

Ajay

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

CRIMINAL BAIL APPLICATION NO. 5266 OF 2024

Mitali Gunvantsingh Parmar

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Arunesh S. Mishra a/w. Ms. Sunayana Kashid i./by Mr. Vedchetan Patil, Advocates for Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 11, 2025.

P.C.:

1. Heard Mr. Mishra, learned Advocate for Applicant and Mr. Kulkarni, learned APP for Respondent – State.

2. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No. 772 of 2024 registered with Sahar Police Station for offences under Section 143 (2) and 143 (3) of the Bharatiya Nyay Sanhita, 2023 (for short “**BNS**”). Applicant before me is a young woman aged 23 years and is incarcerated since 20.09.2024.

3. Briefly stated prosecution case is that on 20.09.2024 Applicant alongwith witnesses Mr. Asfanali Malek and Ms. Richakumari Rathod were scheduled to go to Bangkok, Thailand and at the Airport at 08:35 a.m. when the first informant – Immigration Counter Officer was inspecting the passports of Applicant and the two

witnesses, she found something suspicious and hence forwarded them to the In-charge of Immigration Department for inquiry. Upon inquiry by In-charge and Duty Officer of Immigration Department, it was found that the present Applicant had contacted an agent namely Piyush Patel for securing a job abroad and through the said agent had visited Laos, Vietnam via Thailand in June 2024. It is prosecution case that at Laos, Vietnam Applicant was introduced to a job in chatting scam and was offered salary Rs.70,000/- per month. Furthermore, she was offered additional incentive if she got more persons like her / individuals having computer knowledge for the said job (chatting scam) and that the said individuals would also be paid a handsome salary. Hence it is prosecution case that Applicant was trafficking the present two witnesses Mr. Asfanali Malek and Ms. Richakumari Rathod to Laos via Thailand for recruiting them in the chatting scam job and hence FIR was registered.

4. Mr. Mishra, learned Advocate for Applicant would submit that Applicant has been falsely indicted in the present crime and she has not committed the alleged crime and she is only a victim of circumstances. He would submit that in the past Applicant was introduced to one Piyush Patel by her sister Priyanka and brother-in-law Mr. Chetankumar Parmar who informed her that there is computer related job opportunity in Singapore and hence Applicant alongwith her brother-in-law Mr. Chetankumar Parmar showed inclination to

take up job and agreed to travel to Singapore. It needs to be stated that Applicant is studied upto XI standard. He would submit that that the said Piyush Patel demanded Rs.1,30,000/ from each of them for arranging flight tickets and accordingly Mr. Chetankumar Parmar transferred the amount of Rs.2,60,000/- to the said Mr. Piyush Patel and on 02.06.2024 Applicant alongwith her brother-in-law travelled to Laos, Vietnam. Next it is submitted that the Applicant alongwith her brother-in-law stayed at Laos, Vietnam for one week however the said Mr. Piyush Patel did not secure any job for them in Singapore and instead asked them to chat through online social media applications Instagram and Facebook and agreed to pay them Rs.70,000/- per month as salary, however as the Applicant and her brother-in-law found the job suspicious they refused for the same and returned to Mumbai on 10.06.2024 with the help of one Mr. Shashank. He would submit that on reaching Navsari, Gujarat on 19.06.2024 Applicant alongwith her brother-in-law filed a complaint against the said Mr. Piyush Patel which is appended at page No.79 of the Application. He has drawn my attention to the statement of Mr. Chetankumar Patel which forms part of the charge-sheet and is appended at page No.61 of the Application to corroborate the version of the Applicant.

4.1. He would submit that the present FIR is registered by the first informant on the basis of a mere suspicion in a mechanical manner without carrying out any preliminary inquiry into the aforesaid

facts narrated by the Applicant. He would submit that as the said Mr. Shashank had offered a job opportunity to Applicant, the two witnesses Mr. Asfanali Malek and Ms. Richakumari Rathod alongwith Applicant were travelling to Laos, Vietnam on the legitimate belief of securing a job and was unaware about any such chatting job scam.

4.2. He would submit that except the two statements of the two witnesses there is nothing brought on record by the prosecution to even *prima facie* substantiate their case against the Applicants. He would submit that there is no inducement or coercion at the behest of the Applicant for her indictment under Section 143 of the BNS. He would submit that the prosecution has recorded statements of the two witnesses and a perusal of the same makes it clear that as they both were hunting for a job, Applicant who was acquainted with them informed them about her 2nd visit to Singapore for securing a job and the two victims voluntarily agreed for travelling abroad with her.

