



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1347 OF 2024

Subhash Pandit Borse	...	Applicant
versus		
State of Maharashtra	...	Respondent

**WITH
BAIL APPLICATION NO.989 OF 2024**

Julia Lawrence Fernandes	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. R.R.Salvi with Mr. R.M.Sawant, Mr. Ausgre Carvalho, for Applicant in BA 1347 of 2024.

Mr. Prablinsingh Abroal with Mr. Anil S. Kamble, for Applicant in BA 989 of 2024

Mr. R.M.Pethe, APP for State.

IO PSI S.B.Nanekar, and API Asha Kadam, Trombay Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 2 MAY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicants, who are arraigned in C.R.No.426 of 2023 registered with Trombay Police Station for the offences punishable under Section 370 read with Section 34 of the IPC and Sections 81 and 87 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Sections 33 and 36 of the Maharashtra Medical Practitioners' Act, 1961, have preferred these applications to enlarge them on bail.

3. On 6 September 2023, an information was received at Trombay Police Station that a lady was to sell a new born child. A trap was led. The said lady was contacted on her cell phone. She agreed to come near Khandoba Temple, Maharashtra Nagar, Mankhurd, along with a child. A surveillance was mounted. At about 12.50 p.m., Reena Nitin Chavan (A2) came at the said spot along with a new born child and Sairabano Shaikh (A1). Reena Chavan (A2) was apprehended along with the child.

4. On interrogation, Reena Chavan (A2) and Sairabano (A1) revealed that the mother of the said child was Gulbashah Matin Shaikh (A3) and co-accused Gorobi U. Shaikh (A4) had conspired with the other co-accused in selling the said child for a sum of Rs.5 lakhs, sans legal adoption. Gulbashah (A3) came to be arrested. In the inquiry with Gulabshah (A3), it transpired with Sairabano (A1) had sold a child of Rukaiya Shaikh with the assistance of Goribi U. Shaikh (A4), and Shabana J. Shaikh (A5). Those accused were also apprehended.

5. The investigation further revealed that the applicant – Julia (the applicant in BA 989 of 2024), was the mastermind behind the trafficking of children. In the disclosure statement, Goribi U. Shah (A4) disclosed that she along with Dr. Sairav and Shabana (A5) had sold the children of Gulabshah and Rukaiya at the instance of Julia. The photographs of the children which were shared with Julia and Sairabano (A1) for showing the same to the prospective purchasers were retrieved

from the mobile phone handset of Goribi (A4) pursuant to the said disclosure statement.

6. The investigation further revealed that Julia was in regular touch with Shabana and Goribi (A4). There were financial transactions between Julia and Goribi (A4). It further transpired that Julia, had in turn, employed Subhash Borse – Applicant in BA 1347 of 2024 and Mohan Suryawanshi to scout for the prospective purchasers to sell the children illegally. Subhash was in regular touch with Julia. Pursuant to the disclosure statement made by Subhash Borse, the photographs of the children which Julia had sent on his Whatsapp, to share the same with the prospective purchasers, were retrieved from the mobile phone of Subhash Borse. Julia came to be arrested on 13 September 2023 and Subhash Borse arrested on 9 October 2023.

7. Mr. Abroal, learned Counsel for the Applicant – Julia, submitted that the applicant has been roped in only on the basis of her antecedents. In the FIR, the applicant was not at all named. Nor Reena and Sairabano who were allegedly apprehended along with a new born child, disclosed the name of the applicant – Julia. It is on the basis of the statements of the co-accused and the disclosure statement made under Section 27 of the Evidence Act, the applicant came to be implicated. There is no material to establish the nexus between the applicant and the crime or the co-accused. As Julia runs “Aham Foundation”, the evidence of financial transactions and CDR cannot be pressed into service to implicate the applicant, submitted Mr.

Abroal.

8. Mr. Salvi, learned Counsel for the Applicant – Subhash Borse, supplemented the submissions of Mr.Abroal. It was urged that there is nothing to connect the applicant – Subhash with the trafficking of the children in question. The applicant Subhash has been roped in on the basis of the disclosure allegedly made by Julia. Thus, the applicant Subhash deserves to be enlarged on bail.

