Zainabi Fakir Mohammed Khan vs The State Of Maharashtra on 21 March, 2022

Author: Anuja Prabhudessai

Bench: Anuja Prabhudessai

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            IN THE HIGH COURT OF JUDICATURE AT BOMBAY
               CRIMINAL APPELLATE JURISDICTION

               BAIL APPLICATION NO.3549 OF 2021

Zainabi Fakir Mohammed Khan
                                          ...Applicant
            Versus
The State of Maharashtra                  ...Respondent
                          ....
Mr. Satyam Pille for the Applicant.
Mr. S.H. Yadav, APP for Respondent -State.


                  CORAM : SMT. ANUJA PRABHUDESSAI, J.
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DATED: 21st MARCH, 2022. P.C.:-

1. This is an application for bail filed under Section 439 of the Cr.P.C. by the aforesaid Applicant, who is arrested in C.R. No. Crime No.498 of 2020 registered at Ambernath Police Station for the offences punishable under Sections 201, 363, 368 and 370(4) r/w. 34 of the IPC.

2. The aforesaid crime was registered pursuant to the FIR lodged by Liliya Shiva Mandal alleging that on 15/09/2020 her two and half year old child had gone missing. She suspected that some persons had kidnapped her child from her lawful guardianship. In the course of the investigation it was disclosed that the child was playing outside the house Megha 27_ba_3549_2021.doc alongwith the other children and that accused No.5 Maya Kale had kidnapped the victim child at the instance of accused No.4-Sheru Saroj. It is alleged that accused No.4 handed over custody of the child to the present Applicant (accused No.2), who kept the child at her house and later agreed to sell the child to accused No.1-Pooja Shettiyar for Rs.70,000/-. It is stated that accused No.1 did not have the money and as such in lieu of Rs.70,000/-she gave documents of her house property. The child, which was found in custody of accused No.1-Pooja was rescued and custody of the child was handed over to his biological mother.

3. Learned counsel for the Applicant states that the co-accused Pooja, who had allegedly purchased the child has been granted bail. He therefore submits that the Applicant is entitled for bail on parity. He submits that even otherwise the material on record does not show involvement of the Applicant either in kidnapping or selling the child to the co-accused. He submits that the charge sheet has been filed and that the presence of the the Applicant is no longer required in custody.

4. Learned APP sates that the Applicant (accused No.2) had sold the child to Pooja and in lieu of consideration of Rs.70,000/- she had taken property documents from Pooja. She concedes that apart from Megha 27_ba_3549_2021.doc statement of the co-accused there is no other material to show the involvement of the Applicant either in kidnapping the child or selling the child.

5. The records reveal that this Court had granted bail to Pooja, who had allegedly purchased the child from the present Applicant. The role attributed to the Applicant is not different and hence the Applicant would be entitled for bail on the ground of parity. Even otherwise the investigation is completed and the charge sheet is filed. Presence of the Applicant is not required for investigation. Considering the large pendency, the trial is not likely to commence in near future.

6. Considering the above facts and circumstances, the application is allowed on following terms and conditions:-

(i) The Applicant is ordered to be released on bail on furnishing bail bonds of Rs.25,000/- with one or more sureties in the like amount;

(ii) The Applicant shall co-operate with the Investigating Agency and report to the Investigating Officer as and when called for;

(iii) The Applicant shall not interfere with the witnesses or Megha 27_ba_3549_2021.doc tamper with the evidence in any manner;

(iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

7. The Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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