
(2002) 10 BOM CK 0076
In the Bombay High Court
Case No : Criminal W.P. No. 788 of 2002

Prerana

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 14, 15(4), 17(2)
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2

Citation : (2003) BomCR(Cri) 481 : (2003) 2 BOMLR 562 : (2003) 2 MhLj 105 :
(2003) 3 RCR(Criminal) 365

Hon'ble Judges : Ranjana Desai, J;A.P. Shah, J

Bench : Division Bench

Advocate : Mahrukh Adenwalla and Y.M. Chaudhari, for the Appellant; P. Janardhan, A.A.G., I.S. Thakur, Assistant Public Prosecutor for Respondent No. 1 and V.M. Thorat, for the Respondent

Judgement

Smt. Ranjana Desai, J.—Rule. Respondents waive service. By consent of the parties, taken up for hearing forthwith.

2. The petitioner is a registered organisation established in 1986. It does work in the red light areas of Mumbai and Navi Mumbai with the object of preventing the trafficking of women and children and rehabilitating the victims of forced prostitution. This petition is filed in public interest to protect children and minor girls rescued from the flesh trade against the pimps and brothel keepers keen on re-acquiring possession of the girls.

3. The 1st respondent, State of Maharashtra has established institutions for the care, protection and rehabilitation of women and children rescued from the flesh trade. The Government Special Rehabilitation Centre for Girls at Deonar is one such institution for the care and protection of child victims of forced prostitution. The 2nd respondent is the Probation Officer appointed under the Probation of Offenders Act, 1958 for the Government Special Rehabilitation Centre for Girls. The 3rd respondent, V.P. Jaiswal is an advocate, who, it is alleged, has appeared

for the brothel keeper as well as the minor girls rescued from the brothel.

4. The facts, which give rise to the present petition, may be shortly stated. On 16-5-2002, the Social Service Branch raided the brothel at Santacruz. Four persons, who are alleged to be brothel keepers/pimps, were arrested. Twenty-four females were rescued. The four arrested accused were charged under Sections 3, 4 and 7(2)(a) of the Immoral Traffic (Prevention) Act, 1956 ("PITA" for short) under C. R. No. 00/02 (later converted to SP/LAC No. 20/2002 of 16-5-2002) by Social Service Branch. The twenty-four rescued females were not charged, but were taken into custody under Sections 15 and 17 of PITA for the purposes of ascertaining their age and family background.

5. The accused as well as the rescued females were produced before the learned Metropolitan Magistrate at Esplanade on 17-5-2002. The 3rd respondent appeared on behalf of the four accused. The accused were remanded to police custody and the rescued females were sent to the Government Special Rehabilitation Centre for Girls at Deonar so that they may be medically examined and enquiries be made about their parents and guardians. The learned Magistrate, in his order dated 17-5-2002, noted that the Investigating Officer as well as the Addl. Police Prosecutor had submitted that the detention of the rescued girls is necessary in the corrective home for further examination by medical officer and for making further enquiries about their parents and guardians. He also recorded that the 3rd respondent strongly opposed the application for sending the rescued girls to the corrective home at Deonar. The order indicates that the 3rd respondent argued that the concerned officer had not followed Sections 15 and 16 of the PITA and therefore the girls should be released immediately. So far as accused 1 to 4 are concerned, it appears that the 3rd respondent argued that their further interrogation is not necessary as the owner of the brothel was known to the officer and he can be called for interrogation at any time.

6. The learned Magistrate, after considering the arguments, observed that custody of accused 1 to 4 was necessary to know from where they had procured the girls. Having regard to the provisions of Section 15 of the PITA, the learned Magistrate observed that the girls can be sent to the registered Medical Practitioner for the purpose of "ascertainment of their age, for detection of injuries and result of sexual abuse or presence of any sexually transmitted diseases". In view of this, the learned Magistrate remanded accused 1 to 4 to Police custody till 24-5-2002 and 24 girls along with the report were sent to Shaskiya Manila Sudharak Griha, Deonar for medical examination, to be kept there till 27-5-2002. A direction was given to the Probation Officer of the said Home to make enquiry with the help of the petitioner about the parents and guardians of the rescued girls and also to make enquiry with the girls and to file his report on or before 22-5-2002.

