

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3002 OF 2024

Goribi Mohammed Usman Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 3777 OF 2024

Shabana Zakir Shaikh ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Prablin Abrol, a/w Anil Kamble, Sujata Shirsi and Rahul
Chafe, for the Applicant in both BA.

Mr. H. J. Dedhia, APP for the State.

API Umesh Kasbe, a/w PC Pradeep Deshmukh, Trombay
Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 21st NOVEMBER, 2024

ORDER:

1. The applicants, who are arraigned in CR No.426 of 2023 registered with Trombay Police Station, for the offences punishable under Sections 370 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") 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.

2. 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 laid. 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.

3. Upon interrogation, Reena Chavan (A2) and Sairabano (A1) revealed that the mother of the said child was Gulbasha Shaikh (A3) and co-accused Goribi Shaikh (A4) had conspired with the other co-accused to sell the said child for a sum of Rs.5,00,000/-, sans legal adoption. Gulbasha (A3) came to be arrested. In the inquiry with Gulabsha (A3), it transpired that Sairabano (A1) had sold a child of Rukaiya Shaikh with the assistance of the applicants Goribi Shaikh (A4) and Shabana Shaikh (A5). The applicants were also apprehended.

4. The investigation further revealed that Julia Fernandes (A6) was the mastermind behind the trafficking of children. In the disclosure statement, the applicant Goribi Shaikh (A4) disclosed that she along with Sairabano (A1) and Shabana (A5) had sold the children of Gulabsha and Rukaiya at the instance

of Julia (A6). The photographs of the children which were shared with Julia (A6) and Sairabano (A1) for showing the same to the prospective purchasers were retrieved from the mobile phone handset of the applicant Goribi (A4) pursuant to the said disclosure statement. The investigation further revealed that Julia was in regular touch with the applicants Goribi (A4) and Shabana (A5).

5. Mr. Abrol, the learned Counsel for the applicants, submitted that co-accused Julia Fernandes (A6), Subhash Borse (A7), and Mohan Suryavanshi (A8) have already been enlarged on bail by this Court by orders dated 2nd May, 2024 and 13th June, 2024. The applicants have been roped in on the basis of the statements of the co-accused Rina Chavan (A2) and Sairabano Shaikh (A1). There is no other material to connect the applicants with the alleged offences. Investigation is complete. The applicants have been in custody since 6th September, 2023 and 7th September, 2023, respectively. Therefore, further detention of the applicants is not warranted.

6. The learned APP resisted the prayer for bail. It was submitted that the applicants have been specifically named as the persons who trafficked and sold new born babies. Attention of the Court was invited to the statements of Rukaiya Shaikh

recorded under Section 161 and Section 164 of the Code of Criminal Procedure, 1973. It was submitted that there is electronic evidence to show that the applicant had shared the photographs of the new born baby to be trafficked. As the applicants are involved in the racket to illegally sell the new born babies, the applicants do not deserve to be enlarged on bail.

7. From the perusal of the FIR, it becomes evident that pursuant to a secret information initially Rina Chavan (A2) and Sairabano Shaikh (A1) were apprehended when they had reached near Khandoba Temple, Maharashtra Nagar, Mankhurd, Mumbai. Those accused had named applicant Goribi Shaikh (A4) as one of the traffickers. A disclosure statement was made by Sairabano Shaikh (A1) to retrieve the photographs of the new born baby, which were forwarded by Goribi Shaikh (A4) at the instance of Julia Fernandes (A6).

8. *Prima facie*, the aforesaid statements does not constitute a legal evidence. It is trite, a statement made by one accused is not a legal evidence against another co-accused. Nor the discovery under Section 27 of the Evidence Act can be fastened against a non-maker co-accused.

9. Indeed, Rukaiya Shaikh, the mother of one of the babies allegedly trafficked, has stated that the applicants had coerced her to sell the new born baby. It is necessary to note that the initial transaction between the parties appeared to be that of financial assistance by applicant Goribi Shaikh (A4) to the said Rukaiya Shaikh, when the latter was carrying pregnancy in the year 2020. It is alleged that there was a miscarriage and the said witness could not pay the expenses which were then incurred by Goribi (A4) for the said treatment and, thus, the applicants coerced her and her sister Gulbasha Shaikh (A3) to sell their babies.

10. The fate of the prosecution case at the trial would *prima facie* hinge upon the veracity of the claim of Rukaiya Shaikh. The statement of Anita Popat Sawant, the Manager of Royal Nursing Home relied upon by the learned APP indicates that the applicants had brought a pregnant lady to Royal Nursing Home for treatment under a fictitious name. The said witness, however, claimed to have learnt about the involvement of the applicants in human trafficking, later on.

11. The situation which thus obtains is that initially the applicants were named by the co-accused as the confederates in the human trafficking, alongwith Julia Fernandes (A6), who has

already been enlarged on bail. Those statements do not constitute legal evidence. The statement of Rukaiya Shaikh, one of the victims, *prima facie* incriminates the applicants. However, the veracity of the claim of Rukaiya Shaikh would be a matter for adjudication at the trial.

12. The applicants are women. The applicants have been in custody since 6th September, 2023 and 7th September, 2023, respectively. Investigation is complete for all intent and purpose. It is unlikely that the trial can be concluded within a reasonable period.

13. In these circumstances, I am inclined to exercise discretion in favour of the applicants.

14. Hence, the following order:

: O R D E R :

- (i) The Applications stand allowed.
- (ii) Goribi Mohammed Usman Shaikh, the applicant in BA/3002/2024 and Shabana Zakir Shaikh, the applicant in BA/3777/2024 be released on bail in CR No.426 of 2023 registered with Trombay Police Station, on furnishing a P.R. 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 11.00 am. to 1.00 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 not indulge in identical activities for which they have been arraigned in this case.
- (vii) 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Applications disposed.

[N. J. JAMADAR, J.]