

ORDER BELOW EXH.70
IN REGULAR CRIMINAL CASE NO.218/2018.
(State vs. Sangita Gaikwad etc.)

1. Third party applicant Parul Gouranga Das has filed this application for custody of victim Saraswati Gouranga Das. According to her, she is mother of victim.

2. According to third party applicant, C.R.No.123/2018 of M.Gandhi chowk police station, Miraj, has been registered under sections 3, 4, and 5 of the Immoral Traffic (Prevention) Act, 1956 (the PITA Act). On the date of first remand, Investigating Officer has produced victim Sarswati Das and accordingly, she sent to shelter home viz. Bhagini Nivedita Sudhargruha. Thereafter, victim Sarsawati Das is kept in Ashakiran Mahila Sudhargruh (Protective home) at Karad. According to third party applicant, father of victim is died. Said victim has one seven year old son. The said son is totally dependent on victim. Third party applicant has assured that she will keep the victim in better position, so custody of her be given to her.

3. APP filed her say at Exh.91 and resisted the application the ground that the victim Saraswati Das is kept in protection home at Karad. Previously, by application Exh.33, Kajal Rai Choudhari has applied stating herself to be aunt of victim Sarswati Das and also stating that parents of victim are no more. But she never came to the Court due to her falsity. The victim is important witness of

this case. If she is released from the protection home, there are chances of pressurizing her to change her testimony and also bold chances of her return to the brothel. Thus, for interest of justice and for protection, wellbeing, better care of the victim, it is necessary that she be kept in protection home. The third person applying for custody is not in position to take care of the victim and for her better future. Hence, APP prayed that application be rejected.

4. Applicant along with Exh.75 has filed verified copies of Voters I.D. of the Victim Sarswati, voter's I.D. of herself and her Adhar card.

5. Perused application, say and record of the case. Heard both the advocates.

6. Advocate for third party applicant argued that there is no inquiry as laid down under section 17 (2) of the PITA act. The third party applicant is natural guardian i.e. mother of the victim. He has also produced Aadhar card and Voter's I.D. of third party applicant. Thus, third party applicant has proved that she is fit person as natural guardian of the victim. Thus, she is fit person for the custody of the victim. She is able person to take care of her. Hence, third party applicant prayed for custody of the victim Saraswati Das.

7. APP during arguments brought to the notice of the Court the house investigation report (Exh.50) filed by Freedom firm. She argued that on perusal of the report, it is clear that the victim is in business of prostitution since many years. When her business of prostitution slacken in her area, she was chosen to do this business at the place where she was caught by police. According to the report, her family is poor. Her mother i.e. third party applicant is widow and works as domestic helper and runs the family. She has also niece viz. Payal resides with her mother i.e. third party applicant. The accused persons has also tried to push said Payal in the business of prostitution. Thus, the third party applicant is not fit person to hand over the custody of the victim. On the perusal of the reports, it reflects that third party applicant is not appropriate person to hand over the custody of the victim. As per section 17-A of the PITA Act, the report of investigation made by recognized welfare institution can be relied upon. Prima facie the report (Exh.50) seems to be trustworthy. The third party applicant is aged person, who could not able to take care of the victim. Her wellbeing could not be assured by sending with the custody of third party applicant. The victim is also important witness in this case. The chances of pressurizing her could not be ruled out.

8. Learned advocate for the third party applicant has relied upon the ratio laid down in case of Bombay High Court, Nagpur Bench in Criminal Writ Petition No.1134 of 2017 :

Ramsingh @ Raisaheb s/o Chananiya Guddawat Vs. State of Maharashtra etc”, wherein it is held that prior hearing of victim before an inquiry as contemplated under the provisions of PITA Act is not an empty formality. The report under section 17 (2) of the PITA Act is necessary for deciding the custody application. But in case in hand, my predecessor has called said report which is against the third party applicant. Thus, at the time of deciding custody application, I have heard victim herself and also perused report at Exh.48. Thus, ratio laid down in case cited supra is not applicable to the case in hand.

9. Learned advocate for the third party applicant has also relied upon the ratio laid down in case of “Khushi Harkishan Malhotra Vs. State” reported in “2006 CRI.L.J. 612”, wherein it is held that procedure laid down in section 17 is to be strictly followed. Approach of Courts has to be very cautious considering fact that Court was dealing with victim and not accused. Detention of rescued girl for more than 21 days in protective home without following procedure laid down in section 17 is illegal. Learned advocate for the third party applicant has also relied upon the ratio laid down in case of “Sunita w/w Raju Buudhathoki Magar @ Thapa and another Vs. The State of Maharashtra” reported in “2014 ALL MR (Cri.) 232”, wherein it is held that as per Sub section 3 of section 17, detention cannot be more than three weeks from the date of enquiry, as three weeks are already over, petitioner cannot be detained further and needs to be set at liberty.

Considering the facts of the case in hand and facts of case cited supra, with due respect, ratio laid down in the case cited supra is not applicable to present case.

10. At present victim is detained in protection home. Every care has been taken in protection home. Therefore, reasons mentioned behind custody of victim is appears to be unsustainable. Hence, considering the arguments of both sides and reports on record, considering welfare of the victim, the third party applicant is not fit person to hand over the custody of the victim. Hence, considering the above discussion, it would be proper to reject the application. Hence, I proceed to pass following order.

ORDER

Application (Exh.70) is rejected.

Sd/-xxx

Place-Miraj.
Date- 10.12.2018.

(N.M.Wali)
Judicial Magistrate, F.C., Miraj.