7. On 20-5-2002 the rescued females were sent for ossification test in which, 14 of them were found to be adults and remaining 10 were found to be juveniles

(under 18 years of age). Of the 10 minor girls six were from Meghalaya, three from Andhra Pradesh and one from Assam.

8. The four accused were released on bail on 24-5-2002.

9. On 27-5-2002, the twenty-four rescued girls were produced before the learned Metropolitan Magistrate at Esplanade. According to the Petitioner, the 3rd respondent appeared on behalf of the rescued females and pleaded that they should be released. The 2nd respondent stated that further time was required to complete the home studies then in progress as all the girls were from distant places. By order dated 27-5-2002, the learned Magistrate released the adult females and directed that the juvenile females be produced before the Juvenile Court on 28-5-2002.

10. On 28-5-2002, the juvenile females were produced before the Child Welfare Committee as the Juvenile Justice Board sits only on Mondays and Fridays. According to the petitioner, 3rd respondent appeared on behalf of the minor females before the Child Welfare Committee and prayed that the minor rescued females be sent for another age verification test. The Child Welfare Committee conceded to the request and passed orders, but directed that the rescued girls be produced before the Juvenile Justice Board on the next date in accordance with the order dated 27-5-2002.

11. Admittedly, the minor rescued females were produced before the Juvenile Justice Board at Bombay Central Court on 29-5-2002, when the Board adjourned the matter to 13-6-2002. During the interregnum, the minor females remained in the care and protection of the Special Rehabilitation Centre for Girls at Deonar. The police surgeon refused to conduct the age verification test of these girls as he had already conducted one, a few days earlier.

12. The minor females were produced before the Juvenile Justice Board on 13-6-2002 at Bombay Central Court. According to the petitioner, 3rd respondent filed a vakalatnama dated 13-6-2002 on behalf of the minor girls. He filed a discharge application and prayed that the minor girls be discharged on the ground that they had not committed any offence and had been in custody for over a month. This was opposed by the 2nd respondent and the police. The 2nd respondent prayed for time as she had corresponded with the organisations in the States from where the rescued girls had come and was awaiting their response. On that day no parents or guardians of these minor girls were present in the court. By order dated 13-6-2002, the Board discharged the minor girls. While releasing the minor girls, the Board noted that the 3rd respondent had made an application for discharge of the girls on the ground that they had not committed any offence and they were in custody for more than a month. The order notices that the 2nd respondent and the police had opposed the said prayer. The learned Judge, presiding over the Board, then observed that he had personally asked every detained girl and all the girls had shown eagerness to be released. He further observed that under such circumstances it seemed to him

that further detention of the girls was illegal and unwarranted because they had not committed any offence and they were victims of circumstances. He therefore ordered their release forthwith with condition that they shall not enter into the local jurisdiction of Social Service Branch. Thus the minor girls were released from the Court itself. The 2nd respondent could not, therefore, take the minor girls to the Government Special Rehabilitation Centre for Girls at Deonar. It is in these circumstances, being shocked at the manner in which the rescued girls, though they were minors, were released contrary to the provisions of law, that the petitioner has rushed to this Court.

13. We have heard at some length Ms. Mahrukh Adenwalla with Mr. Y.M. Choudhari for petitioner, Mr. P. Janardhan, learned Additional Advocate General with Mr. I.S. Thakur, A.P.P. for respondent 1 and Mr. V.M. Thorat, learned counsel appearing for respondent 3. Respondent 2 is served. None has represented respondent 2.

