



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3804 OF 2024**

Rosonarabibi Julfikar Gazi	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Ms. Roshni J. Singh, for Applicant.
Mr. H.J.Dedhia, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 7 OCTOBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.1263 of 2022 registered with Malwani Police Station for the offences punishable under Sections 366-A, 370-A, 370(3), 372, 373 read with Section 34 of the Indian Penal Code, 1860, Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, has preferred this application to enlarge her 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. Gudiya Khatun Aslam Mansuri (A3) is the sister of Rani Didi. Another lady Sulekha Didi contacted the victim and asked her to come to the house of the applicant, whom the victim called Rasanadidi. In the house of the applicant, the victim

was allegedly forced to have sexual intercourse with four persons. The victim was paid a sum of Rs.4,000/- by the applicant.

4. On 4 November 2022, Malwani Police laid a trap and a decoy customer was sent. The victim and decoy customer were found in the room of the applicant. Thereupon, the applicant, Ramesh (A2) and Gudiya Khatun (A3) came to be arrested.

5. Learned Counsel for the Applicant, submitted that the victim was a major. The provisions contained in the POCSO Act, 2012 are thus not attracted. In her statement recorded on 8 November 2022, the victim had stated that she was 18 years and 7 months of age. The victim refused to give her statement under Section 164 of the Code of Criminal Procedure. The victim was not at all forced by the applicant to indulge into an immoral act. Therefore, charge under Section 370 of the Penal Code is also not attracted. Moreover, Ramesh (A2) and Gudiya (A3) have already been enlarged on bail. Thus, the applicant who has been in custody since 5 November 2022 also deserves to be released on bail.

6. Mr. Dedhia, learned APP, resisted the prayer for bail. Learned APP submitted that the applicant was running a brothel and living on the earnings of the prostitution. The applicant has been specifically named as a person at whose place the victim was sexually exploited. The victim and the decoy customer were found in the room of the applicant. Therefore, a very strong

prima facie case is made out against the applicant. Learned APP, however, fairly submitted that the statement of the victim under Section 164 of the Code, could not be recorded.

7. To begin with, it is necessary to note that the statement of the victim was recorded on the very day the victim was rescued. The victim specifically stated that her date of birth was 10 July 2004. While releasing co-accused Ramesh (A2) and Gudiya (A3), this Court has noted prima facie inapplicability of the offences under POCSO Act, 2012.

8. As regards the offences under the Penal Code and the Immoral Traffic (Prevention) Act, 1956, in her statement, the victim has stated that on 23 October 2022, she had come to the house of the applicant. On that day, she was made to have physical relations with four persons. The applicant had paid a sum of Rs.4,000/- to her. The statement of the victim, prima facie, incriminates the applicant. The question as to whether the applicant has used force or any other form of coercion or given inducement for the purpose of exploitation of the victim so as to constitute trafficking may, however, warrant adjudication at the trial.

9. The applicant has been in custody since 5 November 2022. Having regard to the large pendency of the cases, it is extremely unlikely that the trial can be concluded within a reasonable period. The Court was informed that the applicant has no antecedents.

10. In the aforesaid view of the matter, as the co-accused have already been enlarged on bail, I am persuaded to exercise discretion in favour of the applicant.

11. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Rosonarabibi Julfikar Gazi be released on bail in C.R.No.1263 of 2022 registered with Malvani Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark her presence before Malvani 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 applicant shall not tamper with the prosecution evidence. The applicant 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 applicant shall furnish her contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant 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.

Application disposed.

(N.J.JAMADAR, J.)