

Shabnoor

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

BAIL APPLICATION NO. 377 OF 2025

Khushboo Ramashinsh Gupta & Anr.	... Applicants
V/s.	
The State of Maharashtra	... Respondent

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Mr. Vinod Chouhan a/w Mr. Gaurav Borse and Mr. Vikas Chauhan, Kumar Therade for the Applicants.

Ms. Megha S. Gajoria, APP for the State – respondent.

Mr. Abhijit Tekawade, PSI, Bhandup Police Station.

CORAM : AMIT BORKAR, J.

DATED : JUNE 17, 2025

P.C.:

1. The present application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking his release on bail in connection with Crime Register No.187 of 2024 registered at Bhandup Police Station. The offences alleged against the applicant are under Sections 363 (kidnapping), 370 (trafficking for exploitation) read with Section 34 (common intention) of the Indian Penal Code, 1860.

2. As per the prosecution's case, on 24th March 2024 around 9:00 p.m., the informant's minor daughter, aged about 5 years, went missing from their residence. The informant and her husband immediately began searching for their daughter. During this

search, a woman informed them that she had seen their daughter around 9:30 p.m. the same night, sitting in an auto rickshaw along with applicant No.1. Based on this information, the informant approached the police station and lodged a First Information Report (FIR), following which investigation commenced at about 1:00 a.m. on 25th March 2024. In the course of investigation, the minor girl was found in the custody of accused Nos.3 and 4, in their residence. After the investigation was completed, a charge-sheet was filed. The applicants had initially moved a bail application before the learned Sessions Court, which came to be rejected. Hence, the present application has been preferred before this Court.

3. Learned Advocate appearing for the applicant has invited this Court's attention to the material available in the charge-sheet and the statements of the informant and other prosecution witnesses. He submitted that the alleged act, though covered under Section 363 of the IPC, lacks the essential ingredients to bring the case within the ambit of Section 370 of the IPC, which pertains to exploitation and trafficking. It was argued that accused Nos.3 and 4, who had no children of their own, intended to adopt the minor girl, and there was no malicious or exploitative intent behind the incident. He submitted that, at the highest, the material may disclose an offence under Section 363 IPC, which is a bailable offence. It was also pointed out that this Court has already granted bail to accused Nos.3 and 4, who are alleged to have harboured the child. The applicant has been in custody since 25th March 2024. Considering the above, the learned Advocate prayed for the

applicant's release on bail on the ground of parity and lack of prima facie case under Section 370 IPC.

4. On the other hand, the learned APP strongly opposed the bail application and submitted that the case involves serious allegations. It was pointed out that during the course of investigation, there is material to indicate that there was a monetary transaction for the purpose of transferring the custody of the minor girl to accused Nos.3 and 4. Such an act, according to the learned APP, prima facie attracts the offence under Section 370 of the IPC, which deals with trafficking of persons for exploitation. It was submitted that the offence of trafficking of a minor, particularly a girl child, is a grave offence affecting the social fabric, and therefore, considering the seriousness and gravity of the allegations, the applicants do not deserve to be enlarged on bail at this stage.

5. I have carefully perused the material placed on record, including the charge-sheet and the statements of the informant and prosecution witnesses. Upon an overall assessment, it appears that the prosecution's case is primarily based on the allegation that the applicants were seen accompanying the victim girl at the time when she was allegedly kidnapped, and subsequently the girl child was found in the custody of accused Nos.3 and 4. It is the prosecution's case that the child was handed over to accused Nos.3 and 4 for the purpose of treating her as their daughter.

6. At this stage, there is no concrete material on record to prima facie indicate that the minor girl was subjected to any kind

of exploitation as is contemplated under Section 370 of the Indian Penal Code. The concept of "exploitation" under Section 370 IPC requires there to be prima facie material to show that the victim was subjected to physical or sexual exploitation, slavery, servitude, or forced removal of organs. No such element is clearly emerging from the record at this stage.

7. On the contrary, the material as of now suggests that the custody of the child was transferred for the purpose of treating her as an adopted daughter, though without following due legal process. Whether such an act ultimately amounts to trafficking for exploitation is a matter that can only be tested during trial on the basis of evidence led by both sides. In absence of clinching prima facie material regarding exploitation, the rigours of Section 370 IPC may not come into play at this stage. Therefore, in the opinion of this Court, a prima facie case for grant of bail is made out by the applicants.

8. It is also relevant to note that the applicants were arrested on 25th March 2024, and have been in custody since then. Further, it is not in dispute that co-accused Nos.3 and 4, in whose house the child was ultimately found, have already been granted bail by this Court. No material has been placed before this Court to show that the applicants are a flight risk or that they have attempted to tamper with the evidence or influence witnesses during the investigation.

9. Additionally, the charge-sheet has already been filed, and the investigation is complete. The trial is yet to commence and the

framing of charge is also pending. It is also a settled position of law that pre-trial detention should not become punitive, particularly when the accused persons have remained in custody for a reasonable period and the trial is not likely to commence in the near future. Hence, taking into consideration the parity with co-accused, the nature of allegations, and the period of incarceration, I am of the considered view that the applicants are entitled to be released on bail, albeit with stringent conditions to ensure their presence at trial and to safeguard the interests of justice.

10. In view of the aforesaid discussion, the following order is passed:

(a) The Bail Application stands allowed.

(b) The applicants, (i) Khushboo Ramashish Gupta, and (ii) Maina Raajaram Dilod, shall be released on bail in connection with Crime Register No.187 of 2024 registered with Bhandup Police Station, upon each of them furnishing a Personal Bond of ₹50,000/- (Rupees Fifty Thousand only), along with one or more solvent sureties of the like amount, to the satisfaction of the learned Trial Court.

(c) The applicants shall not, directly or indirectly, make any contact with the victim or her family members or any of the prosecution witnesses, nor shall they tamper with the evidence in any manner.

(d) The applicants shall regularly attend all proceedings before the Trial Court, unless specifically exempted by the

Court for valid reasons supported by sufficient cause.

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

(f) The applicants shall not commit any offence or involve themselves in any criminal activity during the pendency of the trial.

(g) The applicants shall furnish their present residential addresses and mobile contact numbers to the Investigating Officer as well as the Trial Court at the time of furnishing sureties, and shall also inform any change in address or contact details in writing during the pendency of the trial.

(h) The applicants shall not enter the jurisdictional limits of Bhandup Police Station during the pendency of the trial, except for the purpose of attending court proceedings, with prior intimation to the concerned Police Station.

11. The Bail Application stands disposed of accordingly.

(AMIT BORKAR, J.)