14. Ms. Adenwalla urged that some of the rescued girls being under 18 years of age are victims and cannot be treated as accused. u/s 8 of the PITA soliciting in a public place is an offence. The same provision cannot be applied to juveniles. The learned counsel urged that the law does not permit a girl under 18 years of age to consent to sexual intercourse. Hence, a child cannot be charged for soliciting as in the eyes of law, her consent has been vitiated. She also drew our attention to certain provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 ("the JJA" for short). She submitted that the said Act aims at providing proper care, protection and treatment of children under 18 years of age. "Juvenile" or child is defined under the JJA as a child who has not completed 18 years of age. A child who is said to have committed an offence is described as a juvenile in conflict with law and destitute children who are likely to be grossly abused or tortured or who are mentally or physically challenged, are described as children in need of care and protection. She submitted that a juvenile in conflict with law has to be produced before Juvenile Justice Board and a child in need of care and protection has to be produced before the Child Welfare Committee. Thus, the JJA deals with two types of children, juveniles in conflict with law and children in need of care and protection. A juvenile girl found soliciting can be categorised both as a juvenile in conflict with law u/s 2(1) as well as child in need of care and protection u/s 2(d)(vi). The learned counsel contended that considering the fact that the girls under 18 years of age are victims of circumstances and are forcibly brought into flesh traffic by traffickers, who may include their family, relatives and friends, such girls cannot be treated as accused. They would more appropriately fall in the category of children in need of care and protection u/s 2(d)(vi). She submitted that it is, therefore, necessary that all such girls should be produced before the Child Welfare Committee and not before the Juvenile Justice Board. This is because it is necessary to rehabilitate these girls rather than penalise them, for they are forced into these activities.

15. Referring to the facts of the case on hand, the learned counsel contended that entire matter has been handled in very casual manner. She submitted that the ossification test indicated that the girls were minors. They were taken charge of from a brothel. They were clearly victims of circumstances, acting at the dictates of the brothel keeper. They were therefore children in conflict with law and ought to have been produced before the Child Welfare Committee. They were wrongly produced before the Juvenile Board. The learned counsel further urged that the Juvenile Board fell into a serious error in releasing them. It could not have done so without recording a finding that they were not minors but adult females. Having regard to the provisions of the JJA, it was obligatory on the part of the Juvenile Board to send them to protective home. By releasing them, the Juvenile Board has driven them back to the flesh trade.

16. The learned counsel also contended that the conduct of respondent 3, advocate Shri Jaiswal is objectionable. Shri Jaiswal appeared for the brothel keepers, who are accused and got them released on bail. He also appeared for the victim girls, who were not accused. There is certainly a conflict of interest between the brothel keepers and the victims and the learned advocate could not have appeared for both. Ms. Adenwalla submitted that respondent 3 is guilty of professional misconduct. Respondent 3 even appeared before the Juvenile Justice Board and argued that the girls should be released. Serious note will have to be taken of the conduct of respondent 3. The learned counsel also contended that the rescued girls will have to be traced and hence this Court should direct that the investigation should go on. The learned counsel urged that this Court should issue necessary guidelines/directions which can be followed by the investigating agency and the Courts, while dealing with similar cases.

17. Mr. V.M. Thorat, the learned counsel appearing for respondent 3 contended that it is true that respondent 3 appeared for the rescued girls, but that does not amount to professional misconduct. He submitted that the girls were claiming to be adults. The girls and the four accused were claiming to be innocent and wanted to be released on bail. They were not making any allegations against each other. Respondent 3 was briefed at the last moment. There appeared to be no conflict between them and hence respondent 3 filed applications for all. No professional misconduct can be attributed to him. Respondent 3 has filed affidavit in this Court justifying his conduct and supporting the Court's orders. We shall advert to it at the appropriate stage.

18. Mr. Janardhan, the learned Addl. Advocate General supported the petitioner. He also emphasised the need for this Court to issue necessary directions to prevent recurrence of such events in future. He has taken us through the affidavit of Shabana Irshad Shaikh, Sub-Inspector of Police, Social Service Branch, Crime Branch, C.I.D. Mumbai. We shall refer to it shortly.

19. Before we deal with the rival contentions, it is necessary to have a look at the relevant provisions of law. We may first refer to certain provisions of the Constitution. Article 15(3) of the Constitution empowers the State to make any

special provision for women and children. Under Article 23 of the Constitution, traffic in human beings is prohibited and any contravention of this provision is an offence punishable in accordance with law. Two important Directive Principles of State Policy are found in Article 39(e) and (f). They read as under :

"39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

20. Article 48 imposes on the State a primary responsibility of ensuring that all children until they complete the age of 14 years are provided free and compulsory education. Chapter IV-A which was inserted in the Constitution by the Constitution (42nd Amendment) Act, 1976 introduced fundamental duties in the Constitution. Article 15A(a) states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. The intention of the Constitution makers is clear. Stated in plain words, it means that women and children have to be protected. Trafficking in them has to be prevented and stopped. They must be allowed to develop in free and healthy conditions.

