

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1834 OF 2024

Yallamma Durgappa Maitri @ Mummy .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

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- Ms. Nagma Khan a/w Mr. Raj Naik, Ms. Khushi Mishra, Advocates for Applicant.
- Ms. Savita M. Yadav, APP for Respondent No. 1 – State.
- Mr. Ayush Kedia, Advocate for Respondent No. 2 appointed through Legal Aid.
- Mr. Ravindra Jadhav, PSI, Turbhe Police Station, Navi Mumbai.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 17, 2024

P. C.:

1. Heard Ms. Khan, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent No.1 – State and Mr. Kedia, Advocate for Respondent No. 2

2. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No.87 of 2023 registered with Turbhe Police Station for offences punishable under Sections 370 (1) and (2), 323, 343, 504, 506 read with Sections 4 and 5 of Immoral Traffic (Prevention) Act, 1956 (for short 'PITA') read with Sections 3 (a) and 6(a) of Passport Act, 1950 and Sections 14(A) of Foreigners Act. Applicant is arraigned

as Accused No. 2 in the present crime. She is arrested on 18.02.2023 and is incarcerated for 2 years 2 months pending trial.

3. I have heard the learned Advocates appearing for the parties and perused the record of the case.

4. Applicant is a citizen of India and permanent resident of Navi Mumbai. Applicant is arraigned as Accused No. 2 in the present crime. FIR / Complaint is filed by a social worker on 18.02.2023 on behalf of the victim who is a 25 year old woman and citizen of Bangladesh.

5. It is prosecution case that on 17.02.2023 at about 2:30 p.m. in the afternoon the victim approached the social worker for help at a traffic signal in Turbhe. According to prosecution case Accused No. 1 is the sister of the wife of victim's brother and for the purpose of medical treatment of victim's mother, her brother had borrowed an amount of Rs. 20,000/- from Accused No. 1 which the Accused No. 1 was demanding back from victim's family. Since they were unable to pay, Accused No. 1 convinced victim's family to send her to Mumbai with her and also promised to give her a job in a beauty parlour so that the loan amount / money can be repaid.

6. It is prosecution case that Accused No.1 and victim crossed the border and reached Howrah railway station from where

they took a train to Mumbai. Accused No. 1 brought the victim to Mumbai and placed her in the hands of Accused No. 2 – Applicant before me, in her house in Turbhe. According to prosecution case Applicant forced the victim into prostitution without her consent and therefore the victim approached First Informant - Complainant for help and narrated her story. After FIR was lodged Accused No. 1 and Accused No. 2 - Applicant before me were arrested. According to victim's statement recorded on 18.02.2023 appended at page No. 76 of the Application, she is a married woman who got married in the year 2016 but is separated from her husband.

7. In so far as statements recorded by the prosecution are concerned there is an apparent *prima facie* discrepancy and contradiction. In the statement of the victim it is stated that Accused No. 1 brought her to Mumbai and kept her in a slum area where she indulged and pushed her into prostitution. Whereas in the FIR filed by First Informant – Complainant (social worker) it is alleged that victim was kept in the house of Accused No. 2 – Applicant in Turbhe and she forced her into prostitution.

8. Ms. Khan, learned Advocate for Applicant would submit that statement by First – Informant *prima facie* cannot be proved or believed because the victim is not rescued from the house of the Applicant neither it is *prima facie* proven that the victim ever resided

in the Applicant's house in Turbhe, nor there is any recovery made or panchanama conducted in the house of Applicant to establish this aforementioned fact.

9. Record shows that Applicant is a 50 year old woman who is a devdasi by occupation, residing at Turbhe for the past several years which is evident from the documentation placed on record. Applicant has no antecedents neither she has being involved in any criminal activities to her discredit nor a single complaint has been lodged against her in any police station in India. *Prima facie* if the statements recorded in the present case are considered the nexus of Applicant having a direct link with the present crime in question, save and except the statement of First Informant – Complainant (social worker) is not *prima facie* shown to the Court.

10. Applicant is a woman aged 50 years and also has medical ailments. *Prima facie* on the basis of statement of the First Informant – Complainant (social worker), Applicant has been arrested. Though the nature and gravity of accusation is severe but there has to be a *prima facie* nexus of the same with the accused person which in the present case is not seen by the Court. Needless to state that the complicity of the Applicant can be proved by the prosecution in trial.

11. It is settled law that a court while deciding a bail application has to keep in mind the principal rule of bail which is to ascertain whether the accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases.

12. Argued before me is a case concerning liberty of an under-trial woman who has been incarcerated for almost 2 years 2 months, a situation impacting the rights of undertrial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of High Courts to grant bail is concerned, when the case is such that involves a question of personal liberty of an undertrial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defense.

13. In the case of *Emperor vs H.L. Hutchinson*¹ the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of

1 AIR 1931 ALL 356

Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukherjee writing for the Bench in paragraph No.9 held as under:-

“9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes.”

14. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh***² observed as under:-

“6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment. In this perspective...” (emphasis supplied)

2 1978 (1) SCC 240

15. Thereafter the Supreme Court in a plethora of judgements have discussed the rights conferred by Article 21 qua grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed hereinunder:-

15.1. In the landmark judgment of *Maneka Gandhi V. Union of India*³, Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere physical existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

15.2. In the case of *Hussainara Khatoon Vs. Home Secy, State of Bihar*⁴ the Supreme Court held as under:-

“Now obviously procedure prescribed by law for depriving a person of liberty cannot be “reasonable, fair or just” unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by

3 1978 (1) SCC 248

4 (1980) 1 SCC 81

imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.”

16. In view of my above *prima facie* observations and the ignominy of the Applicant in prison pending trial since the past 2 years and 2 months and certainty of the trial not even commencing or for that matter being concluded in the near foreseeable future being a distinct impossibility, I am of the opinion that Applicant can be released on bail.

17. The Bail Application stand allowed subject to following conditions:-

- (i) Applicant is directed to be released on furnishing P.R. Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) After release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iii) Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark her presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (iv) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically

exempted and will not take any unnecessary adjournments, if she does so, it will entitle the prosecution to apply for cancellation of this order;

- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court; Applicant shall deposit her passport if any with the Trial Court;
- (vi) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vii) Before actual release from jail, Applicant shall furnish her address where she proposes to reside after release from jail, to the concerned Police Station and also to the trial Court;
- (viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

18. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall proceed uninfluenced by the present order.

19. This Court appreciates the assistance rendered by Mr. Kedia, learned Advocate appointed through the Legal Aid to espouse

the cause of Respondent No. 2. His fees be paid by the High Court Legal Aid Services Authority as per rules on production of a server copy of this order and other compliances

20. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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