

Cri.Appeal No.223/2023

..1..

MHCC020050122023



Presented on :29/03/2023
Registered on :29/03/2023
Decided on :26/04/2023
Duration : Y-0/M-0/D-28

**IN THE COURT OF SESSIONS FOR GREATER BOMBAY
AT BOMBAY**

CRIMINAL APPEAL NO.223 OF 2023

(As per record details of the Appellant/Victim is recorded and kept in a separate closed envelope)

Vs.

1. The State of Maharashtra
(at the instance of Mulund Police
Station in C.R.No.145/2023)

2. Superintendent,
Navjivan Mahila Vasti Griha,
Deonar, Mumbai.

..Respondents

**CORAM: HH THE ADDL.SESSIONS JUDGE
SMT.C.V.PATIL
(Court Room No.27)**

DATE : 26th April 2023

Adv. Arjun for Appellant
Adv. S.V.Keknis for Respondent/State

JUDGMENT

1. The said appeal is filed by victim u/s. 397 of Cr.P.C. and requested to release her on executing P.R. bond till final hearing of the appeal. The victim further requested to set aside order dated 15/03/2023 of Metropolitan Magistrate, 54th Special Court for ITPA, at Mazgaon.

2. It is the case of victim that she is witness/victim of the prosecution case. The Mulund police have conducted raid after receipt of the information. Thereafter F.I.R. came to be registered against the accused and the victims were produced before Mazgaon Court. Thereafter the victims were sent for age verification and her intermediate custody was extended. Meanwhile Magistrate called report from Medical officer in which the victim disclosed as major. After receipt of the report the Magistrate inclined to release two victims. In all three victims were rescued. Out of three, two victims are already released by the said order and the present victim is detained in Navjeevan Mahila Vastigriha, Deonar for one year for care, protection and shelter from the date of order.

3. The victim further submitted that she has denied indulged in any immoral activities. The victim has small minor kids. She needs to look after them. On 19/02/2023 again the victims were produced before Magistrate. The final order u/s.17(4) of PITA Act needs to be

passed within three weeks. But there is delay in passing final order. While passing order the Magistrate has not considered age of the victim and mechanical order is passed. The victim has right to move anywhere and to reside anywhere under Article-19 of the Constitution of India. But because of order liberty of victim is curtailed. Therefore the victim requested to release her and to set aside order of the Magistrate dated 15/03/2023.

4. The victim has cited respondent no.1 the State of Maharashtra through Mulund police station and respondent no.2 Superintendent, Navjeevan Mahila Vastigriha, Deonar. The affidavit of service is filed on record. From affidavit of service and postal dispatch receipt annexed with affidavit of service it appears that victim has sent notice to both respondents in which respondent no.1 appeared on record and filed reply at Exh.3. The State of Maharashtra through APP filed reply and submitted that if the victim is released then there is possibility that again she may indulge in sex work. From the documents annexed i.e. copy of F.I.R., copy of remand report, it appears that the Police Inspector Sudhir Jadhav is having power under this Act to take action and to rescue the girls from the sex work. The said Inspector received confidential information that in 'M' place the place is not disclosed. The owner and Manager keeping womens for prostitution. Thereafter the panchas were called. The police persons, panchas, bogus customers were informed about raid. Thereafter bogus customers were sent there as per information received. The bogus customers made inquiry in the said place with the women and he find that the prostitution work is going to be there. Accordingly he gave missed call to squad, thereafter they had been there. They found Manager, owner

alongwith three victims. The police persons made inquiry with victims. After inquiry it disclosed that the victims are doing prostitution work and are receiving amount from the said work. In the remand report after inquiry from the police it disclosed that the victims were suo-moto doing prostitution and were receiving amount from the said work. The raid is conducted on 18/02/2023, thereafter victims were kept in Navjeevan Mahila Sudhargriha, Mankhurd. The same fact is disclosed by victim in her revision that she has been in custody from 19/02/2023. After preliminary custody of the victim Magistrate called report from authorities i.e. Probation Officer, NGO, Medical Officer etc., and thereafter the Magistrate inclined to detain victim 'xxx' in Navjeevan Mahila Vastigriha, Deonar for one year for care, protection, shelter from the date of this order.