21. Various legislative measures have been taken to give effect to this intention. The Suppression of Immoral Traffic in Women and Girls Act, 1956 was a step in that direction. It was amended by Act No.44 of 1986. The title of the said Act was changed to the Immoral Traffic (Prevention) Act, 1956 ("PITA" for short). The purpose of this Act is to inhibit or abolish commercial vice namely, the traffic in persons for the purpose of prostitution as an organized means of living. We will refer to only the relevant provisions. Section 2(aa) of the PITA defines "child" to mean a person who has completed the age of sixteen years and Section 2(cb) defines "minor" to mean a person who has completed the age of sixteen years but has not completed the age of eighteen years. Section 2(f) states that "prostitution" means the sexual exploitation or abuse of persons for commercial purposes and expression "prostitute" has to be construed accordingly. Section 2(b) defines "corrective institution" to mean an institution in which persons who are in need of correction may be detained. Section 2(g) defines "protective home" to mean an institution in which persons who are in need of care and protection may be kept. The PITA provides for punishment for keeping a brothel or for allowing premises to be used as a brothel (Section 3), for living on the earning of prostitution (Section 4), for procuring, inducing or taking persons for the sake of prostitution (Section 5), for detaining a person in premises where prostitution is carried on (Section 6), for prostitution in or in the vicinity of public places and seduction of a person in custody (Section 7). Section 8 will have some relevance. It provides for punishment for seducing or soliciting for purpose of prostitution. Section 9 provides for punishment for seduction of a person in custody. u/s 10A depending on circumstances, a female offender may be sent to

a corrective institution for a term by a Court in lieu of sentence.

22. Section 14 makes offences punishable under the PITA cognizable. u/s 15(4) a police officer is entitled to enter any premises if he has reasonable grounds for believing that the offence punishable under the PITA has been or is being committed in respect of a person. u/s 15(5-A) any person who is produced before a Magistrate has to be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases. u/s 16 a Magistrate may direct that such a person be rescued from such a place and produced before him. Section 17 provides for intermediate custody of persons rescued u/s 15 or 16 and if such a person is in need of care and protection, the Magistrate can direct that he or she may be detained in a protective home. Section 20 provides for removal of prostitute from any place. Protective homes are provided u/s 21. Section 22B provides for summary trials.

23. Taking note of increasing world wide awareness of the problems of children particularly, problems of a girl child and various world conventions resolving to take measures to put an end to immoral traffic in children to some of which, India is a party, the legislature enacted the juvenile Justice (Care and Protection of Children) Act, 2000 ("JJA" for short). As its preamble reads, it is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection by providing for proper care, protection and treatment by catering to their developmental needs and by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children and for their ultimate rehabilitation to various institutions established under the said Act. It is necessary to refer to some relevant provisions of this Act, to appreciate the gradual change in the approach of the legislature towards destitute and erring children.

24. The JJA is a child friendly Act. It simply makes two categories of children. u/s 2(k) juvenile or child means a person who has completed 18 years of age. Section 2(a) defines child in need of care and protection. In this category are children who are not involved in any offence but who are neglected, abused and are victims of circumstances. Section 2(d)(i) to (ix) describe the type of children who fall in this group. For the purposes of the present case it is necessary to read 2(d)(vi). It defines child in need of care and protection to mean a child who is being or is likely to be grossly abused, tortured or exploited for purposes of sexual abuse or illegal acts.

25. Section 2(1) says that a juvenile in conflict with law means a juvenile who is alleged to have committed an offence. Section 4 provides for Juvenile Justice Board. Section 10 states that as soon as a juvenile in conflict with law is apprehended by police, the matter has to be reported to a member of the Board. Section 15 of the JJA provides for the orders that may be passed against a juvenile who has committed an offence. The Board may, inter alia, ask the

juvenile to go home after advice or provide for his counselling or direct that he may be sent to a special home. u/s 16, a juvenile who has completed the age of 16 can be kept in a safe custody, but in no case can a juvenile be sentenced to death or life imprisonment. u/s 20 cases which are pending on the date on which the JJA has come into force, shall be continued in the respective courts where they are pending, but if the court finds that juvenile has committed an offence, it shall record a finding to that effect and send the juvenile to the Board which shall pass orders as if it has been satisfied that the juvenile has committed the offence.

