



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

CRIMINAL APPLICATION (ABA) NO.762 OF 2023

Rupwati Wd/o Kallu Kalkhor

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station,
Lakadganj, Nagpur

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

Court's or Judge's orders

Mr. Madhur Deo, Advocate for applicant.
Ms. H. S. Dhande, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/03/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.759/2020 registered with Police Station, Lakadganj, Nagpur for the offences punishable under Sections 366-A, 370, 370-A read with Section 34 of the Indian Penal Code and Sections 3, 4, 5, 6, 7 and 8 of the Immoral Traffic (Prevention) Act 1956 and Section 3, 4, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012, the present applicant approached this Court for grant of pre-arrest bail.

2. The applicant is apprehending arrest at the hands of police as crime is registered on the basis of report lodged by Police Inspector Omprakash Sontakke alleging that on the basis of information gathered, he has conducted a raid at red-light area in Nagpur, which is also known as Gangajamuna.

During the said raid, the police team apprehended several accused and also found one girl who was forced into the sex trade. Therefore, he lodged the report, on the basis of which crime is registered.

3. Learned Counsel Mr. Madhur Deo, submitted that as far as the present applicant is concerned, the only allegation against her is that she induced the victim and brought her at Nagpur and she is involved in the sex trade. He submitted that though in the FIR the allegations are made against the present applicant, but during her statement under Section 164 of the Code of Criminal Procedure, she has specifically stated that at her own she is in the sex trade business. He submitted that now, the investigation is completed and charge-sheet is filed. The custodial interrogation of the present applicant is not required. In view of that, he be protected by granting pre-arrest bail. He further submitted that as far as the material collected during the investigation by referring the victim for ossification test to ascertain her age also not supporting the prosecution case, which shows that the age of the victim ascertain is 19 to 20 years. Thus, she is not below 18 years and therefore, the provisions of the Protection of Children from Sexual Offences Act, are not applicable. He submitted that considering the two different statements made by the victim, the false implication of the present applicant is revealed.

Her custodial interrogation is not at all required. She be protected by granting ad-interim protection.

4. In support of his contention he placed reliance on the order passed by this Court in **Criminal Application (ABA) No.550/2016 (Smt. Munnibai Tikaram Kalkhor Vs. The State of Maharashtra)** and **Criminal Application (ABA) No.546/2016 (Smt. Fulabai w/o Ajabsingh Dhanawat Vs. The State of Maharashtra)** decided on **22.09.2016**, wherein this Court observed that one version is as recorded during the course of police investigation and the other version is as recorded by the Court of Judicial Magistrate, First Class while conducting the enquiry into the applications filed by the parents of the victims seeking their custody. It is also observed that at that time those girls were saying that they were forced into the business of prostitution by their mother and elder sister, respectively. Subsequently these two girls stated before the learned Magistrate that they came to Nagpur voluntarily and that no element of force or coercion being brought upon them by anybody was involved.

5. He submitted that by observing this, the applicant therein were released on bail. The similar ratio is applicable in the present case also and prays for granting the pre-arrest bail.

6. Learned APP strongly opposed the said application on the ground that considering the serious allegations made in the FIR and during the investigation, the involvement of the present applicant was revealed. The offence is of a serious nature, the girls are forced for the prostitution. In view of that, the custodial interrogation of the present applicant is required. Considering the gravity of the offence, the application deserves to be rejected.

7. Having heard the learned Counsel for the applicant and learned APP for the State, perused the investigation papers. Admittedly, there are two statements made by the victim, in one statement before the police, she stated that she was induced by the present applicant for the prostitution and brought at Nagpur. In 164 Cr. P.C. statement, she has stated that she at her own in the said prostitution and nobody forced her. The ossification test also reveals her age between 19 to 20 years including the margins of error. During the investigation, the Investigation Officer has also recorded the relevant statements of the witnesses.

8. After hearing the learned Counsel for the applicant and perused the entire material on record. There is no dispute as to the fact that the victim was found when the raid was conducted. As per her initial statement, it was the present applicant who

brought her at Nagpur and forced her for the prostitution. In subsequent statement, she has changed the version. This aspect is dealt by this Court in **Criminal Public Interest Litigation No.4/2015 Freedom Firm Vs. Commissioner of Police, Pune and Ors. Decided on 30.10.2015** wherein the guidelines are issued while considering the bail application in the cases of human trafficking.

9. The Division Bench of this Court had considered that the application for bail must take into account -

"(a) The fundamental right of the victim not to be trafficked. - All else is subservient.

(b) The antecedents of the accused - The trafficker would be easily seen to have been earlier apprehended and arrested. Such accused are habitual offenders.

(c) 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.

(d) The intimidation and threat that accompanies the relationship between the accused and the victim. - The victim is the helpless chattel of the accused, the accused being in a position to threaten her to lie and coerce her to turn hostile and thus tamper with evidence.

(e) The economic position of the accused, if a trafficker, - This would reflect in the brothel

that he or she runs and which is statutorily required to be sealed and closed by the police - this would be the most potent antidote. The crime of trafficking in humans is an organized crime. It is one of the most profitable criminal activities world-wide.

(f) The violence involved in the case-reflected from the statement of the victim and the other witnesses, if any. The violence suffered by the victim would show the strength in the position of the accused."

10. It is further held by this Court that by keeping in mind these diverse ways to frustrate justice adopted in various modes and after fully appreciating and considering the aforesaid aspects the Magistrate/Judge must give the grounds and the reasons as to why in a transient offence such as trafficking also he/she has deemed it fit to grant bail, more especially to the trafficker and the brothel owner.

11. The Division Bench of this Court further observed that bail should be denied to habitual offenders (traffickers) except upon exceptional, special and compelling reasons upon the most stringent conditions. Bail should be refused to brothel owner until the brothel is closed and sealed under Section 18 of the ITPA. Bail should also be denied if the victim is a minor except in case of any extraordinary, compelling or special circumstances to

be explained in the order itself and upon the most stringent conditions.

12. In view of the above observations in the said **Criminal Public Interest Litigation** (supra) and if the facts of the present case are considered, though it appears from the record that victim has attained the age of majority, but considering her first statement and the fact that she found during the raid and her immediate statement discloses that it is the present applicant, who induced her and brought her at Nagpur and kept her in a prostitute or sex trade business, sufficiently shows the involvement of the present applicant.

13. Admittedly, the parameters for grant of anticipatory bail and bail under Section 439 of Cr. P.C. are different. Considering the gravity of the offence at this stage, the applicant has not made out a case for grant of pre-arrest bail. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass following order.

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)