5. The order under challenge is dated 15/03/2023. By the said order the victim is detained for one year from 15/03/2023. The Magistrate opined that as per report of Probation Officer, Navjeevan Mahila Vastigriha, Deonar the said victim is the repeater. She has given undertaking in C.R.No.37/2020 of Bhandup police station not to indulge in same activity. Even though she found indulge in the same activity. In the said C.R. the Magistrate inclined that the victim has no regard to the Court orders as well as of the law. Therefore considering antecedents of the victim in the sex trade, Magistrate opined that she should detained in the Navjeevan Mahila Vastigriha, Deonar for one year u/s. 17(4) of the PITA Act. Being prejudice of the said order the victim had been before this Court.

6. Heard learned APP and the learned advocate of victim. The

learned advocate of victim has also filed bail application and he has insisted to release the victim on bail during pendency of the appeal. The victim is detained by Magistrate u/s.17(4) of the PITA Act, 1956. Under Section 17(6) she has tendered appeal before this Court against the said order. As per order of the Magistrate the victim is detained in safe custody for care, protection and shelter. It is not her judicial custody and therefore there is no question to release the victim either on P.R.bond or bail during pendency of the appeal.

7. From the facts on record, documents, subject order following points arise for consideration to which I have given reasons before them as under:

Sr. No	POINTS	FINDINGS
1)	Does order dated 15/03/2023 of Metropolitan Magistrate 54 th Special Court for ITPA, Mazgaon, Mumbai is legal and proper ?	In the negative.
2)	Does there are grounds to interfere with the findings recorded in the impugned order dated 15/03/2023 ?	In the affirmative.
2)	What Order ?	Appeal is allowed.

REASONS

AS TO POINT NO.1 to 3 :-

8. The learned advocate of victim in the arguments has given much emphasis on the ground that the order passed u/s.17(4) is not legal. However under Sub-Section 3 of Section 17 detention cannot be more than three weeks from the date of enquiry. In support he relied upon “**Sunita w/o. Raju Budhathoki Magar @ Thapa & Anr., vs. The**

State of Maharashtra” in 2014 ALL MR (Cri) 232,” in which the Hon'ble High Court held that under Sub-section 3 of Section 17 – detention cannot be more than three weeks from the date of enquiry. It is further held that as three weeks are already over, petitioner cannot be detained further and needs to be set at liberty. Here on perusal of record i.e. remand papers, report of the I.O. it appears that the I.O. has conducted raid on 18/02/2023 at the evening and on the same day he has rescue the victims. They got medically examined and thereafter the three victims were kept in Navjeevan Mahila Sudhargriha, Mankhurd. The order of Magistrate is dated 15/03/2023. In the said order it is nowhere disclosed that the victims were produced on 18/02/2023, but it is disclosed in the said order that victims were produced before Magistrate and Magistrate has called reports from various authorities. But the final order is passed on 15/03/2023. From the initial wordings of the Magistrate it appears that on the date of raid the victims might have been produced before Magistrate however production of victims before Magistrate on 19/02/2023 is admitted by victims herself u/s. 17(2) of PITA Act. The Magistrate then directed enquiry. From the starting words in the order it appears that when the victims were produced first time that time the Magistrate has ordered enquiry, that is called reports from the Probation Officer, NGO, medical officer etc. Clause 3 of Section 17 read as under :-

'Except minor, no person shall be kept in custody for the purpose for a period exceeding three weeks from the date of such an order and no person shall be kept in the custody of a person likely to have a harmful influence over.'

