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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 1853/2022

SARIKA@RADHA@LOVANYA T

..... Petitioner

Through: Mr.Rajat Katyal, Ms.Anjali Chauhan,
Mr.Ankur Gupta, Ms.K. Kaur and
Ms.Anand Amit, Advs.

Versus

STATE OF NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Ritesh Kumar Bahri, APP for
State with Inspector Surender Dalal
and SI Giri Raj

Ms. Liyi Marli Noshi, Advocate for
complainant

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

02.08.2022

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1. The application has been filed under Section 439 Cr.P.C. for grant of interim bail, by one of the accused in FIR No.0072/2021, registered under Sections 363/366(A)/368/370/370(A)/372/376/34 IPC read with Sections 3/4/5/6/7 of the ITP Act read with Sections 6/17 of the POCSO Act, at PS Kamla Market, Delhi.

2. The Status Report along with the medical verification report has been filed in compliance of the previous directions.

3. It is the contention of Mr. Rajat Katyal, learned counsel for the applicant, that the report has affirmed that the mother of the applicant requires urgent knee replacement surgery of both her knees. He submits that the address has also been verified. Therefore, at least a week's bail may be granted and the applicant be tested as to whether she would get the mother operated and if not, she would immediately surrender to the court. Reliance has been placed on a decision of a Co-ordinate Bench of this Court in *Ashique Ilahi vs. The State (NCT of Delhi)* 2015 SCC OnLine Del 11082 to contend that in similar circumstances, the court had granted interim bail, even though the accused belonged to a disturbed area in that case.

4. Mr. Ritesh Kumar Bahri, learned APP for the State, has opposed the bail on the ground that there was a very good chance of the applicant absconding and influencing the prosecutrix. It is submitted that the facts in the case of *Ashique Ilahi (supra)* were vastly different from the facts in the present case, where the applicant was found in a brothel house (*kotha*) from where 13 girls (minors) had been rescued. It was submitted that the prosecutrix has to be examined and the trial would suffer if the bail was granted. It is also submitted that the applicant being a sex worker would indulge in the same activity, if released on bail.

5. Ms. Liyi Marli Noshi, learned counsel for the complainant, submitted that the requirement of knee replacement surgery did not entail a life threatening condition and further, even as per the report of the Investigating Officer (I.O.), there was one person Murali who was looking after the

mother of the applicant, in her absence as she was located in Delhi while the mother resides in Andhra Pradesh. It is further submitted that the applicant used to transfer money to her mother/Murali and the same arrangement can continue.

6. It is her fervent submission that the prosecutrix has been successfully rehabilitated and if the applicant was released on bail, for howsoever short a time period, the chances were that she would try to influence the prosecutrix, as out of the 13 minors rescued only one has had the courage to come in the open. Moreover, she could also abscond as had happened in another case. There interim bail was sought for the treatment of the child of the accused and after being released, the accused had absconded since 2019 and the trial has now proceeded after she had been declared a proclaimed offender. It is submitted that considering the nature of the case, granting interim bail would only hinder the process of trial.

7. In response, the learned counsel for the applicant, relying on the judgment of the Supreme Court in *Budhadev Karmaskar vs. State of W.B.*, 2022 SCC OnLine SC 704, argued that even if the applicant was a sex worker, she was entitled to all protection under the law. He also submits that the applicant was not responsible for the trafficking of minors as no allegations have been made against her that she had prevented the minors from escaping. It is also submitted that except for one prosecutrix, all the others had denied that they had been trafficked and had told the police that they were in the brothel of their own free will. Hence, whatever accusations

of trafficking could be only against "Mala Lama" aka "Punjabi Didi or Nani and not her.

8. The present case is not one where the rights of the applicant as noticed in *Budhadev Karmaskar (supra)* require protection. The applicant is an accused in an FIR registered after rescue operations. In her eagerness to obtain bail from the learned Trial Court, the medical records were tampered with. This has been observed by the learned Trial Court in its order dated 13th May, 2022. Thus, the conduct of the applicant does not invoke the confidence of the court.

9. The Status Report previously filed by the State records that during investigations the prosecutrix had identified the applicant as the one who had forced her into prostitution and did not allow her to leave the Kotha. Therefore, the prosecutrix must be permitted the opportunity to testify before the court. Another fact that is relevant to be noted from the Status Report is that a total of 13 girls were rescued. 12 girls did not make any statement implicating any person of trafficking, of whom 10 girls were placed in Critical Care Centre Dwarka Sector-19. On 3rd May, 2021, they had escaped for which a separate FIR being No.205/2021 under Section 363 IPC had been registered at PS Dwarka. Who helped them escape, though rescued through a raid at the brothel? Suspicions would arise that the same networks may have been involved. There is no gainsaying that the girls were rescued from the brothel where the applicant was also soliciting customers. It becomes a matter of concern, for she too could try to reach out to the

prosecutrix to try and influence her and/or prevent her from testifying before the court.

10. The report also discloses that much effort had to be made to trace out, through concerted efforts and high networks of secret informers, the brothel owner “Mala Lama” aka “Punjabi Didi” alias “Nani” who could be only arrested on 11th July, 2021 from Mumbai. No doubt, the present applicant was arrested from the brothel on 19th March, 2021, and it was on the identification of the prosecutrix. The probability of her escaping from the law is very high.

11. No doubt, a sex worker is entitled to all rights available to a citizen, but at the same time, if she violates the law, she would be subjected to the same consequences under law and cannot claim any special treatment. The applicant has been accused of offences not merely under the Immoral Traffic (Prevention) Act, 1956, but also under Sections 370 IPC (Trafficking of person) and 372 IPC (Selling minor for purposes of prostitution, etc.) which are extremely serious offences.

12. The report submitted by the Investigating Officer (IO) records the fact that there was one Murali, who is presently taking care of the needs of the mother of the applicant. The argument that being a male he would not be in a position to help the mother of the petitioner to attend to personal requirements post surgery does not impress, for the immediate care would be provided by the hospital and after discharge any further care at home would have to be arranged by the said Murali.

13. There is no meaning in the submission of the learned counsel for the applicant that the sincerity of the applicant be tested by granting her a week's interim bail and allow her mother to be operated upon and to wait and watch if she surrenders.

14. In the light of the foregoing discussion and particularly in view of the serious nature of allegations and the fact that the prosecutrix is yet to be examined by the learned Trial Court, no ground is made out for grant of interim bail to the applicant.

15. The application is dismissed.

16. The order be uploaded on the website forthwith.

ASHA MENON, J

AUGUST 2, 2022

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