

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.75 OF 2015

Ratnakar Sunder Hegde ... Applicant

Vs.

The State of Maharashtra ... Respondent

with

BAIL APPLICATION NO.192 OF 2015

Navin Divakar Kotiyan ... Applicant

Vs.

The State of Maharashtra ... Respondent

with

BAIL APPLICATION NO.1429 OF 2014

Raju Dejanna Shetty ... Applicant

Vs.

The State of Maharashtra ... Respondent

Ms.Anjali Patil for the Applicants in BA/75/2015 and BA/192/2015
Mr.Milan Desai i/b M.V. Sahil Mahajan for Applicant in BA/1429/2014
Mr.Arfa Sait, APP, for Respondent – State
Mr.Ranjit Dhure, ACP, Crime Branch, Navi Mumbai - present

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **MARCH 30, 2015**

P.C.:

1. All these bail applications are decided by this common order as the applicants/accused are prosecuted for the offences punishable under

sections 372, 373, 371(1), 376(1), 109, 114, 34 of the Indian Penal Code, under section 3(4), 5, 6(2)(A) and 7 of Prevention of Immoral Traffic Act and under sections 6 and 8 of the the Protection of Children from Sexual Offences Act, 2012. At the instance of the complainant, the offence was registered at C.R. No.I 173 of 2013 with the Panvel City police station, Navi Mumbai. The applicant/accused i.e., Raju Shetty is accused No.3, Navin Kotiyan is accused No.5 and Ratnakar Hegde is accused No.6. It is the case of the prosecution that the police received information that at one Kapal bar and Dimple Lodge at Bhingari Village, Old Bombay Pune road, Taluka Panvel, illegal activities, punishable under the Indian Penal Code and the Prevention of Immoral Traffic Act, were going on and, therefore, the police with some dummy customers raided the premises on 3.5.2013. Pursuant to the raid, the police, apart from the six accused, arrested nearly 40 waiters as accused. The police found nearly 90 women including 14 minor girls out of whom 9 were involved in prostitution.

2. As per the case of the prosecution, the applicant/accused Raju Shetty, is the Manager of the Kapal Bar and Restaurant and Dimple Lodge. Applicant/accused Navin Kotiyan is the Manager and applicant/accused Ratnakar Hegde is a waiter. All the applicants were involved in facilitating the prostitution of the women, especially of the minor girls.

3. The learned Counsel for the applicants/accused have submitted that the applicants/accused are in the prison nearly since last 22 months. They have not committed any offence much less the offence under Prevention of Immoral Traffic Act and the Protection of Children from Sexual Offences Act, 2012. Both the learned Counsel submitted that there is no material with the prosecution to show that the applicants have committed offence under sections 4 and 5 of the the Protection of Children from Sexual Offences Act, 2012. It is submitted that the accused have approached the High Court, whereby the action under the Protection of Children from Sexual Offences Act, 2012 is challenged and the matter is pending before the Division Bench. It is further submitted that the case of the police that these applicants/accused were involved in the prostitution of the minor girls is baseless as the police could not collect adequate evidence against the applicants/accused. The learned Counsel argued that the ingredients of the offences under sections 4, 5, 6(2A) and 7 of the Prevention of Immoral Traffic Act also cannot be proved against the applicants/accused. It is further submitted that the claim of the prosecution that earlier 14 girls were pushed in the prostitution is now reduced to 9 girls. However, the statements of these 9 girls are monotonous. They are not recorded by a Special Officer as required under section 13 of Prevention of Immoral Traffic Act. It is further argued

that these minor girls are not in fact minor. The learned Counsel relied on the statements of other two victim ladies who were found in the bar whose ages were shown in the medical certificate as 16 years and 18 to 19 years. However, their real age was 32 and 22 respectively. The learned Counsel argued that stereo-type mechanical statements are recorded by the police of all the minor girls. The medical examination showing their ages is doubtful and the evidence before the Court is exaggerated. There are many illegalities in the investigation and the applicants/accused cannot be deprived of their liberty for a long period considering the punishment under the relevant sections.

4. Mr.Desai, the learned Counsel appearing for the applicant/accused Raju Shetty, submitted that the applicant/accused is not a Manager of the Kapal Bar and Dimple Lodge. He is not associated with these 2 establishments. He was connected with the Bar earlier in the year 2007. There is only one certificate of demand of VAT from Raju Shetty in the name of Kapal Bar and there is an account in the Axis Bank which was operated by Raju Shetty because he and the owners of the Bar Shobha and Jayram Shetty were running one trust in that area. Mr.Desai pointed out the certificate of registration u /s 16 of the MVAT Act, 2002 which stands in respect of the Kapal restaurant and bar which is in the name of Raju Shetty of the year 2008. He also relied on the account of the Kapal

restaurant and bar of the Axis bank and the statement of account from 3.5.2013 to 29.5.2013 which stood in the name of Raju Shetty, who is shown as a proprietor in the account and he was the sole person to operate the account. He submitted that the applicant/accused will not run away and will not tamper with the evidence. He is to be given bail.