Here there is no case of harmful influence over victim but the case of custody during enquiry. As discussed earlier Magistrate has

ordered custody on 19/02/2023 and final order is passed on 15/03/2023. If as per prescribed limit in clause 3 of Section 17 three weeks time counts from 19/02/2023 then it will come to an end on 12/03/2023. But after three days the order is passed on 15/03/2023. There is three days delay in passing order. Under Section 17(3) detention only can be for three weeks and further detention is u/s.17(4). Though the advocate of victim refer citation but on perusal of the said citation it appears that till the judgment in the said citation the final order u/s.17(4) was not passed and therefore detention u/s. 17(3) was held illegal. But here facts are different. Magistrate has already passed final order u/s. 17(4) after three days delay and therefore with due respect the citation relied by advocate of victim is not relevant to the facts and circumstances of the case.

9. The advocate of victim has given much emphasis on the ground of right to freedom under Article 19 of the Indian Constitution. In support he relied upon “**Budhadev Karmaskar vs. The State of West Bengal and Ors., in Criminal Appeal no.135/2010 dated 19/05/2022**”. In the said citation the Hon'ble Supreme Court has discussed about Article 14, 19 and 21 of the Constitution of India. However the Hon'ble Supreme Court has discussed the rights of sex workers with dignity. It is also discussed that sex workers are entitled for equal protection. However when there is a raid on any brothel, since voluntary sex is not illegal and only running the brothel is unlawful. Here it is discussed earlier that the victims were themselves involved in the sex work in which they were receiving amount and therefore there is no case of forcefully involving them in the said work. Hon'ble Supreme Court in above citation has also given directions to State

Government to conduct survey in the Protective Homes and directed to release the adult womens who are detained against their will in the Protective Homes. Here victim has filed appeal which shows that she is not willing to stay in the protection home and it can be said that order is against her will. On perusal of order of the Magistrate it appears that while passing order the Magistrate has considered order of NGO, medical officer and Probation officer u/Sec 17(2) of the Act, the Magistrate may summon a Panel of five respectable persons, three of whom shall wherever practicable, be women to assist him, and may, for this purpose keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of PITA Act. Here u/s. 17(2) burden is casted on Magistrate to take help of respectable persons. For discharge of the said burden., the Magistrate relied upon **Writ Petition no.2192/2014 dated 24/07/2014, Husna Amir Jahan Sayyed v/s. State of Maharashtra**. By referring the said judgment it is opined by Magistrate 'personal inquiry of victims made by the Lady Magistrate is sufficient' then summons to respectable persons is not necessary. This shows that here Magistrate has not summoned respectable persons before passing enquiry and personally interacted with victims. In the said interaction victims have declined to indulge into sex work. The Magistrate made personal enquiry but till now the Hon'ble Bombay High Court is observing in many judgment about help of respectable person before order u/sec 17(4) of the Act. Same observations is made by Hon'ble Bombay High Court in "**Kajal Mukesh Singh vs. State of Maharashtra in Criminal Writ Petition no.6065/2020 dated 24/09/2020.**" Apart from that the Magistrate by relying upon Writ Petition no.2192/2014 inclined not to summon respectable persons. But here the order of the Magistrate is based on antecedent of the victim only. The age of the victim is shown by I.O. is

34 years. The same age is mentioned in the copy of Aadhar card. However as per observations of the Magistrate all the victims are found major. The Magistrate has considered medical report. The victims were medically examined before passing final order on 15/03/2023 in which Magistrate found that the victims are major. Out of three victims on the same day the Magistrate released two victims and detained the said victim on the ground that as per report of Navjeevan Mahila Vastigriha, Deonar earlier also said victim found indulged in one more C.R. at that time she has given undertaking that she will not involve in sex work. Even though taking undue advantage again she found involved in sex work. The police have conducted raid. They have found three victims. All the victims were major as per their report. Even as per observations of the Magistrate all the victims are major. But the said victim is detained only on the ground of antecedent. At the time of initial inquiry the Magistrate called report from various authorities so as to ascertain age, detection of injuries and sexually transmitted diseases. The Magistrate has considered report of the medical officer in which Magistrate found that the victims are major and the Magistrate do not found any other problem in the medical report. But in para 7 the Magistrate opined that the victim has committed breach of earlier undertaking and again she found indulged in sex work and therefore though she is major but possibility cannot be discarded that again she would dragged herself in the flesh of sex trade and therefore the Magistrate opined to detain her for one year in the Navjeevan Mahila Vastigriha, Deonar.