4.3. He would submit that reliance of prosecution on the statement of Applicant which is hand-written in english and appended at page No.94 cannot be relied upon as the Applicant has completed her education till XI grade from a vernacular (Gujarati) medium and she cannot understand English language and that the said statement is inadmissible in evidence. He would submit that the Applicant is the sole bread-winner of her family and has no criminal antecedents to her

discredit.

4.4. He would submit that in any event the investigation of the matter is completed and charge-sheet has been filed before the Trial Court. He would submit that on perusal of the entire record of charge-sheet there is no incriminating material for indictment of the Applicant and in any event Applicant is ready and willing to extend her full co-operation to the Investigating Agency and as such there is no discovery or recovery pending at her instance. He would submit that there is no possibility of the Trial concluding in the near foreseeable future and hence urge the Court to enlarge the Applicant on bail on terms and conditions as deemed fit by the Court.

4.5. In support of his submissions, he has referred to and relied upon the decision of the Supreme Court in the case of *Serious Fraud Investigation Vs. Nittin Johari & Anr.*¹ wherein the Supreme Court has reiterated the basic principles for grant of bail. He has next referred to and relied upon the decisions of the Supreme Court in the case of *Sanjay Chandra Vs. Central Bureau of Investigation*² and *State of Rajasthan, Jaipur Vs. Balchand alias Baliay*³ to state that the basic rule in criminal jurisprudence is bail and not jail and bail should not be refused ordinarily.

1 (2019) 5 SCC 266

2 (2012) 1 SCC 40

3 (1977) 4 SCC 308

5. Mr. Kulkarni, learned APP for State has vehemently opposed the Bail Application. He would submit that the offence committed by Applicant is of trafficking of persons and as it involves trafficking of more than one person it entails punishment of imprisonment of not less than ten years and extendable upto life imprisonment and as such is of a very serious nature. He would submit that such offences of online job scams coupled with human trafficking have an adverse impact on the society at large and hence the Court should be cautious while deciding Bail Applications in such matters. He would submit that there is ample *prima facie* material on record to prove the guilt of Applicant in the form of witness statements and Whatsapp chats and if she is released on bail then there is every likelihood of the Applicant re-offending and also tampering the evidence and influencing witnesses.

5.1. He would submit that in so far as the statement of Applicant which is appended at page No.94 is concerned, the same clearly mentions that it was explained to Applicant in Hindi language and it also bears her signature at the bottom of the page. He would submit that Applicant has stated that the agent Mr. Shashank told Applicant to get more persons / individuals to Laos and that she would be paid additional incentives for the same. He has drawn my attention to the statement of witness Mr. Asfanali Malek at page Nos.51 and 95 of the Application wherein he has categorically stated that he got acquainted

with Applicant through Instagram and sometime in August 2024, Applicant contacted him and informed him that she has found an online computer job in Singapore for which he would get Rs.70,000/- per month salary. He has stated that thereafter Applicant sent him flight tickets and hotel booking details on Whatsapp and told him that first he will be taken to Bangkok and from there he would be taken to Singapore. Next he has drawn my attention to the statement of Ms. Richakumari Rathod which is at page Nos.53 and 96 of the Application wherein she has stated that Applicant informed her that she has found a job for her in Singapore fetching salary of Rs.70,000/- per month and sought for her passport details for arranging flight tickets. Hence he would submit that it is *prima facie* clear that Applicant has for the purpose of gaining incentives induced the two witnesses to go to Laos, Vietnam for recruiting them in the online chatting scam job.

5.2. He would submit that Applicant is a resident of Gujarat and if released on bail it would be difficult for the prosecution to secure her presence at the time of trial. He would submit that she would equally be a flight risk. Hence he would urge the Court to reject the Bail Application.

6. With the able assistance of both the learned Advocates, I have perused the record of the case. Applicant before me is educated till XI grade in Gujarati medium. This is a case wherein the Applicant

has argued that she has been a victim of circumstances. According to Applicant she was duped by two agents viz; one Mr. Piyush Patel and Mr. Shashank who on both occasions took money from Applicant with the promise to provide a job to her however on the second instance Applicant was apprehended at the Airport alongwith two others viz. Ms. Richakumari Rathod and Mr. Asfanali Malek. Applicant's case is that she alongwith the said two individuals was lured into accepting a job offer from the second agent Mr. Shashank and was promised a salary of Rs.70,000/- per month. Admittedly Applicant has admitted the fact that in the first instance she travelled to Laos through the first agent Mr. Piyush Patel and met the second agent Mr. Shashank in Laos.

