

CRIMINAL BAIL APPLICATION NO. 1706 OF 2024

Mr.Ankit Takle a/w Tarsem Singh Gabbi for the Applicant.
Mr.A. A. Naik, APP for the Respondent – State.
PSI Shri. S. S. Ghag, Malvani Police Station is present.

CORAM : N. J. JAMADAR, J.
DATE : 28th AUGUST 2024

1. Heard the learned Counsel for the Applicant and the learned APP for State.
2. The applicant, who is arraigned in C.R. No. 1263 of 2022, registered with Malvani Police Station for the offences punishable under Sections 366(A), 370(A), 370(3), 372, 376 read with 34 of the Indian Penal Code, 1860; sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and Sections 4, 8, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012, seeks to be enlarged on bail.
3. The victim had left her home in Vikramnagar, Dist. Patna, Bihar on account of a quarrel with her mother and came to

Mumbai. The victim, then allegedly 17 years of age, was staying with a lady, namely Rani Didi. The applicant is the sister of the said Rani Didi. Another lady Sulekha Didi contacted the victim and asked her to come to the house of accused No.1 Rosonarabibi Zulfikar, whom the victim called Rosonarabibi. In the house of accused No.1 Rosonarabibi, the victim was allegedly forced to have sexual intercourse with four persons. The victim was paid a sum of Rs.4,000/-. Some amount was paid by the Rosonarabibi to Gudia Didi, the applicant.

4. At the outset, the learned Counsel for the Applicant invited the attention of the Court to an order dated 9th May 2024 passed in Criminal Bail Application No.3717 of 2023, whereby Ramesh Buddhram Panjabi, the co-accused came to be released on bail. Ramesh Panjabi had allegedly acted as a tout.

5. The learned Counsel for the Applicant further submitted that the statement of the victim was recorded on 8th November 2022 wherein the victim had categorically claimed that she was 18 years 7 months of age and her date of birth was 10th July 2004.

6. The learned APP disputed this position. Inviting the

attention of the Court to the X-ray report which indicates that the radiological age of the victim appeared to be more than 16 years and less than 17 years.

7. The statement of the victim was recorded on the very day the victim was rescued and the Applicant and the co-accused were arrested. The victim specifically stated that her date of birth was 10th July 2004. While deciding Bail Application of Ramesh Panjabi, this Court had noted *prima facie* inapplicability of the offences punishable under POCSO Act, 2012.

8. The learned Counsel for the Applicant further submitted that the victim was initially staying with the sister of the Applicant, namely Ranididi. Thereafter, she started to reside with the Applicant. Taking the Court through the statement of the victim, it was submitted that, there is no material to indicate that the Applicant had induced the victim to indulge in the immoral act. It was further submitted that since the co-accused has been enlarged on bail and the Applicant is in custody since November 2022, the Applicant also deserve the relief of bail.

9. In opposition to this, the learned APP submitted that the statement of the victim squarely incriminates the Applicant.

Support was sought to be drawn from the statement of Rani Sinha, the sister of the Applicant.

10. I have carefully perused the statement of the victim. *Prima facie* it appears that the victim came in contact with the lady by name Sulekha Didi. The said lady invited the victim to the room of co-accused Rosonarabibi. The victim does not state that it was the Applicant who induced the victim to visit the house of co-accused Rosonarabibi and indulge in immoral act. The victim states that the Applicant had accompanied her when she disclosed to the Applicant that she was going to the house of Rosonarabibi. True, there is an allegation that out of the amount which the victim had received some money was paid to the Applicant. However, this allegation is required to be considered in the light of the fact that the victim was residing with the applicant. The victim was allegedly forced to have sexual relations at the house of the Rosonarabibi.

11. *Prima facie*, the Applicant cannot be arraigned for keeping the brothel. In the circumstances of the case, whether the Applicant can be arraigned for living on the earnings of prostitution, would be a matter for adjudication at the trial.

12. The Applicant has been in custody since 8th November 2022. It is unlikely that the trial can be commenced and concluded within a reasonable period. The Court is not informed that the Applicant has any antecedents. In these circumstances, I am inclined to exercise the discretion in favour of the Applicant.

Hence, the following order:

ORDER

- 1] The application stands allowed;
- 2] The applicant be released on bail in C.R. No. 1263 of 2022 registered with Malvani Police Station, on furnishing a P.R. Bond of Rs.30,000/- with one or more local sureties in the like amount;
- 3] The applicant shall mark her presence at Malvani Police Station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier;
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the

facts of the case.

5] The applicant shall furnish her contact number and residential address to the investigating officer and shall keep her updated, in case there is any change.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] The applicant shall not indulge in identical activity for which she has been arraigned in this case.

8] 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.)