10. In the appeal victim submitted that she has two kids and she needs to look after them. From the statement of victim it appears

that she is married and therefore before Magistrate her husband has claimed her custody but on the ground of antecedent Magistrate refused to hand over custody of the victim. Apart from that the victim is major she is able to take her own decisions. Though custody is claimed by husband but considering her age i.e. 34 years she is at liberty to reside and move freely wherever she feels necessary. Here though the victim is major but she is detained only on the ground of antecedent. Under Article 19(1)(d) right to move freely through out territory of India and under Article 19(1)(e) right to reside and settle in any part of the territory of India are the fundamental rights of Indian citizen. The victim is major she is citizen of India and therefore she possesses this rights and if the victim is detained without reason then it can be said that her right to move freely and right to reside and settle are infringe. However from the report of police nowhere it appears that victim found indulged in sex work in public place. Police have no allegations against victims about commission of offence. The offence is registered against accused who found running the said institution. These are the victims they found indulged in sex work. It is also discussed earlier that victims were found indulged in sex work with their wish and they were doing work for earning money. Though her husband has claimed custody but considering age of victim it is not necessary to hand over custody to the husband. Victim is at liberty to reside anywhere and to move freely anywhere in India.

11. The learned Magistrate only on the ground of antecedent of indulge in similar kind of offence has detained victim without considering her right under Article 19 and without considering her age. Here the order is under challenge only on the ground of antecedent that

the victim is found indulge earlier also in similar act but the victim is major. She has right to do work. As per rule to involve in sex work is not itself an offence but to do sex work in public place so as to cause annoyance to others can be called as offence. Here no allegations is found of indulging in sex work in the public places against victim. In such circumstances detaining victim only on the ground of one antecedent of the similar work is not proper. The victim is having two kids certainly they needs their mother and if the victim is detained against her wish certainly it curtails her right to move freely all over India. The Hon'ble Supreme Court in the citation of '*Budhadev*' referred earlier has discussed right of sex workers and also given directions to State Government to conduct survey and to release adult victims who were found detained against her wish in the Protective Homes. Considering said citation, legal position, major age of the victim order dated 15/03/2023 needs to be set aside and the victim needs to be set at liberty. Accordingly I answer point no.1 in negative, point no.2 in the affirmative and proceed to pass the following order to point no.3.

ORDER

1. Criminal Appeal No.223 of 2023 is allowed.
2. The order dated 15/03/2023 passed by Metropolitan Magistrate, 54th Special Court for ITPA, at Mazgaon, about detention of victim in Navjeevan Mahila Vastigriha, Deonar for the period of one year for care, protection, shelter is quashed and set aside.
3. The Superintendent of Navjeevan Mahila Vastigriha, Deonar is directed to set at liberty forthwith victim 'X'.
4. Bonds or undertaking, if any, executed by Superintendent Navjeevan Mahila Vastigriha, Deonar stands discharged.
5. Inform the order to Superintendent, Navjeevan Mahila Vastigriha,

Deonar.

6. Record and proceeding, if any, return to Magistrate Court.
7. In view of earlier observations **Bail Application no.745/2023** stands disposed of alongwith **Appeal no.223/2023**.

(Smt.C.V.Patil)
Addl.Sessions Judge,
City Civil & Sessions Court,
Gr. Mumbai

26/04/2023

Date of Dictation :26/04/2023
Date of Transcription :27/04/2023
Checked on :02/05/2023
Date of signature :03/05/2023

<u>“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”</u>		
Upload Date	Upload Time	<u>Name of Stenographer</u>
04-05-2023	1.00 p.m.	Mrs. M.S. Putta
Name of the Judge (With C.R. No.)	H.H.J. Smt. C.V.Patil (C.R.No. 27)	
Date of Pronouncement of JUDGEMENT /ORDER	26-04-2023	
JUDGEMENT /ORDER signed by P.O. on	03-05-2023	
JUDGEMENT /ORDER uploaded on	04-05-2023	