

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 No.804 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Lalit Sharma, Advocate, for the applicant. Mr. V.K. Gemini, D.A.G. for the State of Uttarakhand. This C482 application has been preferred by the present applicant, who is shown to be an accused in a Criminal Case No.562 of 2022, "State Vs. Vipin Srivastava and others", for his involvement in commission of the offences under sections 5, 6 and 7 of the Immoral Traffic (Prevention) Act, 1956, which emanates from the FIR No.300 of 2022, as it was registered on 30.07.2022, at Police Station Sitarganj, District Udham Singh Nagar. In accordance with the FIR, which was registered on 30.07.2022, it was contended, that when the police team raided the "Spa Centre", it was found that certain males and females, they were indulging themselves in commission of the offences, which was contrary to the basic norms of society and was immoral act, as well as against the provisions contained under the Immoral Traffic (Prevention) Act, 1956. There had been various roles assigned to the different persons, who were found to be engaged in the commission of the offence, and particularly, the ownership of the "Spa Centre", was vested with one Sri Vipin Srivastava. The applicant argues, that none of the offence as contained under sections 5, 6 and 7 of the Act of 1956, would be made out as against him, as it cannot be directly attributed against him that he was involved in commission of the offence because he contends, that his presence was found to be at the reception counter, at the time when the police team has raided the place in question, he attempted to

		escape, and he was caught on spot by the police. He submits, that his presence at the reception centre of the spa centre where the offence was being committed will not directly attribute him to be a person involved in the commission of the offence, which could attract sections 5, 6 and 7 of the Act of 1956. Coupled with the fact, that in addition to it, it has been argued by the learned counsel for the applicant that since his status of being a customer is not being established by the allegations which had been levelled in the FIR, the provisions contained under section 5 of the Act of 1956, will not be made out against him. In order to answer his arguments as raised by the learned counsel for the applicant, particularly, in the context of the section 5 of the Act, which creates a legal obstruction against an accused person, who is said to be involved in procuring, inducing or taking a person, for the sake of the prostitution. Since the presence of the applicant in the place in question, what role he could be attributed in commission of the offence to bring it within an ambit of the section 5 of the Act, would be a subject matter to be tried, when the statement of the witnesses are recorded, because merely his presence cannot oust him from the act inclusive of section 5 of the Act of 1956, because even otherwise also, in the entire C482 application or in the FIR itself, there is no logical assertion as to why and for what reasons the applicant was found present at the spa centre where the prostitution was being carried, nor it is the case of the applicant that he was not engaged in the commission of the offence of the nature as narrated in paragraph 5. Even for the time being, if it is taken that the applicant's argument pertaining to his involvement in commission of the offence under section 5, is not made out, that cannot be determined by this Court in the absence of appreciation of the evidence, which is to be led before the trial court, as up to what extent the applicant was instrumental in commission of
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			the offence, and for what purpose he was present in the spa centre, where the offence of the said nature was being carried. It's not the case of the applicant in the C482 application, that he was there for procuring the services of as provided by the spa centre, as a customer other than the customer for the purposes of prostitution. In that eventuality, so far as the argument extended by the learned counsel for the applicant in the context of section 5 of the Act of 1956 is considered, will purely be a subject matter to be decided by the learned trial court, when the trial court considers the case on merits, as to what bearing with the word “procure, enticing” would have with regards to the co-accused person, who were found to be present at the place where the offence was being committed. Learned counsel for the applicant has referred to section 6 of the Act of 1956, and thereafter too, he has contended, that he cannot be said to be involved in commission of the offence, because he was not present and instrumental in detaining a person, where the prostitution is being carried out in any brothel or any premises, with an intent to that such persons may have sexual intercourse with the person, who is not the spouse of such person. This aspect too, as to what was the motive behind the applicant's presence at the place in question, and up to what extent he was involved in inducing the persons to carry out the prostitution at the place in question, whether he was the person instrumental in detention of the females, who were engaged in the commission of the offences, would yet again be a subject matter of the trial upon appreciation of evidence. Lastly he argues, that in the light of the provisions contained under section 7 of the Act, since it was a spa, it will not fall to be within a domain of “public premises”, and therefore, he cannot be fastened with the allegations levelled under section 7 of the Act.
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			With all due reverence to his argument, this Court is in disagreement with the argument as extended by the learned counsel for the applicant, because the term “public premises or a public place” as referred to in section 7 of the Act, has to be widely and rationally construed to be a place, where a general public has an open access. Admittedly, the place where the offence was found to have been committed, it was a spa centre. It was not a place where the movement of a person was restricted by any law. It was a place, which was easily accessible by the public which will include within it’s definition the present place too, and the place where the offence was found to have been committed would fall to be a public place. In that eventuality, it cannot be said that section 7 of the Act, could not be made out as against the present applicant, merely because of the fact, that it was a spa centre where the offence was being committed, and according to his contention, that it will not be a public place. There is nothing on record nor pleaded by the present applicant to justify as to what was the reasons for his presence either he was instrumental as a tool in procuring, inducing or taking the person for the purposes of prostitution or he was detaining a person in the premises, where the prostitution was being carried is yet a fact to be determined by the trial court. The very act of presence and the act of making an attempt to escape, when he was apprehended by the police force on spot, what was the motive of his presence and what was the reasons for his making an attempt for escape all of this is to be tested on an anvil of evidence before the trial court. Hence, the tenacity of the argument of the learned counsel for the applicant, with regards to the context of the provisions as contained under sections 5, 6 and 7 of the Act of 1956, they all entail within itself, that before coming to any logical conclusion, the basic
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			intention and purposes of all the acts as contained under the aforesaid provisions are to be tested by the trial court after appreciating the evidence to be adduced before it. These aspects cannot be made a subject matter of trial court to be considered by the court, while exercising its powers under section 482 of CrPC, which in itself is very confined within its exercise of jurisdiction, as the C482 jurisdiction cannot be utilized as a forum, where an evidence could be attempted to be established or wherein evidence or supporting evidence is required to be considered by the court, to oust the applicability of the provisions as contained under sections 5, 6 and 7 of the Act of 1956. In these eventualities, I do not find any merit in the C482 application, the C482 application stands dismissed. (Sharad Kumar Sharma, J.) 03.10.2023 NR
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