

State Vs. 1. Pinku Devi, 2. Digvijay Singh, 3. Nectu @ Nitu and 4. Vineet
FIR No. 223/2022
P.S Maidan Garhi

विवेक कुमार अग्रवाल
VIVEK KUMAR AGARWAL
महानगर दण्डाधिकारी-04
Metropolitan Magistrate-04
दक्षिण जिला, कमरा संख्या-201
South District, Room No. 201
जिला न्यायालय, साकेत
District Court, Saket
नई दिल्ली
New Delhi

10.06.2022

Present: Ld. APP for the State.
Counsel for accused Pinku Devi and Digvijay Singh.
Counsel for accused Nectu @ Nitu.
Counsel for accused Vineet.
IO / SI Raj Kumar alongwith case diary.

This composite order of mine shall decide four separate bail applications moved on behalf of accused persons.

Reply of separate applications have been already filed by the IO.

Arguments on all four bail applications already heard.

It has been argued on behalf of accused Neetu that she is the mother of the child in question, who was allegedly sold by her through co-accused persons to some other accused persons. That the child needs his mother. That there are four other children of the present accused, who require the care of their mother. Again that it was the present accused only who had made a call to Delhi Commission of Women in this regard and thereafter only the criminal proceedings were initiated in this matter. Again, that accused is ready to abide by all the conditions.

Again, it has been argued on behalf of accused Vineet Gupta that he is the sole bread earner in his family and in his absence, his family is not able to survive as having no other source of income. That there are minor children of the said accused. The only allegations against the present accused are that he had given the ride to the accused Neetu and his wife namely Sonia for taking them to Ghaziabad, where the child was allegedly sold, however, no recovery of money has been effected from his possession. Again, that accused is ready to abide by all the conditions.

Again, it has been argued on behalf of accused Pinku Devi and Digvijay Singh that both accused are wife and husband and only allegations against these accused is that they had purchased the child in question. However, they were not aware, if child was being sold and rather they were told by co-accused Rekha that child was given in adoption by the mother of the child and they were told to donate

Cont...



State Vs. 1. Pinku Devi, 2. Digvijay Singh, 3. Nectu @ Nitu and 4. Vineet
FIR No. 223/2022
P.S Maidan Garhi

10.06.2022

Present: Ld. APP for the State.
Counsel for accused Pinku Devi and Digvijay Singh.
Counsel for accused Nectu @ Nitu.
Counsel for accused Vineet.
IO / SI Raj Kumar alongwith case diary.

विवेक कुमार अग्रवाल
VIVEK KUMAR AGARWAL
महानगर दण्डाधिकारी-04
Metropolitan Magistrate-04
दक्षिण जिला, क्रमांक संख्या-2022-10
South District, Room No. 10
जिला न्यायालय, साकेत
District Court, Saket
नई दिल्ली
New Delhi

This composite order of mine shall decide four separate bail applications moved on behalf of accused persons.

Reply of separate applications have been already filed by the IO.

Arguments on all four bail applications already heard.

It has been argued on behalf of accused Nectu that she is the mother of the child in question, who was allegedly sold by her through co-accused persons to some other accused persons. That the child needs his mother. That there are four other children of the present accused, who require the care of their mother. Again that it was the present accused only who had made a call to Delhi Commission of Women in this regard and thereafter only the criminal proceedings were initiated in this matter. Again, that accused is ready to abide by all the conditions.

Again, it has been argued on behalf of accused Vineet Gupta that he is the sole bread earner in his family and in his absence, his family is not able to survive as having no other source of income. That there are minor children of the said accused. The only allegations against the present accused are that he had given the ride to the accused Nectu and his wife namely Sonia for taking them to Ghaziabad, where the child was allegedly sold, however, no recovery of money has been effected from his possession. Again, that accused is ready to abide by all the conditions.

