

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3414 OF 2025

Rescue Foundation	]	
Through Superintendent	]	
Leena Pramod Jadhav	]	
Age :- 40 Years, Occp: - Service,	]	
Having Officer at:- Plot No.39,	]	
Fathimadevi Road, Behind Our	]	
Lady of Remedy School, Poisar,	]	
Kandivali(W), Mumbai-400 067.	]	
Petition presenting on behalf of	]	
Esha Yakub Hussain @ Noopur	]	
Age :- 27 Years, Occp :- Nill,	]	
Address:- Sipahipara, P.O. Rampal	]	
P.S. Munshinganj Sardar,	]	
District:- Munshiganj,	]	
Bangladesh	]	... Petitioner

V/s.

- | | | |
|----|----------------------------|---|
| 1. | Union of India-Respondent |] |
| | Through Secretary of |] |
| | Government of India, |] |
| | Ministry of Home Affairs |] |
| | Shastri Bhavan, |] |
| | New Delhi-110 001. |] |
| 2. | The Deputy High Commission |] |
| | The Peoples of Republic of |] |
| | Bangladesh |] |
| | Office :- Jolly Maker, |] |
| | Bungalow No.08, Cuffe |] |
| | Parade, Mumbai-400 005. |] |
| 3. | State of Maharashtra |] |
| | Through Secretary of |] |
| | State of Maharashtra |] |
| | Ministry of Home Affairs, |] |
| | Mantralay, Mumbai-400 032. |] |
| | The Public Prosecutor |] |

	Criminal Appellate Side,	]	
	High Court, Bombay-400 001.	]	
4.	The Senior Inspector	]	
	Dahisar Police Station,	]	
	Dahisar, Mumbai-400 086.	]	
	Summons to be served upon	]	
	The Public Prosecutor	]	
	Criminal Appellate Side,	]	
	High Court, Bombay-400 001.	]	... Respondents.

Mr. Ashley Cusher a/w Ms. Priyanka Tiwari, Ms. Keerti Gupta for the Petitioner.

Ms. Manisha Jagtap for Respondent No.1.

Mr. J.P. Yagnik, APP for the State.

Mr. Balasaheb Raut, IO, PI, DCB, CID, Unit 12-Mumbai, Present.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 6th April, 2026.

PRONOUNCED ON : 15th April, 2026.

JUDGMENT (PER : KAMAL KHATA, J.) :

1) By this Petition under Article 226 of the Constitution of India, the Petitioner seeks a direction for the repatriation of the victim, namely Esha Yakub Hussain @ Noopur to her country of origin, Bangladesh. The Petitioner further seeks a direction to the Deputy High Commission of the People's Republic of Bangladesh, Mumbai to issue a fresh travel permit in the name of the said victim and to facilitate her immediate repatriation, with a further direction to ensure her appearance, as and when required, through video-conferencing in Special Case No.1595 of 2024.

2) Present Petition arises in somewhat unusual circumstances. The Petitioner, a Foundation engaged in the rescue, rehabilitation and

repatriation of victims of human trafficking from India, Nepal and Bangladesh, who are subjected to commercial sexual exploitation, had on 27th December 2024, filed an application before the learned Sessions Court seeking repatriation of the victim. The learned Sessions Court, by an oral direction, required the Petitioner to approach the learned Judicial Magistrate First Class at Borivali with the same application, on the ground that the victim was a major. Since the application was not taken on record by the Sessions Court, the Petitioner approached the Judicial Magistrate First Class (JMFC) at Borivali. The learned JMFC declined to entertain on the ground that the case is a Sessions triable matter, involving offences under the POCSO Act in respect of other victims, and that a charge-sheet had already been filed before the Sessions Court.

In these circumstances, the present Petition came to be filed in this Court on 19th June, 2025.

3) We have heard Mr. Ashley Cusher learned Counsel for the Petitioner, Ms. Manisha Jagtap for the Respondent No. 1- Union of India and Mr. J.P. Yagnik, APP for the State. We have also carefully perused the material placed on record.

4) A perusal of the earlier Orders discloses an unsatisfactory state of affairs on the part of both the Union and the State, who despite being served, have failed to furnish timely instructions to their Advocates, resulting in considerable delay in a matter of such sensitivity.

5) By an Order dated 8th October, 2025, this Court had directed the Trial Court to record the evidence of the victim. However, as of 11th March, 2026, i.e. over five (5) months thereafter, it was reported that the evidence of the victim had still not been recorded and was scheduled to be taken on 24th March, 2026. There was absolutely no satisfactory explanation offered for this delay. A report was accordingly called for by this Court from the Registry of the trial Court. The Order dated 11th March, 2026 also records the submission of the Petitioner that the earlier permission for repatriation had lapsed on account of the failure of the Trial Court to frame the charges or record the victim's evidence. A perusal of the report reveals no satisfactory or plausible explanation for the delay in complying with the directions of this Court.