26. u/s 29 of the JJA, the State Government may constitute a Child Welfare Committee. A child in need of care and protection has to be produced before the said Committee as per Section 32. If such a child has no family of ostensible support, the Committee may direct that the child may be remanded to children's home or shelter home. Chapter IV of the JJA is devoted to rehabilitation and social integration of children.

27. The JJA therefore intends improving the lot of children, be they children in need of care and protection or juveniles in conflict with law. The officers dealing with them have to be specially trained and instructed. Procedure to be adopted while dealing with them is different. The thrust is on rehabilitation. Adoption, foster-care, sponsorship or lodging them in after-care organisations are the options open to the authorities. Even where they are involved in offences they are not to be treated as offenders, but merely as children who have strayed their path for want of guidance. We will have to examine the present case against this background.

28. In almost all cases, where girls are rescued from a brothel, it is found that they are forced to submit to prostitution by brothel keepers. Cases are not unknown where young women from far of corners of India have to leave their homes and come to city like Bombay in search of bread. They are a burden to their parents. Their marriages cost money. They are neglected and unwanted. Many a time they are brought to cities with false promises of better future and sold to brothel keepers. Once they are in the trade, it is impossible for them to get out of it. If it is a brazen case of voluntarily soliciting in public attracting Sections 7 or 8 of the PITA such girls can be described as children in conflict with law and will have to be produced before Juvenile Justice Board. Otherwise such girls can more aptly fall u/s 2(b)(v) of the JJA as children in need of care and protection i.e., children who are being or who are likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts and they will have to be produced before the Child Welfare Committee. While dealing with both these categories of minors a kindly approach is needed. Their reformation or rehabilitation must be the object. The provisions of the JJA will have to be strictly followed.

29. If the facts of the present case are examined, we find that the provisions of the JJA are completely ignored. Shabana Shaikh, Sub Inspector of Police, Crime Branch CID Mumbai has stated that the brothel was raided on 15-5-2002. Four

brothel keepers were arrested on the spot. Twenty four girls were found in the premises. Against the said accused Special LAC No. 20/02 under Sections 3, 4, 7(2)(a) of the PITA, was registered. On 17-5-2002, the four accused as well as the twenty four girls were produced before the Additional Chief Metropolitan Magistrate's 3rd Court, Esplanade, Mumbai. The learned Magistrate remanded the four accused to police custody till 24-5-2002 and twenty four girls were sent to Shaskiya Mahila Sudhar Griha with a direction that their medical examination be carried out.

30. On 20-5-2002, the medical examination of the girls was carried out. Ten girls were found to be minors. On 24-5-2002, the four accused were released on cash bail. On 27-5-2002, the twenty four girls were produced before the learned Magistrate. Four major girls were released and ten minor girls were ordered to be produced before the Juvenile Court on 28-5-2002.

31. On 28-5-2002, the Probation Officer produced the ten minor girls before the Juvenile Welfare Board. Respondent 3, Advocate Jaiswal appeared for the minor girls and argued for their release claiming that they are not minors. The Board ordered their re-examination and the matter was adjourned to 13-6-2002. On 11-6-2002, the Probation Officer produced the said ten girls before the Medical Officer of Nagpada Police Hospital for their re-examination to ascertain their ages. The Medical Officer expressed opinion that he had already examined them in detail and issued a certificate as to their age with a margin of error of 6 months on either side. According to the Medical Officer the certificate was issued after physical examination, ossification test, X-ray examination as per procedure prescribed in H. S. Mehta's Book of Medical Law and Ethics in India (1963) and hence re-examination of the said girls was not necessary.

32. With this report the said girls were again produced before the Juvenile Court, Mumbai on 13-6-2002. Respondent 3 again appeared for them and argued for their release. The Probation Officer opposed their release and contended that she had made correspondence with different Non-Governmental Organisations of different States about the girls and hence they may be detained for further 15 days. The Board released the girls on the condition that they shall not enter into the local jurisdiction of Social Service Branch.

