for the Victim.
API Suhel Pathan, Kashimira Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 1st MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the applicant, the learned APP for the State - respondent No.1 and the learned Counsel for respondent No.2 – victim.
2. The applicant, who is arraigned in CR No.378 of 2022 registered with Kashimira Police Station, Thane, for the offences punishable under Sections 366(A), 370(1)(4) and 372 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”), Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (“PITA”) and Sections 17 and 18 of the Protection of Children from Sexual Offences Act, 2012, has preferred this application to enlarge her on bail.

3. The indictment against the applicant is that the applicant in furtherance of her common intention with accused No.1 Janhavi was pushing the applicant's two minor daughters and respondent No.2 victim, who was also a minor, into prostitution. Pursuant to a secret information, the Kashimira Police had conducted a raid at Dara's Dhaba. A decoy customer was sent. The applicant and co-accused came at the said Dhaba alongwith victim girls. While the applicant and co-accused were showing the girls to the decoy customer, the police party apprehended them. The victims were rescued and the applicant and co-accused came to be arrested.

4. The learned Counsel for the applicant submitted that the applicant alongwith her daughters and relatives had gone to the said Dhaba for lunch. The police party apprehended the applicant and co-accused, who is the niece of the applicant, and another girl on the basis of suspicion. The prosecution has falsely roped in the applicant and co-accused for human trafficking. The learned Counsel for the applicant invited the attention of the Court to the statements of the alleged victims.

5. The learned APP resisted the prayer for bail. It was submitted that in their statements recorded before the police, the victims have stated that the applicant and co-accused Janhavi were showing them to a boy.

6. In response to notice, the victim - respondent No.2 appeared and filed an affidavit. Respondent No.2 declined to subscribe to the prosecution version. Respondent No.2 asserted that on the date of occurrence, she had gone to Dara's Dhaba alongwith co-accused Janhavi for lunch.

7. The learned APP was directed to place on record copies of the statements of the victims recorded under Section 164 of the Code. I have perused the statements of the victims. Suffice to note that the victims have categorically declined to subscribe to the prosecution version. Even from the perusal of the statements recorded under Section 161 and annexed to the report under Section 173 of the Code, it appears debatable whether the indictment against the applicant and co-accused Janhavi can be said to have been *prima facie* made out. In the aforesaid view of the matter, I am persuaded to exercise the discretion in favour of the applicant.

8. Hence, the following order.

ORDER

- (i) The application stands allowed.
- (ii) The applicant be released on bail in CR No.378 of 2022 registered with Kashimira Police Station, on furnishing a P.R. Bond of Rs.30,000/- with one or two sureties in the like amount.
- (iii) 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 her from disclosing the facts to Court or any police officer.
- (iv) 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.
- (v) The applicant shall mark her presence at Kashimira Police Station on the first Monday of every alternate month between 10.00 am. to 12.00 noon for a period of two years or till the conclusion of the trial, whichever is earlier.

- (vi) The applicant shall not indulge in identical activities for which she has been arraigned in this case.
- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (viii) 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 disposed.

[N. J. JAMADAR, J.]