5. Ms.Patil, the learned Counsel appearing for the applicants/accused Navin Kotiyan and Ratnakar Hegde, relied on the order passed by this Court on 23.6.2014 while releasing the accused No.4 Ravi Pujari in Criminal Appeal No.724 of 2014. She relied on the observations of this Court in paragraphs 4, 5 and 6. She pointed out that the statements of the victim girls were not recorded immediately after the raid dated 3.5.2013 but they were recorded on 23.5.2013 and the statements of the other witnesses were recorded 2½ months after the alleged incident. She submitted that the hotel was divided into 3 sections and the prostitution was going on in Dimple Lodge. The present applicants/accused Navin Kotiyan and Ratnakar Hegde had nothing to do with that section. They are in no manner connected with the prostitution. She further pointed out that the birth certificates of the minor girls are not procured by the police. On these grounds and on the ground of parity, these applicants/accused seek bail.

6. Learned Prosecutor while opposing the applications relied on the order of the Supreme Court in Special Leave to Appeal (Cri.)No.7822 of 2014 dated 17.11.2014. He submitted that the bail application of Shobha Shetty was rejected by the Supreme Court and the Supreme Court has directed the trial Court to go ahead with the matter. He further submitted that 90 women were found in the bar. He also relied on the statements of the minor girls, who have unequivocally stated that they were minor when they were proposed to go for prostitution and they were paid for that. The women had stated that major portion of the amount received by them was taken by Kotiyan and Hegde and they have taken the name of Raju Shetty as he was conducting the business. He relied on the medical reports of the 9 minor girls disclosing that they were sexually abused. The learned Prosecutor further submitted that the learned Sessions judge in fact is going to frame charges on 1.4.2015. However, the accused out of the 40 accused, who were released on bail, are not coming before the Court and therefore, the stage of framing of charges is prolonged. The learned Prosecutor submitted that earlier in 2009 and 2010, the bar was raided and action was taken and though Jayram Shetty was shown as the owner, the applicant/accused Raju Shetty was the Manager and was actively responsible for the illegal activities in the bar.

7. Heard the learned counsel for both the sides at length. Perused the order of this Court dated 23.6.2014 releasing Ravi Pujari on bail. My

predecessor in her order itself had specifically mentioned that Ravi Pujari used to sit at the reception counter and, therefore, his role was different than the others. It is to be noted that after going through the statement of the minor girls, it is found that the names of these applicants/accused are specifically taken by the victim girls. Other women, who were indulged in the prostitution, have stated that they were in the prostitution on their own wish and there was no force and they are all adults. Under such circumstances, there is no offence in respect of these women by the applicants/accused. The offence is restricted only in respect of the minor girls and it is also to be noted further that those girls have not stated in their statements that they were physically forced to go with the customers and were compelled to do prostitution by the applicants/accused. However, they have stated that the applicants/accused have proposed and facilitated and dragged them into prostitution when they were minors. It is also stated that the applicants used to take major portion of the money. Considering these submissions, it appears prima facie the ingredients of some of the sections for which they are charged are seen.

8. One important point is made by the learned Counsel for the applicants/accused that the prosecution has not placed before the Court the birth certificates of these girls to show that they minor. However, the said point can be considered at the stage of trial. At this stage, there is a prima facie evidence to show the age of these girls medically and also the

girls have told their ages that they were minor when they indulged into prostitution.

9. I am fully aware that while considering the application for bail, the Court has to take care that rejection of bail should not be punitive. The learned Counsel, Mr.Desai for the applicants, in support of his submissions has relied on **Dr.Vinod Bhandari vs. State of Madhya Pradesh¹**, and especially on para 11 thereof, wherein it is held by the Supreme Court that the seriousness of the allegations or availability of the material in support thereof are not the only considerations for declining the bail, but the delay in commencement and conclusion of the trial is a factor to be taken into account. The appellants are in custody since last 22 months. However, this Court has to take into account that the Special Leave to Appeal of one of the accused Shobha Shetty is rejected by the Supreme Court in 17.11.2014 i.e., after the application of Ravi Pujari was allowed by this Court. The Supreme Court has passed the order dated 17.11.2014 as follows:

“ Heard Mr.Bhagwati Prasad, learned senior counsel for the petitioner.

We are not incline to entertain the prayer for bail and the same rejected. However, the learned trial Judge shall be well advised to proceed with the matter as the same has been committed to it by the competent Court. Be it stated, we have not expressed

1 Criminal Appeal No.220 of 2015 decided on 4.2.2015

any opinion with regard to the proceedings to be undertaken by the learned trial Judge.

The special leave petition is, accordingly, dismissed."

10. Thus, as per the order of the Supreme Court, it was necessary for the trial Judge to proceed with the matter. However, the trial Court has not proceeded. I am aware that the trial Court may face difficulties in procuring the presence of the other 40 accused who are released on bail. However, it is expected that the trial Court has to overcome this difficulty by using its powers and the provisions under the criminal law to its fullest.

11. Considering the order passed by the Supreme Court, I am of the view it is appropriate to pass the following order:

- i) All the bail applications are rejected.
- ii) The trial Court shall frame charges on or before 10.4.2015 and thereafter the trial shall commence and statements of the minor girls shall be recorded on a day to day basis.
- iii) After recording of the statements of the 9 minor victims or less, as per the requirement of the prosecution, considering the fact that the accused are inside the prison since last 22 months, liberty is granted to the applicants/accused to make fresh bail applications before this Court. However, such liberty shall be in the event if the

charges are not framed and statements of the minor victim(s) are not recorded on or before 30.4.2015.

12. The Bail applications are disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)