

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1308 OF 2024

Sangita Ramsumer Patel Petitioner

V/s.

The State of Maharashtra & Anr. Respondents

Mr.Nadeem M.S. Shaikh, for the Petitioner.

Dr.Dhanlaxmi Krishnaiyer, APP, for Respondent Nos.1 and 2-
State.

CORAM : R.M. JOSHI, J.

DATE : 27th AUGUST 2024

P.C:-

. This Petition takes exception to the order dated 2nd September 2023 passed by the Special Judge under Protection Of Children from Sexual Offences Act, 2012 (POCSO), Thane, whereby the victim girl aged about 15 years was directed to be kept in the custody of CWC for the period of two years.

2. The Petitioner is mother of the victim. According to the Petitioner on 15th February 2023 at about 10.00 a.m. police received secret information about human trafficking in an acupuncture center being owned by Respondent No.1 and her

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accomplice. The said place was raided and the victim minor girl, daughter of the Petitioner, was taken in custody. The minor was sent to rescue foundation. FIR came to be registered on 16th February 2023. The victim was produced before the Special Court on 16th February 2023 and was directed to be placed with rescue foundation on 22nd February 2023 and medical examination of the victim was conducted. The learned Special Judge under the POCSO Act passed impugned order directing the victim to be kept in the custody of the CWC for the period of two years.

3. The Petitioner challenges this order on the ground that order impugned is contrary to Section 17(2) and proviso to sub-Section-3 of the Immoral Traffic (Prevention) Act, 1956. The learned counsel for the Petitioner submits that, it is not open for the Court to keep any person in the custody for the period more than three weeks. It is thus, his submission that, the order passed by the Special Judge directing the custody of the victim to be kept with CWC for the period of two years is not tenable being contrary to the provisions of the law.

4. The learned APP supported the impugned order and has drawn attention of this Court to the provisions of the POCSO Act, as well as the observations made by the learned Judge of the paragraph No.7 of the order.

5. No doubt the provisions of Section 17 of the Immoral Traffic (Prevention) Act, 1956 would apply to a person who has been produced before the Magistrate under Section 5 of Section 15 of the Act. However, at the same time it needs to be considered that, the such person here in this case is a minor girl. Undisputedly, provisions of the POCSO are made applicable in this case. POCSO, has been enacted to protect children from offences of sexual assault etc. As per Section 42A, provisions of this Act are in addition and not interrogation of provisions of any other law for the time being in force. This being special statute would prevail over general provision of Immoral Traffic Act.

6. Perusal of the impugned order more particularly paragraph No.7 indicates that, it is not in the interest of the victim child to be handed over her custody to her mother. This Court does not wish to elaborate further on this aspect but suffice

it to say that the observations made by the learned judge are sufficient to indicate that sending the child in the custody of the mother i.e. Petitioner herein is against her interest.

7. Having regard aim and object of enactment of POCSO and peculiar facts and circumstances of the case, learned Special Judge was within its right/authority to pass appropriate direction in the interest of the child to send her into the custody of CWC for the period of two years. The paramount consideration for passing any order in respect of any child, under the any provision would be the interest of the child than any other thing. The order impugned does take care of the interest of the child and this Court sees no reason to cause any interference in this order.

8. The Petition therefore stands dismissed.

(R.M. JOSHI, J.)