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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2436 OF 2024

... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Sesley Menezes a/w Adv. Steven Anthony and Waqar pathan
for the Applicant.

Mr. Kiran C. Shinde, APP for Respondent-State.

Mr. Pathan Wahid, P.I., D. N. Nagar Police Station, Mumbai.

CORAM: MANISH PITALE, J.

DATE : 27th JUNE 2024

P.C. :

. Heard learned counsel for the applicant and learned APP for
respondent-State.

2. By this application, the applicant seeks bail as he was
arrested on 26th May 2024 i.e. the date of registration of FIR No.
0514 of 2024 at D. N. Nagar Police Station, Brihanmumbai City,
for the offences under Sections 370 read with 34 of the Indian
Penal Code, 1860 (IPC) and Sections 80 and 81 of the Juvenile
Justice (Care and Protection of Children) Act, 2015, wherein the
applicant is arraigned as accused No.6.

3. The informant in the present case is a Police Sub-Inspector
and in her statement, which led to the registration of the FIR, she
has stated the manner in which the accused Nos. 1 and 2
approached her raising a grievance concerning their minor child

who is about one year and seven months old. A perusal of the statement shows that according to accused Nos. 1 and 2, since their financial condition was precarious, they had agreed for their minor child to be sent for shooting of films, so that certain amounts could be earned in order to help them financially. In that regard, the role of accused Nos. 3, 4 and 5 is mentioned in the statement of the informant. It is stated that during enquiry, when accused No.5 was called to the Police Station, she stated that the accused No.6 i.e. the applicant before this Court wanted to adopt a child and in that context, the minor child of accused Nos. 1 and 2 was agreed to be sold for a consideration of Rs.4,65,000/-. Thereupon, the accused No.5 stated that specific amounts were paid on 5th May 2024 and 25th May 2024, totaling to Rs.4,50,000/- and the child was given in the custody of the accused No.6. It was specifically submitted that the accused No.6 did not take the child for shooting whatsoever. As the said statement indicated the involvement of the applicant, he was arraigned as accused and arrested on 26th May 2024 i.e. the date on which the FIR was registered. As on today, the applicant is in judicial custody.

4. The learned counsel for the applicant submitted that the allegations in the statement, leading to registration of the FIR, do not indicate the ingredients of the offence under Section 370 of the IPC, which pertains to trafficking of person. It is further submitted that the applicant belongs to the LGBTQ+ community

and that therefore, he is vulnerable in society. It is further submitted that the applicant remaining in jail is creating complications because of the community to which the applicant belongs. It is submitted that the applicant and his partner, as per the present position of law in India, are unable to legally adopt children and since they wanted to take care of child, they had taken possession of the minor child. The allegation of money having exchanged hands for the purpose of the possession of the minor child, is strongly denied on behalf of the applicant. It is further brought to the notice of this Court that the applicant his HIV positive. Medical documents to that effect are annexed to the application. It is submitted that the applicant has always cooperated with the investigation and he has already spent more than a month in jail and that in these circumstances, this Court may favourably consider the present application.

5. On the other hand, the learned APP has opposed the prayer for grant of bail on the ground that the investigation is still on going and that the medical report of the minor child is still awaited. It is submitted that the allegations are serious and the co-accused persons have given details about applicant being paid amount for taking possession of the minor child, which clearly indicates involvement of the applicant in the offence under Section 370 of the IPC.

6. This Court has considered the material on record, particularly the statement of the informant, which led to

registration of the FIR. Undoubtedly, there are clear allegations against the applicant of having paid specific amounts in order to take possession of the minor child. Co-accused No.5 has given details as to when such amounts were paid and the fact that in exchange for payment of such amounts, the child was “sold” to the applicant.

7. Considering the specific allegations in the statement of the informant, this Court does not find substance in the contention raised on behalf of the applicant and the ingredients of the offence under Section 370 of the IPC are *prima facie* made out. A perusal of the aforesaid provision shows that when a person is harboured, transferred or received by inducement and giving or receiving payments, the offence can be said to have been committed. To that extent, this Court is unable to agree with the learned counsel for the applicant.

8. Nonetheless, the peculiar facts of the present case cannot be ignored. The applicant is a person belonging to the LGBTQ+ community. A statement to that effect on affidavit is made by the applicant and this is supported by Exhibit ‘D’ at page 44, which is an Instagram post of the applicant, stating that he is an entrepreneur and event organiser and a person belonging to LGBTQ community. The fact that the applicant has proclaimed such a status in the public domain is enough to indicate that he can be said to be the person belonging to the said community.

9. The fact that persons belonging to such a community are vulnerable and in certain situations open to be ridiculed and harassed, cannot be ignored by this Court.

10. Additionally, the applicant is HIV positive and in support thereof, a report is annexed at page 55 and at page 57, the applicant has annexed a copy of the prescription giving the details of the medicines prescribed to the applicant for treatment, as he is HIV positive.

11. The applicant has remained behind bars since 26th May 2024, which is more than a month. He is in judicial custody. The amounts in question are stated to have been recovered during the course of investigation. This Court is of the opinion that a person belonging to the LGBTQ+ community, who is also HIV positive, can be said to be a person belonging to a category of persons, who are indeed vulnerable, particularly within the four corners of a jail. There are no criminal antecedents of the applicant and therefore, this Court is inclined to favourably consider the present bail application. Appropriate conditions can be imposed to address the apprehensions expressed by the learned APP, as regards the pending investigation.

12. In view of the above, the application is allowed in the following terms :

(a) The applicant shall be released on bail in connection with FIR No. 0514 of 2024 dated 26th May 2024 registered at D. N. Nagar Police Station, Brihanmumbai City, on furnishing P.R. Bond of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the concerned Court.

(b) The applicant shall report to the D.N. Nagar Police Station, Brihanmumbai City, on first and third Monday of each month between 10:00 a.m. and 12:00 noon, till filing of the charge-sheet. The applicant shall attend the concerned Court on each and every date, unless specifically exempted by the concerned Court.

(c) The applicant shall not contact, in any manner, the minor child and his parents.

(d) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.

(e) The applicant, upon being released on bail, shall place on record of the concerned Court the details of his Contact Number and residential address with updates in case of any change.

13. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

14. The application is disposed of.

MANISH PITALE, J.

BIPIN DHARMENDER
PRITHIANI

Digitally signed by BIPIN DHARMENDER PRITHIANI
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