33. We express our displeasure at the manner in which this case has been handled by the Board. First of all if the girls were minors and they were not involved in any offence, they could not have even been described as juveniles in conflict with law. They were children in need of care and protection as per the provisions of the JJA. They ought to have been produced before the Child Welfare Committee once their minority was confirmed. Assuming they had to be produced before the Magistrate to seek orders for their production before the appropriate forum, the Magistrate should have directed their production before the Child Welfare Committee and not before the Juvenile Justice Board because they were minors and not accused. Assuming further, that they could have been produced before the Juvenile Justice Board, there was no warrant for the Board

to release them because the record before the Board clearly indicated that the girls were minors. The Board could have released them, without conditions, only if they were majors. Because they were minors, the Board was duty bound to follow the procedure prescribed under the JJA. The Board ought to have given due consideration to the request of the Probation Officer that they should not be released because she was awaiting information about them from the States from where they had come. This request was obviously made to explore the possibility of finding out their parents so that their custody could be entrusted to them with some conditions. Surprisingly the Board released them on a condition that they shall not enter into the local jurisdiction of Social Welfare Branch.

34. We have referred to the relevant provisions of the JJA which make it evident that both, a juvenile in conflict with law or a child in need of care and protection have to be dealt with, keeping in mind the possibility of their reformation and rehabilitation. The JJA provides for Protective Homes or Special Homes where such girls have to be kept for safe custody, because the fear is that they may be driven back to the brothels. The Board should have been alive to this. By asking the girls not to enter into the local jurisdiction of Social Service Branch, the Board has treated them as confirmed prostitutes. Such orders can be passed u/s 20 of the PITA which empowers a Magistrate to order removal of prostitutes from any place and prohibit them from re-entering it. We wonder how the Board could have passed such harsh order to the detriment of the minor girls. The learned Magistrate presiding over the Board has observed that he had personally asked the girls and they had shown eagerness to be released. There is no provision under the JJA whereunder, the Board can release the minor girls because they desired to be released without giving a thought to their rehabilitation and the frightening possibility of their re-entry into brothels.

35. Another disturbing facet of the matter is that it is at the request of respondent 3, who had appeared for the brothel keepers, that the Board released the girls. Having appeared for the accused, respondent 3 could not have appeared for the victim girls who were not the accused. This was sufficient indication that the girls would be driven back to the brothels, and the Board should have realised this. The Board committed the greatest blunder in entertaining such an application and releasing the, girls pursuant thereto. The Board ought to have sent them to the Protective Home as requested by Probation Officer. In our opinion greatest injustice has been done to the minor girls.

36. We are also of the opinion that it was improper on the part of Advocate Jaiswal to appear for the accused as well as for the victim girls. To us there appears to be a clear clash of interest between the accused and the victim girls. We have perused the affidavit filed by him in this Court. Through the affidavit respondent 3 has justified his conduct. We are not happy with the explanation offered by respondent 3. The tenor of the affidavit strikes a very unhappy note. Respondent 3 was present in the Court. We have also heard his advocate. Even in this Court we witnessed a defiant approach of respondent 3. We may not be

however understood to have expressed any final opinion on the conduct of respondent 3, as in our opinion, the proper authority to consider this is the Bar Council of Maharashtra. We will therefore refer his case to the Bar Council to conduct appropriate enquiry and arrive at its conclusions without getting influenced by our observations about his conduct.

37. We feel that the following directions may prevent recurrence of such events in future.

(A) No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection, as defined by Sections 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000. At the first possible instance, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need of care and protection.

(B) A Magistrate before whom persons rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place are produced, should, u/s 17(2) of the said Act, have their ages ascertained the very first time they are produced before him. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a Juvenile in conflict with law, or to the Child Welfare Committee if such person is a child in need of care and protection.

(C) Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the Probation Officer.

(D) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.

(E) If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be followed for the rehabilitation of the rescued child.

(F) No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose.

(G) An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic (Prevention)

Act, 1956.

38. We are anxious about the safety of the minor girls who are released. The statement made by the learned A.G.P. that the investigation will go on and vigorous efforts will be made to trace the minor girls has reduced our anxiety to some extent.

39. We have already indicated that respondent 3's conduct in this case needs to be examined by the Bar Council. We therefore direct the Bar Council of Maharashtra to conduct an inquiry into respondent 3, Advocate Jaiswal's conduct in this case, as per law. We make it clear that our observations about his conduct are prima facie observations and the Bar Council of Maharashtra should examine his case, after giving him a notice and after giving him an opportunity of hearing in accordance with law, without being influenced by our observations.

40. The petition is disposed of with above directions.