

ORDER BELOW EXH.74
IN REGULAR CRIMINAL CASE NO.218/2018.

(State vs. Sangita Gaikwad etc.)

1. Third party applicant Tamal Jagdish Bagadi has filed this application for custody of victim Kanika @ Konika Tamal Bagadi. According to him, he is father of the 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 Kanika @ Konika Tamal Bagadi and accordingly, she sent to shelter home viz. Bhagini Nivedita Sudhargruha. Thereafter, victim Kanika @ Konika Tamal Bagadi is kept in Ashakiran Mahila Sudhargruh (Protective home) at Karad. According to third party applicant, the victim Konika is married woman but her husband has left out her. The victim was residing with her parents and brother. The victim has left the house for job at Pune. Third party applicant has assured that he will keep the victim in better position, so custody of her be given to him.

3. APP filed her say at Exh.92 and resisted the application the ground that the victim Kanika @ Konika Tamal Bagadi is kept in protection home at Karad. Previously, by application Exh.26, Mohammad Iduhasan Nasim has applied stating himself to be

cousin of victim Kanika @ Konika Tamal Bagadi and also stating that parents of victim are no more. But he 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. It is contended that the victim is HIV positive. She needs better treatment. If her custody is given to third party applicant, the chances of victim to return in prostitution business cannot be ruled out. 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.77 has filed verified copies of bank passbook, resident certificate of the Victim Kanika @ Konika Tamal Bagadi and Aadhar card of the third party applicant.

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. father of the victim. Thus, he is fit person for the custody of the victim. He is able person to take care of her. Hence, third party applicant prayed for custody of the victim Kanika @ Konika Tamal Bagadi.

7. Learned APP during arguments brought to the notice of the Court the house investigation report (Exh.48) 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. It was observed that there is not much employment opportunity for Konika in her village, economic condition of her family is very low. Hence, there are high chances of Konika getting back into prostitution. As per medical report, Konika is HIV positive. Thus, the third party applicant is not fit person to hand over the custody of the victim. On the perusal of the report (Exh.48), 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.48) 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.74) is rejected.

Sd/-xxx

Place-Miraj.
Date- 10.12.2018.

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