7. While considering the Bail Application of the Applicant if the *prima facie* material investigated by prosecution is seen which is in the form of statements of the witnesses, these statements are of witnesses Ms. Richakumari Rathod and Mr. Asfanali Malek and the same are duly supported by Whatsapp chat messages which are appended from page No.63 onwards. According to the statement of Ms. Richakumari Rathod which is recorded before the Immigration Officer on 20.09.2024 at page No.96 of the Application, it states that she contacted the Applicant who assured her to get a job in Singapore but before that told her that she would have to travel to Laos via Thailand. She has recorded that Applicant assured her that her salary would be

Rs.70,000/- per month for a computer related job and she would be escorted by her from Mumbai to Laos. The second statement of the said witness recorded by the police officer on the same date is a much detailed statement and is appended at page No.53 of the Application. In the said statement Ms. Richakumari Rathod has stated that one month prior to the date of arrest at Airport, Applicant called her and informed that she had visited Singapore and returned back and that she would be going back to Singapore again where she had found a job for her and the same would fetch her a pay of Rs.70,000/- per month. Falling prey to the Applicant's offer the said Ms. Richakumari shared her passport details and the Applicant arranged a flight ticket from Mumbai to Bangkok alongwith hotel booking by assuring her that she will take her to Bangkok first and thereafter take her to Singapore from there.

8. Next, the statement of Mr. Asfanali Malek recorded before the Immigration Officer is appended at page No.95 of the Application which states that he got acquainted with Applicant through Instagram and she assured him that she would help him secure a job in Laos for a salary of Rs.70,000/- and that she would escort him from Mumbai Airport. Detailed statement of the said witness appended at page No.51 of the Application narrates the same *modus operandi* and story as told by Applicant to Ms. Richakumari Rathod. Hence it is *prima facie* clear that both person / victims who were accompanying the

Applicant were induced by the Applicant by narrating the same story.

9. According to Applicant, the first agent Mr. Piyush Patel befriended her brother-in-law Mr. Chetankumar Parmar and through him she paid substantial amount to said Mr. Piyush Patel. Statement of the brother-in-law is appended at page No.61 of the Application. He has stated that in Laos, he and the Applicant were stranded due to the alleged fraud committed by Mr. Piyush Patel and were helped by Mr. Shashank who is the second agent to return back to India. He states that after being defrauded by Mr. Piyush Patel, he alongwith Applicant after reaching their hometown lodged a complaint against him for defrauding. This is the principal defence taken by Applicant. However the subsequent acts enticing the two witnesses are such that Applicant cannot rely upon the above defence.

10. The question which intrigues the Court is that if Applicant was a victim of circumstances in the first instance then there was no change of circumstances for her to have repeated and committed a similar act for the second time. It is seen that this time it is the Applicant who lured the two witnesses to visit Laos for a job alongwith her for reasons best known to her. Further if Applicant's case is to be believed then there is no reason for her to lure other persons i.e. the two witnesses to travel alongwith her to Bangkok and arrange for their travel on her own. Hence Applicant's reliance on the fraudulent

experience by the first agent Mr. Piyush Patel becomes a clear suspect and is unbelievable on *prima facie* consideration.

11. The Applicant's statement at page No.94 itself states that she stayed in Laos for 9 days and met the second agent Mr. Shashank (whose contact details have been provided therein) who was from Bangalore and he told her that he will give her good incentives if she brings more persons / individuals to Laos for internet chatting scam activity. Hence from *prima facie* material made available on record there is reasonable apprehension that Applicant is involved in the offence under Section 143 of BNS on the basis of material available on record and releasing the Applicant in bail would not be conducive at this stage. She would also be a flight risk as correctly pointed out by Mr. Kulkarni. Applicant fails the Tripod Test as envisaged by the Supreme Court in the case of ***Gurwinder Singh Vs. State of Punjab and Anr.***⁴ for grant of bail.

12. The reliance placed by Applicant on the decision of the Supreme Court in the case of ***Sanjay Chandra*** (*supra*) cannot be countenanced as in that case the accused was indicted in an offence entailing maximum punishment of upto 7 years whereas in the case at hand the maximum punishment would be life imprisonment. Applicant's reliance on the judgements in the case of ***Serious Fraud Investigation*** (*supra*) and ***State of Rajasthan, Jaipur Vs. Balchand alias***

⁴ (2024) 5 SCC 403

Baliay (*supra*) also does not find favour with the Applicant's case.

13. In view of the above *prima facie* observations from the record considering the active involvement of the Applicant in the crime as *prima facie* established from the observations delineated hereinabove, Bail Application stands rejected.

[MILIND N. JADHAV, J.]

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by AJAY
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