Again, it has been argued on behalf of accused Pinku Devi and Digvijay Singh that both accused are wife and husband and only allegations against these accused is that they had purchased the child in question. However, they were not aware, if child was being sold and rather they were told by co-accused Rekha that child was given in adoption by the mother of the child and they were told to donate

Cont...



some money in the Trust of the Hospital. That they were not having any malafide intention and rather they wanted to adopt the child. That they had lost their son, aged about 18 years in the year 2019 and were in the state of Trauma. That they are having two other young children to be taken care of and again both accused are patient of diabetes. Again, that accused are ready to abide by all the conditions.

It is further argued by all the counsel that allegations in the present matter do not attract the offence under Section 370 IPC, as the child in question was not transferred or given for purpose of exploitation but for the purpose of adoption only. That at best the allegations attract the offence punishable under Section 81 of Juvenile Justice Act, 2015.

All four applications are opposed by Ld. APP for the State assisted by the IO on the ground of severity of the allegations.

Heard. Record perused.

Regarding the maintainability of the Section 370 IPC, it is to observed that the very first ingredient of the said offence is that a person has been transferred or received for the purpose of exploitation. In the present case, it is no where has come on record during investigation, if child was given by his mother namely Neetu to other co-accused persons namely Pinku Devi and Digvijay Singh for purpose of exploitation and rather the child was given for adoption.

On being inquired in this regard, IO has conceded that child was found being well maintained by accused person, namely, Pinku Devi and Digvijay Singh and that they wanted to adopt the child.

Accordingly, prima facie, I am satisfied that the offence the under Section 370 IPC is not made out as per investigation in the present matter and the allegations attract the offence punishable under Section 81 of J.J. Act.

It is to further observe that offence in question is certainly heinous, as the child in question was treated as a property. Certainly the mother of the accused has committed an act, which is against the pious and celebrated concept of motherhood in Indian Society. However, at the same time, it is important to observe that

Cont...



jurisprudence of bail requires that conditions of the accused persons and the surrounding circumstances are material factors to be considered while considering the bail of an accused.

In the given facts, it is to observe that accused Neetu is the mother of the child. The child who has been recovered has been lying unattended by his mother for last several days. Undoubtedly, mother is the best person to look after the infant. The accused Neetu is in JC for last several days. Investigation qua said accused already been completed and no purpose would be served to detain her behind the bars.

Again, coming to accused Vineet Gupta, it is to observed that IO has conceded that no recovery of money was effected from his possession and therefore, the role of the accused in the alleged offence is certainly matter of further investigation. Again, the accused is in JC for last several days. Investigation qua said accused already been completed by the IO and further investigation, if any does not require the detention of the accused behind the bars. Therefore, no purpose would be served to detain him behind the bars.

Again, coming to accused Digvijay Singh and Pinku Devi, it is to observed that IO himself has conceded that both these accused had taken the child with the intention to adopt him and they had no malafide intention. It is to further observe that undoubtedly, the manner and process adopted by these accused was against the law and the morals of the society, however, it is clear that they had no malafide intentions. Again, considering the family circumstances of both these accused and their medical condition, I am satisfied that they deserve the concession of bail.

In view of the aforesaid discussion, all four accused persons are granted bail and all accused persons are **admitted to bail on furnishing of bail bonds in the sum of Rs.50,000/- with one surety of the like amount.**

At request, on behalf of accused Vineet Gupta and Neetu and considering their financial condition, bail amount of both these accused is reduced to Rs.20,000/- each.

Cont...



Bail granted but following conditions are hereby imposed:-


1. That accused will attend the court in accordance with the conditions of the bond,
2. That accused will not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected,
3. That accused will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,
4. That accused will inform his mobile number to the IO/SHO and shall keep the same operational all the times,
5. That accused will notify the IO in case of change of address or mobile number,

Bail bonds furnished on behalf of all accused persons. Original RC of surtey Ravi Shankar is retained on record. Again, original passbook of surety Meena Kumari is also retained on record. Original RC of surety Brij Mohan and Shri Kant are also retained on record.

Release warrant be issued.

Copy of this order be given dasti to counsel for the applicant/accused persons.




(Vivek Kumar Agarwal)
MM-04, South, Saket
New Delhi. 10.06.2022
Metropolitan Magistrate
New Delhi