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

BAIL APPLICATION NO.353 OF 2025

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Mahesh Dharmiah Ditti

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Hrishikesh Mundargi with Ms. Shradha Sawant for
the applicant.

Ms. Rajashree V. Newton, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : JULY 7, 2025

P.C.:

1. By this application filed under Section 439 of the Criminal Procedure Code, 1973, the applicant seeks bail in connection with Crime No.377 of 2020, registered at Juhu Police Station for offences punishable under Sections 363, 370, 120(B) read with 34 of the Indian Penal Code, 1860.

2. The prosecution case, in short, is that the offence alleged is of kidnapping of a minor child of four months when its mother was sleeping in the midnight and for its trafficking with the conspiracy. The prosecution alleges that the said minor child was in the custody of its mother who was residing at the relevant place and was sleeping during the night hours when the alleged incident took place. Said child was allegedly lifted by accused Ramesh who

allegedly handed over to the present applicant/accused Mahesh. The prosecution's case is that there was a well-planned conspiracy between the accused persons to commit the said offence. It is alleged that the first accused Ramesh had committed the actual act of kidnapping the child from the custody of its mother, and thereafter, as per the pre-planned conspiracy, the said child was handed over to the present applicant. Thereafter, present applicant had transported said child to Hyderabad and handed over to one Dr. Mohammad Nasrudding Bashiruddin who had sold out the child to a couple for Rs.4,00,000/-, keeping the couple under impression that it was legally adopted by said couple. The prosecution further alleges that the present applicant had actively participated in the trafficking of the said minor child by transporting the same from Mumbai to Hyderabad and facilitating the illegal sale of the child to the said couple through the said doctor. The prosecution case is that the entire transaction was carried out with the motive of monetary gain and that the child was treated as a commodity for commercial purposes. The couple who purchased the child were kept under the false impression that they were legally adopting the child through proper legal procedures, whereas in reality, the child was being trafficked illegally.

3. Learned advocate for the applicant submits that the applicant is arrested on 17 November 2020. The applicant has been in custody for a considerable period and has been cooperating with the investigation. Charges are framed in 2023, which indicates that there has been substantial delay in the

proceedings. The prosecution has cited 22 witnesses and it is unlikely that the trial will be concluded in near future. The learned counsel for the applicant submits that considering the number of witnesses cited by the prosecution, the trial is likely to be prolonged and may take several years to conclude. The applicant, being in custody for such an extended period without any reasonable prospect of early trial, is entitled to be enlarged on bail.

4. Moreover, inviting my attention to the Explanation 1 of Section 370 of the Indian Penal Code, 1860, he submits that the case of prosecution that the child allegedly lifted by the applicant was handed over to the doctor who sold out the child to a couple for Rs.4,00,000/- under impression that it was legally adopted child of the couple will not be covered by expression "exploitation".

5. The learned counsel argues that the Explanation 1 to Section 370 defines "exploitation" to include prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs. He contends that the alleged act of handing over the child to a couple who believed they were legally adopting the child does not fall within the ambit of "exploitation" as defined under the said provision.

6. He therefore seeks regular bail on the grounds that the applicant has been in custody for a prolonged period, the trial is unlikely to conclude in the near future, and the allegations against the applicant do not constitute the offence of trafficking as defined under Section 370 of the Indian Penal Code, 1860.

7. Per contra, learned APP opposed the application contending

that the allegations against the applicant are serious. The learned APP submits that the offences alleged against the applicant are of grave nature involving kidnapping and trafficking of a minor child of tender age. The acts committed by the applicant have serious implications on the safety and security of children in the society. She submits that the applicant is actively involved in the act of lifting the child. The prosecution's case is that the applicant was not merely a passive participant but had played an active role in the commission of the offence. The applicant had received the kidnapped child from the co-accused and had transported the same to another state, thereby facilitating the trafficking of the child.

8. Moreover, the acts done by the applicant along with other co-accused will fall under the expression "exploitation", and therefore, the prosecution has invoked Sub-section (4) of Section 370 of the Indian Penal Code, 1860. The learned APP argues that the act of selling a child for monetary consideration, even if the purchasers believe it to be a legal adoption, constitutes exploitation within the meaning of Section 370 of the Indian Penal Code, 1860. She contends that the child was treated as a commodity and was sold for Rs.4,00,000/-, which clearly indicates that the child was being exploited for commercial purposes. The fact that the couple was kept under the impression that it was a legal adoption does not change the nature of the transaction, which was essentially trafficking of a minor child. She, therefore, prayed for rejection of the application on the grounds that the allegations are serious, the applicant has played an active role in

the commission of the offence, and there is prima facie evidence to show that the applicant has committed the offence of trafficking of a minor child punishable under Section 370 of the Indian Penal Code, 1860.

9. Having heard the learned counsels for both sides and having perused the material on record, I proceed to consider the merits of the present bail application.

10. The primary question that arises for consideration is whether the alleged acts of the applicant would constitute "trafficking in persons" as defined under Section 370 of the Indian Penal Code, 1860. Section 370 defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion for the purpose of exploitation.

11. The crucial element in the definition of trafficking under Section 370 is the "purpose of exploitation". Explanation 1 to Section 370 defines "exploitation" to include prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.

12. In the present case, the prosecution alleges that the applicant transported the kidnapped child from Mumbai to Hyderabad and facilitated its sale to a couple for Rs.4,00,000/-. However, the prosecution's own case is that the couple who purchased the child were under the impression that they were legally adopting the child. This Court finds merit in the submission of the learned counsel for the applicant that the alleged acts may not strictly fall

within the definition of "exploitation" as envisaged under Section 370 of the Indian Penal Code, 1860. The couple's belief that they were legally adopting the child, though misguided, suggests that the child was not being exploited for any of the purposes specifically enumerated in Explanation 1 to Section 370.

13. The Supreme Court in numerous pronouncements has laid down the principles for granting bail. The court has to balance the interests of the society and the rights of the accused. The primary considerations include: Nature and gravity of charges: While the charges are serious, the applicant's role appears to be that of a conduit rather than the principal offender who actually kidnapped the child. Strength of prosecution case: The prosecution case, *prima facie*, appears to have certain gaps, particularly in establishing the element of "exploitation" under Section 370 of the Indian Penal Code, 1860. Period of custody: The applicant has been in custody since 17 November 2020, which is a considerable period. The right to speedy trial is a fundamental right, and prolonged incarceration without trial violates this right. Likelihood of trial conclusion: With 22 witnesses cited by the prosecution and charges having been framed only in 2023, the trial is unlikely to conclude in the near future. Flight risk and tampering with evidence: There is no specific allegation that the applicant is likely to flee from justice or tamper with evidence.

14. In view of the above reasoning and findings, this Court is of the considered opinion that the applicant has made out a case for grant of regular bail. The application for bail is accordingly allowed.

15. Hence, the following order is passed.

16. The applicant Mahesh Dharmaiah Ditti is directed to be released on bail in connection with Crime No.377 of 2020, registered at Juhu Police Station for offences punishable under Sections 363, 370, 120(B) read with 34 of the Indian Penal Code, 1860, upon furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

- a) The applicant shall not tamper with the evidence or attempt to influence any witness.
- b) The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
- c) The applicant shall report to the Juhu Police Station on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.
- d) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
- e) The applicant shall not indulge in any criminal activity during the pendency of the trial.

17. The bail application stands disposed of in the aforesaid terms.

(AMIT BORKAR, J.)