

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 797 OF 2024

(This order is corrected as per speaking to the minutes of order dated 08th July, 2024)
Nisha Shakeel Khan ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

- Mr. Milan Desai, for Applicant.
- Mr. Sagar R. Agarkar, APP for Respondent No.1 – State.
- Ms. Deepa Panicker, for Respondent No.2.
- Mr. Sanjay Joshi, PI, Turbhe Police Station, Navi Mumbai.

CORAM : MANISH PITALE, J.

DATE : 03rd July, 2024.

P. C. :

1. Heard Mr. Milan Desai, learned counsel for the applicant, Mr. Sagar Agarkar, learned APP for the State and Ms. Deepa Panicker, learned counsel having instructions to appear on behalf of the respondent No.2.

3. On an earlier occasion this Court had directed the applicant to amend the application, so as to add the victim i.e. the daughter of the applicant herself as party respondent No.2. The said respondent No.2 was served and today she is represented by a counsel.

4. The applicant was arrested on 24th August, 2023, in connection with First Information Report No.0299 of 2023, dated 24th August, 2023, registered at Police Station Turbhe MIDC, Navi Mumbai, for the offences under Sections 366-A, 370(1), 370(4) and 372 of the Indian Penal Code

(IPC) and Sections 4 and 5 of the Immoral Trafficking (Prevention) Act, 1956 (PITA).

5. As per the FIR, the applicant had reached out to the co-accused for making available her own daughter i.e. the respondent No.2 for sexual exploitation at the hands of customers. It is the case of the Investigating Authority that upon information being received, a decoy customer was arranged and at the time of the incident the applicant and respondent No.2 victim arrived at the place of the incident in a rickshaw. The co-accused person was paid cash amount by the decoy customer and the applicant along with respondent No.2 went with the decoy customer.

6. The applicant and the co-accused were arrested and they have remained behind bars. The learned counsel for the applicant submits that on the last occasion, when it was asserted that the respondent No.2 was a minor, she was made a party and notice was served on her, but the documents on record would show that the assertion of the Investigating Authority that respondent No.2 was a minor at the time of the incident, is false and that documents on record demonstrate that she was a major. It is further submitted that the respondent No.2 herself had made a statement before the Chairman of the Child Welfare Committee on 25th August, 2023, to the effect that she had visited a person known to her mother seeking help and for work, when

the police took the applicant in custody. It is submitted that according to the applicant, she was not even present at the spot of the incident and it was perhaps because the police was interested in implicating the co-accused person that the applicant has also been roped in. On this basis, it was submitted that the applicant may be released on bail.

7. The learned APP has opposed the prayer made in the application, highlighting the fact that in the medical examination report of the respondent No.2, it is specifically recorded that the respondent No.2 was aged between 15-16 years with a margin of error of 6 months. It is submitted that in these circumstances offences under the provisions of the Protection of Children from Sexual Offences Act, 2012, can also be added. It is further submitted that the facts of the present case reveal that serious offences have been registered against the applicant who has sought to bring her own daughter into prostitution and that this Court ought not to show any sympathy to the applicant. It is submitted that most of the contentions raised on behalf of the applicant are a matter for trial and therefore, the present application deserves to be dismissed.

8. The learned counsel for the respondent No.2 submits that respondent No.2 is supporting the prayer made in the present application. The respondent No.2 is present in Court and she has specifically instructed

her counsel to make submissions in support of the applicant and it is alleged that no such incident took place, which resulted in registration of the FIR. The learned counsel for respondent No.2 undertakes to file *Vakalatnama* within one week from today.

9. This Court has perused the material on record. The documents at pages 116 and 117 of the application indeed show that even as per the Police Officer who recorded the statement of respondent No.2, while the respondent No.2 was being produced for medical examination, he stated that she was 21 years old. The documents at page 117 pertaining to the Navi Mumbai Municipal Corporation Hospital also records the age of the respondent No.2 as 21 years. As opposed to this, learned APP has placed reliance on the medical examination report which records that the age of the respondent No.2 was between 15-16 years, with a margin of error of 6 months.

10. Considering the conflicting documents, at this stage, the applicant has indeed made out a *prima facie* case to claim that the respondent No.2 was not a minor at the time of the incident.

11. The statement leading to registration of the FIR and even the statement of the respondent No.2 (victim) before the police does indicate the role of the applicant in the present case. The statements indicate that the applicant, despite being the mother of the respondent No.2, had brought her

to the decoy customer in the presence of the co-accused person. But, on the very next date of the registration of the FIR i.e. 25th August, 2023, the respondent No.2 stated before the Chairman of the Child Welfare Committee that she along with her mother had visited the co-accused person asking for help / work, when the police took the applicant in custody. Even the Chairman of the Child Welfare Committee took note of the fact that the aforesaid statement is at variance with the what the respondent No.2 stated before the police when her statement was recorded.

12. Thus, at this stage, the material on record shows that the victim herself is not supporting the statement on the basis of which the FIR came to be registered against the applicant and the co-accused person. In fact, today, the respondent No.2 herself is present in Court and she is represented by counsel. She has specifically instructed her counsel to support the prayer made in the application, thereby indicating that she is not supporting the very basis of registration of the FIR against the applicant.

13. Considering the aforesaid material and the fact that the applicant has remained behind bars since 24th August, 2023, this Court is inclined to allow the present application.

14. In view of the above, the application is allowed in the following terms :

- (A) The applicant shall be released on bail in connection with FIR No.0299 of 2023, dated 24th August, 2023, registered at Police Station Turbhe MIDC, Navi Mumbai, on furnishing PR bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.
- (B) The applicant shall cooperate with the Trial Court and attend the proceedings regularly.
- (C) The applicant shall not tamper with the evidence in any manner. The applicant shall not influence the informant, witnesses or any other persons concerned with the case.
- (E) The applicant shall upon release immediately inform the Investigating Officer about her Contact number and residential address and update the same in case of any change.

15. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled.

16. It is made clear that the observations made in this order are limited to the question of grant of bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

17. The application is disposed of.

(MANISH PITALE, J.)