6) Learned Advocate for the Union has placed on record the Standard Operating Procedures (SOP) for countering Cross-Border Trafficking in Persons between India and Bangladesh, as well as, the Memorandum of Understanding between the Government of the Republic of India and the Government of the People's Republic of Bangladesh on bilateral cooperation for Prevention of Human Trafficking, particularly trafficking in women and children and for the rescue, recovery, repatriation and reintegration of the victims of trafficking. The Maharashtra Module for Cross-Border Repatriation to Bangladesh dated 3rd March, 2009, annexed to the Petition, also sets out, *inter alia*, the applicable SOPs for RRRI and cross-

border traffic victims. Relevant clauses are set out hereunder for ready reference:

Post-rescue procedure:

- a) Production before Magistrate for the order of age verification and safe custody.
- b) Placement in proper shelter home.
- c) Production before Magistrate/CWC to order jail/home investigation and family tracing.
- d) The information should be shared with the State Task Force.

Administrative process:

- a) Confirmation of Nationality by Bangladesh Government.
- b) Issuance of repatriation order/consent letter from Ministry of Home Affairs, Government of Bangladesh.
- c) Issuance of travel documents by Bangladesh High Commission.
- d) Issuance of release order from shelter homes.
- e) Issuance of leave the country permission / notification from Foreign Registry Office(FRO).

Physical Repatriation:

- a) Communication with BSF or immigration authority in the Airport and other counterpart for arrangements for repatriation.

- b) Physical transfer of victims to the repatriation point (Land border or Airport). Handling over to the relevant authority by endorsing hand over note.
- c) Reception of Victim on the other side of the border (Bangladesh) at Airport or Border post.

7) The format prescribed under Annexure 5 of the Standard Operating Procedures that is presently under consideration by us is as under:

To,
Under Secretary (BSM),
Ministry of External Affairs,
South Block, New Delhi.

Subject : Repatriation Consent from Ministry of External Affairs.

Dear Sir,

The Bangladeshi girls trafficked in India are staying in (Name of Organization). These girls have been ordered for repatriation. (Copy of Consent letter and Order of CWC/Magistrate is attached herewith).

The State Government of Maharashtra has 'no objection' to repatriate these girls to Bangladesh subject to approval from the Ministry of External Affairs. You are requested to recommend the case to the High Commission of People's Republic of Bangladesh for issuing the travel permission to these girls, under intimation to us.

Thanking You,

Yours Sincerely,

()
Deputy Secretary.

8) A plain reading of the relevant clauses of SOP and said format

indicates that the victims / girls are required to either obtain consent from the CWC or secure an order of repatriation from the Magistrate.

9) The question posed to learned Counsels was: Why an adult victim would be required to obtain an order from the Magistrate when the Ministry of External Affairs, Government of India had already granted permission for the victim's return to Bangladesh and the Government of the People's Republic of Bangladesh, through its Deputy High Commissioner, had issued the requisite travel permit.

9.1) None of the learned Counsel were able to point out any specific provision in law mandating such an order from the Magistrate.

10) Our attention was, however, invited to Section 17 of the Immoral Traffic (Prevention) Act, 1956 (ITA), which deals with intermediate custody of persons removed under Section 15 or rescued under Section 16 of the said Act.

11) A plain reading of the Section 17 of ITA makes it clear that, it does not contemplate or require any order permitting repatriation of a victim to her country of origin.

12) In our view, the explanation offered by Ms. Jagtap, as adopted by the other learned Counsel, that the concerned Court hearing the matter should grant a 'No Objection' to the repatriation of the victim and that such an endorsement would suffice for the purposes of the Annexure 5 appears to be both pragmatic and consistent with the intent of the SOP.

13) In our considered view, in the present case, the learned Judge of the Special Court, who has recorded the statement of the victim, would be the appropriate authority to record such 'No Objection' and permit the release of the victim for repatriation to her home country. In other cases, it would be the Court which has granted custody of the victim to the rescue foundation or such person as provided under Section 17 of the Immoral Traffic Act, 1956, that shall grant such 'No Objection' for repatriation.

14) However, in the facts of the present case, since, the repatriation of the victim has been inordinately delayed for over six months, we deem it appropriate to exercise our writ jurisdiction instead of relegating the parties to the Special Court.

15) Accordingly, the victim, namely Esha Yaqub Hussain @ Noopur, a Bangladeshi national presently under the care and protection of the Petitioner, shall be repatriated to her country of origin forthwith, subject to furnishing the usual undertakings as may be required to ensure her appearance, as and when required, through video-conferencing in the Special Case No.1595 of 2024.

16) All concerned authorities to act on the basis of an authenticated copy of this Order.

17) List the matter for reporting compliance on 15th April, 2026.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.).