

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1889 OF 2024

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Aquilabi Farooque Khan

... Applicant

V/s.

State of Maharashtra

... Respondent

Mr. Anilkumar Patil a/w Mr. Sachin M. Bhavar a/w Ms. Zeel Jain a/w Mr. Digvijay Patil, for the applicant.

Mrs. Mahalaxmi Ganapathy, APP for the State – respondent.

CORAM : AMIT BORKAR, J.

DATED : JUNE 19, 2025

P.C.:

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, wherein the applicant is seeking her release on bail in connection with *Crime Register No. 822 of 2023* registered with *Shantinagar Police Station, Bhiwandi, District Thane* for offences punishable under Sections 363 (kidnapping), 370 (trafficking of persons), 341 (wrongful restraint), 506 (criminal intimidation), 511 (attempt to commit offences) read with Section 34 (acts done by several persons in furtherance of common intention) of the Indian Penal Code, 1860.

2. As per the case of the prosecution, on 13th October 2023 at about 5:00 p.m., the applicant's husband had allegedly kidnapped the informant's minor daughter, aged about 12 years, and

forcefully carried her to his residence where he had confined the victim against her will. The prosecution alleges that the accused persons had hatched a criminal conspiracy with the common intention to give the informant's daughter in adoption to a third person without lawful authority. As part of this alleged plan, they had intended to send the minor girl to Malegaon for the purpose of handing her over to prospective adoptive parents.

3. When the victim's mother discovered that her daughter was missing and upon making enquiries came to know about the alleged kidnapping, she immediately approached the concerned police station and lodged a complaint. During the course of investigation conducted by the police, the applicant's husband was first arrested. Subsequently, the applicant was also arrested on 15th October 2023 on the allegation that she was part of the conspiracy and had actively participated in the commission of the alleged offences. The applicant had earlier approached the learned Sessions Court seeking bail, which application was rejected by the said Court. Being aggrieved by the said order of rejection, the present application has been filed before this Hon'ble Court seeking her release on bail pending trial.

4. The learned Advocate appearing for the applicant has vehemently submitted that the applicant has been falsely implicated in the said crime and that there is no credible evidence to connect her with the alleged offences. He has argued that the narration of the incident as depicted from the chargesheet does not, prima facie, disclose the essential elements required to prosecute someone under Section 370 of the Indian Penal Code,

which deals with trafficking of persons for exploitation.

5. The learned counsel has further submitted that there is no material evidence on record to establish that the victim was kidnapped specifically for the purpose of exploitation as envisaged under the trafficking provisions. He has contended that at most, the allegations may reveal that the applicant and her husband intended to hand over the minor to a couple who wished to adopt her, but even these facts are disputed and need to be properly established during the course of trial through due process of law.

6. The defence counsel has emphasized that the applicant has been in continuous custody since 15th October 2023, which amounts to a considerable period of detention. He has highlighted that being a woman with no previous criminal antecedents or history of similar offences, and considering the fact that the charges against her are based on disputed facts that require detailed examination during trial, she has made out a strong prima facie case for the grant of bail. The learned counsel has therefore prayed that the applicant be released on bail with appropriate conditions to ensure her presence during trial and to prevent any interference with the investigation or witnesses.

7. On the other hand, the learned Additional Public Prosecutor has strenuously opposed the bail application on several grounds. The prosecution has argued that the offences alleged against the applicant are extremely serious in nature, particularly as they relate to kidnapping of a minor child and human trafficking offences which are grave crimes against society and specifically

against vulnerable children.

8. The learned APP has submitted that the material placed on record by virtue of the chargesheet clearly indicates that there is prima facie fulfillment of all the essential ingredients of Section 370 of the Indian Penal Code relating to trafficking of persons. The prosecution has contended that the alleged act of taking a minor child against her will and planning to hand her over to third parties, even if claimed to be for adoption, falls squarely within the definition of trafficking as it involves recruitment, transportation, and harboring of a person (who is a minor) for the purpose of exploitation.

9. The learned APP has further argued that considering the grave and serious nature of the offences, the vulnerability of the victim being a minor child, and the potential for the applicant to influence witnesses or tamper with evidence if released on bail, the applicant does not deserve to be released on bail at this stage of the proceedings. The prosecution has therefore prayed that the bail application be rejected, and the applicant be kept in custody pending completion of trial.

10. Having heard the learned counsels for both parties and having perused the material on record including the chargesheet and other documents filed, this Court proceeds to analyze the present bail application on the following considerations:

11. The present case involves allegations under Section 370 of the Indian Penal Code, which deals with trafficking of persons. This provision was introduced through the Criminal Law

(Amendment) Act, 2013, to address the growing menace of human trafficking. The section defines trafficking as recruitment, transportation, transfer, harbouring or receipt of persons by means of threat, force, coercion, abduction, fraud, deception, abuse of power or position, or giving or receiving of payments or benefits to achieve the consent of any person having control over the person recruited, transported, transferred, harboured or received, for the purpose of exploitation.

12. However, upon careful examination of the facts as presented in the chargesheet, this Court finds that while the allegations are serious, there appears to be some ambiguity regarding the specific intent and purpose behind the alleged acts. The prosecution's case primarily rests on the allegation that the minor was to be given to third parties for adoption. The crucial question that arises is whether such an act, even if proven, would constitute trafficking within the meaning of Section 370 of the IPC.

13. From the material placed on record, it appears that the prosecution's case is primarily based on the statement of the informant and the circumstances leading to the arrest of the accused persons. While the allegation of kidnapping a minor is serious and cannot be taken lightly, the evidence regarding the specific intent to exploit the minor for commercial purposes or other forms of exploitation as envisaged under Section 370 appears to be lacking *prima facie*.

14. The defence contention that the alleged act may at best constitute an unauthorized attempt at facilitating adoption rather

than trafficking for exploitation deserves serious consideration. The distinction between these two acts is crucial as it determines the gravity of the offence and the corresponding punishment.

15. The applicant is a woman with no previous criminal record or antecedents. She has been in custody since 15th October 2023, which amounts to a considerable period of pre-trial detention. The principle laid down in *Hussainara Khatoon v. Home Secretary, State of Bihar (1980) 1 SCC 98* emphasizes that prolonged detention without trial is violative of fundamental rights under Article 21 of the Constitution.

16. The applicant's gender and lack of criminal history are relevant factors in determining whether she poses a flight risk or is likely to tamper with evidence. The prosecution has not placed any material on record to suggest that the applicant has attempted to influence witnesses or obstruct the investigation during the period of her detention.

17. The investigation in the present case appears to be substantially complete, with the chargesheet having been filed. The victim has been recovered and is presumably in safe custody. Under these circumstances, the likelihood of the applicant tampering with evidence or influencing witnesses appears to be minimal, particularly if appropriate conditions are imposed.

18. In view of the above discussion and legal position, the following order is passed:

(a) The Bail Application is allowed.

(b) The applicant, Aquilabi Farooque Khan, shall be released on bail in connection with Crime Register No.822 of 2023 registered with Shantinagar Police Station, Bhiwandi, District Thane for offences punishable under Sections 363, 370, 341, 506, 511 read with 34, upon furnishing a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) along with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

(c) The applicants shall not directly or indirectly make any contact with the family members of the victim or any prosecution witnesses, and shall not tamper with the evidence in any manner.

(d) The applicant shall attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.

(e) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

(f) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(g) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number to the Investigating Officer as well as the Trial Court, and shall inform the Court in writing of any change in residence or contact details during the pendency of the case.

19. The Bail Application is accordingly disposed of.

(AMIT BORKAR, J.)