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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 4656/2024 CRL.M.A. 38112/2024
SHABNAM BIBIPetitioner
Through: Mr. Bhargwa Jha, Advocate.
versus
THE STATE OF NCT OF DELHIRespondent
Through: Mr. Aman Usman, APP for State

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
19.12.2024

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CRL.M.A. 38111/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application is accordingly disposed of.

BAIL APPLN. 4656/2024

1. This petition has been filed seeking bail in FIR No. 224/2024 registered at P.S. South Rohini Delhi, under Sections 363/365/34 IPC & Section 81/87 JJ Act. Subsequently, the charge sheet was filed on 11th September 2024 under Sections 363/365/370(4)/201/120(B)/34 IPC & Section 81/87 JJ Act. Petitioner has been in custody since 30th June 2024.
2. Case of the prosecution is that information was received about a child being sold for money, pursuant to which two ladies were detained along with two children.
3. The two ladies were identified as Simran @ Salmi and Shabnam Bibi (petitioner herein). Shabnam Bibi was found along with her daughter, who was 15 months old, whereas Simran was found with another infant,



approximately 15 to 20 days old. During the enquiry, the identity/guardianship of the infant could not be established, and the child was rescued and placed in a Care and Protection Home at Ashram Orphanage, c/o Hope Foundation, A-46, New Multan Nagar, Near Peeragarhi, Delhi - 110063.

4. Further enquiries with both the petitioner and Simran were conducted, during which a disclosure regarding one Kutumuddin was made, who was arraigned as the main accused. Upon interrogation, Kutumuddin disclosed that the infant belonged to the Sahibganj area of Jharkhand and that the parents of the newborn wanted to give the baby to someone for upbringing due to their poor financial condition. Kutumuddin further disclosed that, upon learning that an infant could be “procured” with the help of Simran @ Salmi, he devised a plan to sell the child in Delhi in exchange for money and included his nephew Iliyas (husband of petitioner) and petitioner in the scheme.

5. Statement of one Salgi Hasda (mother of the victim) was recorded under Section 164 Cr.P.C., wherein she stated that she is 30 years old, and has two children. She further stated that, due to extreme poverty, she and her husband could not take care of both children. Her previous statement, recorded under Section 161 Cr.P.C., also states that she had not given the child based on a monetary transaction. She stated that she resided in a hut in Sathali, in the mountains, and given the poor condition of their hut, she gave her child to someone known to her. She expressed no objection to the child being taken for adoption and stated that the decision was made with the consent of her husband.

6. During investigation, blood samples of Salgi and the infant were sent to FSL for DNA analysis. As per the report dated 10th October 2024, a



biological relationship was established between Salgi and the child, who is presently in the Care and Protection Home.

7. The other child was found to be of Shabnam's; however, due to the child's young age, no specific documentation was available. Counsel for petitioner has informed the Court that Shabnam's 15-month-old child is with her in jail, while she is serving custody

8. APP filed a status report in this regard, which has been placed on record. He, further, states on instructions of the IO, that they were not able to trace anybody who was to receive the child. However, it was found that Shabnam had brought the child to Delhi from Jharkhand.

9. Notwithstanding, the ultimate issue that may arise as to why Salgi gave the child to an unknown person, who subsequently ended up with Shabnam (petitioner).

10. The infant who was recused and is now in the Care and Protection Home, seems to have been abandoned by his mother Salgi and currently does not have any guardian, since there is a question upon Shabnam being in possession of the child.

11. Though the infant is in the said Care and Protection Home, it would be our constitutional and statutory obligation to exercise *parens patriae* jurisdiction to see the best in interest of child.

12. This Court in various decisions has appointed a guardian *ad litem*; reference is made to ***Smt Lavanya Anirudh Verma v. State of NCT of Delhi*** 2017:DHC:772 and ***Arsheeran Bahmeech v. State (Govt. of NCT of Delhi)***, 2015 SCC OnLine Del 12673, an order passed by the Division Bench of this Court in ***Dhiraj Kumar v. The State of NCT of Delhi & Ors*** in W.P. (CRL) 3128/2024, where the Court had directed a guardian *ad litem* in a case where



a three-year-old child was subjected to trafficking.

13. Upon suggestion of the APP for State, Ms. Anu Narula, Counsel, is appointed as the guardian *ad litem*, who has given her consent. She shall keep in touch with the child in the Care and Protection Home, as it grows up. Ms. Anu Narula shall accordingly file the first report within 2 months, and subsequently shall file a report every 3 to 6 months, before the concerned court regarding the well-being of the child and if need be, she will be at liberty to approach this Court, or any other competent authority/court, for directions, through an appropriate application, at any stage.

14. However, as regards bail plea of the petitioner, in the peculiar facts and circumstances of the case, and considering that the petitioner is a woman is in custody along with her 15-month-old child, the Court is granting bail to the petitioner.

15. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the



matter is taken up for hearing.

iv. Petitioner shall join investigation as and when called by the IO concerned.

v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.

vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

16. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

18. Copy of the order be Ms. Anu Narula, Advocate for information and necessary compliance.

19. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

20. *Dasti*

21. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 19, 2024/RK/tk/sc