9. Mr. Pethe, learned APP stoutly resisted the prayer for bail. It was submitted that the allegations against the applicants are required to be appreciated in the light of six crimes registered against the applicant Julia during the period 2017 to 2022. In all the cases, the allegations are of trafficking of children. The fact that the applicant was not named in the FIR and the applicant was not apprehended with the co-accused, does not detract materially from the prosecution case as the applicant was the mastermind and there is substantial evidence to incriminate the applicant. Attention of the Court was invited to the statements of the witnesses, including the sister and son of Goribi, who stated that Goribi was rendering the services of providing donors for fertility and was in touch with the applicant Julia, and there were financial transactions between the applicant Julia and Goribi. Noorjaha Shaikh, sister of Goribi also stated that the applicant Julia had shown keen interest in securing the release of Goribi, after she was arrested by the Police.

10. I have given careful consideration to the submissions canvassed across

the bar. Reena and Sairabano were apprehended along with a new born child of Gulabshah. The prosecution alleges that during the course of investigation, it transpired that the accused had attempted to sell a child born to Rukaiya as well. The said child was also retrieved from the custody of a lady near Sahara Hotel, as is stated by Mohd. Yunus Shah, brother of Rukaiya. The role attributed to the applicant – Julia is that of providing money to the expecting mothers and, thereafter, getting new born children and selling them to the prospective purchasers.

11. However, the material on record indicates that the applicant Julia, or for that matter, Subhash Borse, are sought to be roped in on the basis of the disclosure statements of the co-accused. It is trite, a disclosure statement made by one accused is not a legal evidence against the non-maker co-accused. Therefore, the nature and quality of the other evidence assumes significance. The prosecution banks upon the statements of Noorjahan and Amin, sister and son of Goribi. The tenor of their statements is that Goribi was arranging fertility donors and the applicant Julia used to pay her. The statement of Mohd. Yunus Shah refers to the involvement of Goribi Shaikh in the alleged child trafficking. Thus, the statements prima facie do not implicate the applicant – Julia.

12. The prosecution then relies upon the electronic evidence in the form of the photos retrieved from the mobile phone handset of the accused and the Whatsapp chats. Those photos and chats were retrieved pursuant to the disclosure statements

made by the co-accused. The veracity and reliability of the said material is a matter for evidence and trial. Indeed, there appear to be financial transactions between the applicant Julia and Amin, son of Goribi. However, the statements of Noorjaha and Amin Shaikh refer to some arrangement between the applicant Julia and Goribi. The CDR does indicate that Julia was in touch with Subhash Borse, Shabana and Goribi. The CDR in itself without the transcript of the conversation may not be sturdy material to deprive the personal liberty of the applicants.

13. It is true, Applicant Julia has antecedents. That puts the court on guard. But the quality of evidence which emerges in the instant case against the applicant Julia deserves to be taken into account. The complicity of Subhash Borse, as noted above, rests on the disclosure made by Julia and the discovery made by Subhash leading to the retrieval of the photos of children and the CDR. The pivotal question which may warrant adjudication at the trial is, whether there is nexus between the applicants – Julia and Subhash Borse with the trafficking of the children in question.

14. In the aforesaid view of the matter, at this stage, when the investigation is complete for all intent and purpose, I am persuaded to exercise discretion in favour of the applicants.

15. Hence, the following order :

ORDER

- (i) The Applications stand allowed.
- (ii) The Applicants – Subhash Pandit Borse and Julia Lawrence Fernandes be released on bail in C.R.No.426 of 2013 registered with Trombey Police Station on furnishing a PR bond in the sum of Rs.50,000/- each and one or two sureties in the like amount to the satisfaction of the trial Court.
- (iii) The applicants shall mark their presence at Trombey Police Station on first Monday of every month between 11 am to 1 pm for a period of three years or till the 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 numbers and residential addresses 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.
- (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.

Applications disposed.

(N.J.JAMADAR, J.)