



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 80 OF 2024

Sushila w/o Sushil Paisadeli

Vs.

State of Maharashtra, Through Police Station Ajani, Nagpur and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. S. Nayak, Advocate for applicant.

Mr. U. R. Phasate, APP for respondent No.1/State.

Mr. A. M. Chaudhari, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 02/05/2024

1. The applicant came to be arrested on 04.10.2020 in connection with Crime No.512/2020 registered with Police Station Ajani, Nagpur for the offence punishable under Sections 376 (2)(n), 370 read with Section 34 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act.

2. The accusation against the present applicant is on the basis of report lodged by one Ravi Narendra Mishra alleging that one Rakesh Pande is his brother by relation who is having two sons. On 03.10.2020 at 9.30 p.m. Gittikhdan police staff came along with the two boys and it revealed that the boys were involved in the crime of the sexual assault. It further revealed that one Sushil Paisadeli and the present applicant who is the wife of said Sushil has

involved in the human trafficking and prostitution. On the basis of said report, police have registered the crime against the present applicant.

3. During investigation, the statement of the minor victim girl was recorded, who has alleged that the co-accused Sushil residing along with the present applicant. In the month of September, present applicant had been to the hospital along with her mother, in her absence the co-accused Sushil has subjected her for sexual assault and thereafter, he took her to one Pawan, who has also subjected her for sexual assaulted. She further stated that thereafter, she came to know that present applicant and her husband are involved in the human trafficking and they are dealing with the work of purchasing the girls and selling them for marriage. On the basis of said statement, the crime is registered against the present applicant.

4. Learned Counsel for the applicant submitted that except this statement, which is vague in nature, no other evidence is collected by the Investigating Officer to connect the present applicant with the alleged offence. Merely because she is the wife of the co-accused, she is implicated in the alleged offence. He submitted that there are no criminal antecedents, no incidents are narrated by the victim which reveals that she is involved in the offence of human trafficking. Now, investigation is

already completed and charge-sheet is filed. From last four years she is behind bar and there is no progress in the trial. He submitted that now further incarceration of the present applicant is not required and prays for releasing her on bail.

5. Learned APP strongly opposed the said application on the ground that considering the serious allegations against the present applicant, who is involved in the human trafficking, the application deserves to be rejected. He also invited my attention towards the order passed by the learned trial Court and submitted that a minor victim girl was subjected for sexual assault by the co-accused and the involvement of the present applicant is also revealed from her statement. He also invited my attention towards the observations of the Division Bench of this Court in the case of **Freedom Firm Vs. Commissioner of Police, Pune and others** in **Criminal Public Interest Litigation No.4 of 2015 decided on 30.10.2015** wherein the Division Bench has laid down the guidelines while releasing the applicants who are involved in a human trafficking on bail. He submitted that the fundamental right of the victim is not to be trafficked and considering the gravity of the offence, the bail application deserves to be rejected.

6. Learned appointed Counsel for the respondent No.2 has also reiterated the said

contention and submitted that if the applicant is released on bail, she would tamper with the prosecution evidence and therefore, application deserves to be rejected.

7. After hearing the learned Counsel for the applicant and learned APP for the State, perused the entire investigation papers. Admittedly, besides the statement of the victim girl, there is no other material to connect the present applicant with the alleged offence to show her involvement in the human trafficking. As far as the statement of the victim regarding the sexual assault on her by the co-accused, there is a specific allegations, but as far as the present applicant is concerned, she alleged that she came to know that the applicant and her husband are dealing with the human trafficking. Except this statement, there is no other material to connect the present applicant with the alleged offence.

8. The Division Bench of this Court has considered the aspect of trafficking in humans which is a heinous offence as it is and as the name suggests, is a crime against humanity resulting in human rights violations. The Division Bench therefore laid down the guidelines for grant of bail in cases of human trafficking and observed that the application for bail must take into account that the fundamental right of a victim not to be trafficked, the antecedents

of the accused - The trafficker would be easily seen to have been earlier apprehended and arrested and such accused are habitual offenders, the repetitiveness of the offence since it is a career in crime, it is bound to be repeated upon the accused being released on bail thus trafficking further similar victims which is the State's duty to prevent, the intimidation and threat that accompanies the relationship between the accused and the victim and the economic position of the accused, if a trafficker, is to be taken into consideration.

9. In the light of the above said guidelines, if the facts of the present case are taken into consideration. Admittedly, except the statement of the victim there is no other material to show that the present applicant who is the wife of the co-accused is involved in the human trafficking. For the sufficient period, she is incarcerated in jail. There is no progress in the trial. Considering all these aspects, the application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Sushila w/o Sushil Paisadeli** shall be released on bail in connection with Crime No.512/2020 registered with Police Station Ajani, Nagpur for the offence punishable under Sections 376 (2)(n), 370 read with Section 34 of the Indian Penal

Code and under Section 4 of Protection of Children from Sexual Offences Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(iv) The applicant shall not indulge in similar type of the activities.

(v) The applicant shall furnish cell phone number and address with the address proof before the Investigating Officer.

10. The fees of the appointed Counsel be quantified as per rules.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)