

Ajay

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

CRIMINAL BAIL APPLICATION NO. 5092 OF 2024

Mona Sunil Khemane

.. Applicant

Versus

The State of Maharashtra

.. Respondent

-
- Mr. Saurabh Butala i/b Mr. Sachin Chandan, Advocates for Applicant.
 - Mr. Rajeshree V. Newton, APP for Respondent – State.

.....
CORAM : MILIND N. JADHAV, J.

DATE : APRIL 29, 2025.

P.C.:

1. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Regular Bail in connection with C.R.No. 1366 of 2024 registered with Mumbra Police Station for offences punishable under Sections 370 read with 34 of the Indian Penal Code, 1860 read with Sections 81 and 87 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short '**JJ Act**'). There are in all 9 Accused persons. Applicant is arraigned as Accused No. 5. She is arrested on 23.04.2024 and incarcerated for 11 months 6 days pending trial.

2. It is prosecution case that on 22.05.2024 Anti Human Traffic Cell, Crime Branch, Thane (for short '**AHTC**') received a specific information regarding Accused Nos. 1 and 2, residents of Mumbra

were involved in sale and procurement of minor children through agents. Acting on the information, prosecution laid a trap wherein a decoy customer contacted Accused No. 1 over a phone call, who offered a two month old girl child for consideration of Rs. 5,00,000/- stating that the child was with a guardian at Nashik. It is prosecution case that Accused No. 1 instructed the bogus customer to come and meet him near Mumbra Reti Bunder Bus Stop on the next day i.e. on 23.05.2024 at about 5:00 a.m. Few dummy currency bundles were prepared by the investigating agency for the trap. It is prosecution case that two males and four females alongwith with a child reached the spot, decoy customer handed over bag containing money to the person holding the child. Upon the decoy customer handing over bag containing the dummy bundles, a signal was given and police apprehended the accused persons. Two males and four females were intercepted and on inquiry it was revealed that Accused No. 2 informed Accused Nos. 1 and 3 about the prospective customer, who in turn informed Accused No. 5. Thereafter Accused No. 4 and 5 transmitted the information to Accused Nos. 6 and 7, who contacted Accused No. 9, who contacted Accused No. 8 who was ready to sell her minor girl child. Hence, in connivance with each other and in furtherance of their common intention to sell the minor child for consideration, present FIR is filed.

3. Mr. Butala, learned Advocate for the Applicant would submit that Applicant is falsely implicated in the present crime. He would submit that the role attributed to Applicant in the FIR is secondary and indirect. He would submit that no overt act such as directly handling the child, negotiation of sale or accepting money is attributed to the Applicant. He would submit that only role attributed to Applicant is she transmitted information to other co-accused persons in the chain. He would submit that prosecution has failed to establish any direct linkage or active role of Applicant in the alleged crime. He would submit that prosecution case is solely based on statements of co-accused persons, alleged chain of communication, CDR details and nothing more. He would submit that no recovery has been made at the instance of Applicant.

3.1. He would submit that material placed on record or the prosecution case itself does not indicate any kind of 'exploitation' of the minor child or any kind of threat or inducement by Applicant to child's parents or relatives, hence essential ingredients of Section 370 of the IPC are not made out. He would submit that no allegation of kidnapping of the minor child is made out against Applicant, which casts a serious doubt on the prosecution case. He has referred to and relied upon the decisions of this Court in the case of *Divya Kailash Singh and Anr. Vs. The State of Maharashtra*¹ and Delhi High Court in

¹ Bail Application No. 3272 of 2024 decided on 19.11.2024

the case of *Rukma Singh Vs. State (Govt. NCT of Delhi)*² in support of his aforementioned submissions.

3.2. He would submit that Applicant is a woman and the sole breadwinner of her family, has two children to provide care and support and has deep roots in Society. He would submit that she has no criminal antecedents to her discredit. He would submit that Applicant is arrested on 23.05.2024 and incarcerated since then. He would submit that investigation is complete, chargesheet is filed, charge is not been framed till date and commencement and completion of trial in the near foreseeable future being doubtful he would urge the Court to allow the present Application.

