



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (ABA) No. 193 of 2023

Elamulla Jangumiya Khan ..vs.. State of Maharashtra through PS.O., PS. Koradi, Nagpur]

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

Court's or Judge's orders

Mr. S. P. Bhandarkar, Advocate for the applicant
Mr. A. M. Kadukar, APP for the State/non-applicant

CORAM : ANIL L. PANSARE J.

DATED : 26-11-2024

On previous date, following order was passed.

“These Applications were filed in February-2023 and March-2023 respectively. Interim relief was granted at that time. The chargesheet has been filed. As could be seen, the Applications are pending for last 1½ years. The learned AGP seeks time.

2. Considering the fact that Applicants were granted interim relief and there is no allegation of misuse of the liberty, the learned AGP shall justify the custodial interrogation, if he intends to oppose making interim relief absolute. Accordingly and as requested, stand over to 26th November, 2024.”

2. The accusations against the applicant is that he was in contact with prime accused Ayesha Khan, who has allegedly sold the child to Santosh Gangurde and Meena Gangurde. According to prosecution, Santosh and Meena Gangurde had adopted the said child and was found safe in their house.

3. Despite such status, the prosecution has invoked Section 370 of the Indian Penal Code (IPC) against the

applicant and co-accused so also the provisions of the Maharashtra Control of Organised Crime Act, 1999.

4. Section 370 of IPC deals with trafficking of person. The essential ingredients are that the person, who for the purpose of exploitation, either recruits or transports or harbours or transfers or receives, a person (in the present case, child) by using threats or using force or by abduction or by practising fraud or by abuse of power or by inducement. The explanation (1) defines 'exploitation' to mean an act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs. In other words, the child so trafficked should be for the purposes, either for physical or sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs. It is nobody's case that child was so trafficked for such exploitation, rather the prosecution has come up with a case that the child has been adopted by the couple and was safe at their house. Such act, at the most, could be said to be illegal adoption but by no stretch of imagination can it attract an offence of trafficking of child.

5. Be that as it may, the applicant was granted interim anticipatory bail vide order dated 27-3-2023. There are no allegations of he misusing the liberty. Charge-sheet has been filed. Learned Additional Public Prosecutor could not give any justification for custodial interrogation of the applicant. In the circumstances, there appears to me no reason why should interim relief be made absolute. Hence, following order.

ORDER

(i) In the event of arrest in Crime No. 50/2023 registered with Police Station, Koradi, Nagpur City for the offences punishable under Section 370 read with Section 34 of the Indian Penal Code and Sections 75 and 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the applicant – Salamulla Jangumiya Khan be released on bail on he executing PR bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) The applicant shall regularly attend the Court and co-operate to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also, shall not tamper with the evidence.

(iv) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned, and shall not change the residence till the final disposal of the case.

(v) The applicant shall maintain law and order.

(vi) The applicant shall surrender his passport, if any, before the Investigating Officer within a period of one week from today. If he does not possess any passport, he shall file affidavit to that effect.

6. The criminal application is disposed of in aforesaid terms.

(Anil L. Pansare, J.)

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