4. Ms. Newton, learned APP for State would vehemently oppose the submissions made by Mr. Butala. She would submit that crime in question is of a serious nature involving trafficking of a two month old infant. She would submit that present Applicant was present at the time of apprehending the accused persons. She would draw my attention to the Affidavit-in-Reply filed by Ms. Chetna Dhanraj Chaudhari, Police Inspector, Anti Human Trafficking Cell, Crime Branch, Thane dated 19.03.2025 appended at page No. 202 of the Application and contend that role attributed to Applicant is that when Accused No. 1 informed her that there is a requirement of a child she approached Accused No.7 to enquire whether any child was

² 2019 SCC OnLine Del 9032

available for sale, upon which Accused No. 7 informed her that a minor girl child was available. She would submit that thereafter she informed Accused No.1 that a minor girl child was available as the child's mother and relative were ready for sale for consideration of Rs. 5,00,000/-. She would submit that during investigation it was revealed that on 22.05.2024 Accused Nos. 1, 3 and 5 visited and met Accused No.8 – mother of the child and assured her that child will be sold and Rs. 1,50,000/- each will be paid to her and the relative involved. That thereafter Accused Nos. 1, 3, 5, 6 and 7 brought child to Thane after which they met the bogus customer and handed over the child to him. Against receipt of the bag containing money. Hence Applicant's active role in the present crime was prominent.

5. She would submit that during further investigation it is revealed that Applicant was to receive an amount of Rs. 50, 000/- as her share for sale. She would submit that Applicant was constantly in contact with other accused persons during this time. She would rely upon CDRs and SDRs details between accused persons to corroborate the aforementioned submission. Hence direct nexus of Applicant in the crime in question *prima facie* stands proved. She would submit that if Applicant is released on bail possibility of re-offending, influencing witnesses and tampering of evidence cannot be ruled out. Hence she would urge the Court to reject the present Application.

6. I have heard the Advocates at the bar and with their able assistance perused the record of the case.

7. *Prima facie* on perusal of record it is seen that the role attributed to Applicant is primarily limited to that of transmission of information between the co-accused persons without any direct involvement in handling of the child, negotiation of sale, or acceptance of consideration. It is *prima facie* seen that participation of Applicant in the alleged crime appears to be secondary and facilitative. It is seen that prosecution case solely relies on CDR details and statement of co-accused persons and nothing more but the live link of the transcripts to substantiate the prosecution case is not established.

8. With regard to offence under Section 370 of the IPC, the key words in the said Section are “whoever, for the purpose of exploitation.” The expression “exploitation” has been explained in explanation (1) to the aforesaid provision, which specifies that it shall include an act of physical exploitation or any form of sexual exploitation, slavery or practices similar thereto or forced removal of organ. It is *prima facie* seen that Applicant can be said to be involved in the transaction to a certain extent however no specific material is placed on record to show that the child was sexually exploited in the process. In this regard, medical records appended at page No.176 of the minor girl child is relevant.

9. It is seen that in fact, it is not even the case of prosecution that the child was subjected to any sexual or physical violence or that there were signs of any attempt in that regard having been made by Applicant. To that extent *prima facie* there is substance in the contention raised on behalf of Applicant that material on record may fall short of showing ingredients of the offence under Section 370 of the IPC, which pertains to trafficking of persons.

10. *Prima facie* the reliance placed on CDR details do not draw any inference of Applicant's involvement in the crime, however complicity of Applicant can be proved at the stage of trial. It is *prima facie* seen that no recovery of any amount is made at instance of Applicant. *Prima facie* in absence of sufficient material to indicate that Applicant, despite being present at the incident spot, had custody of the minor child for purpose of sexual or physical exploitation, a case for the grant of bail is made out by Applicant. It is seen that Applicant is a woman being the sole breadwinner of her family having her own two children to provide care and support for and being incarcerated for almost a year further persuades me to consider Applicant's case for grant of bail.

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 are required to be considered in such cases.

12. 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 herein under:-

12.1. In the landmark judgement of *Maneka Gandhi Vs. Union of India*³, the 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.

12.2. 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

3 1978 (1) SCC 248

4 (1980) 1 SCC 81

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

13. Considering the aforementioned *prima facie* facts and circumstances of the case, absence of criminal antecedents, Applicant being a woman arrested on 23.05.2024 being incarcerated since then pending trial, investigation being completed, charge sheet being filed, charge not been framed till date, commencement and completion of trial in the near foreseeable future being doubtful, persuades me to consider Applicant's case. Hence I am of the opinion that Applicant can be released on bail.

14. Bail Application is allowed on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.15,000/- for her release immediately and file undertaking that she will provide one or two sureties

in the like amount of Rs. 15,000/- within a period of four weeks after her release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

- (iii) After her release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) 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;
- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence any of the witnesses or

tamper with the evidence in any manner;

(viii) Before her actual release from jail, Applicant shall furnish her address where she proposes to reside after her release from jail, to the concerned Police Station and also to the trial Court;

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking her attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

15. 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 be adjudicated on the basis of the evidence led by parties uninfluenced by the present order and strictly in accordance with law.

16. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2025.04.29
19:10:59 +0530

Ajay