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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.423 OF 2015

Santosh Shekhar Shetty ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr.S.R.Borulkar a/w Ms.Aarti Kalekar i/b P.V.Nelson Rajan, for the Applicant.

Ms.S.S.Kaushik, APP for the Respondent – State.

API – H.S.Kshirsagar, Wagle Estate Police Station, Thane.

CORAM : REVATI MOHITE DERE, J.

DATED : 31st MARCH, 2015.

PC.

1. Heard the learned counsel for the Applicant, and the learned APP for the Respondent - State.

2. By this application, the Applicant seeks pre-arrest bail in connection with C.R.No.I 55 of 2015 registered with the Wagle Estate Police Station, Thane for the alleged offences punishable under Sections 308, 346, 294, 34 of the Indian Penal Code.

3. The alleged incident is stated to have taken place on 12th March, 2015. The Senior Police Inspector, Shri Kshirsagar, of the Wagle Estate

Police Station, Thane, along with other police officers and lady constables had conducted a raid on the Seaqueen (Sarovar) Bar and Restaurant. It is alleged by the prosecution, that an information was received that the owner and other associates of the said bar and restaurant were carrying out obscene activities, in the guise of conducting an orchestra. According to the information, the bar dancers/lady waiters were asked to wear revealing clothes. At around 1.45 a.m. the raiding party entered the said premises of Seaqueen Bar and Restaurant. It is alleged that some performance was going on and that four ladies were dancing in an obscene manner, by making obscene gestures. The four ladies were apprehended. One Sudhir R. Shetty, a cashier, was also arrested. It was allegedly revealed that the owner of the bar was one Narayan Shetty and Santosh Shetty (present applicant) and one Shiva Kundan Pujari was the Manager of the said premises. All the said persons are alleged to have left the premises, in the commotion, during the raid. It is further alleged, that when the raiding party proceeded towards the basement area of the said bar and restaurant, they saw a passage which was leading to a toilet. It was noticed that on one side there was a wall with tiles on it and as the said tiles/wall looked suspicious and appeared to be a fake, the police started breaking the said wall. After breaking the

said wall, it was revealed that there was an iron door behind the tiled wall and on opening the wall, around 11 ladies were found in the said room. The room in which the ladies were found was of about 14 X 3 ½ feet.

4. Learned Counsel for the Applicant contended that the applicant is neither the owner nor the licensee nor the Manager of the Bar and Restaurant. He submitted that the license stands in the name of some third party. He submitted that except 308 of the Indian Penal Code, rest of the sections are bailable sections. As far as Section 308 of the Indian Penal Code is concerned, he submitted that the same cannot be attracted inasmuch as, there was an A.C and exhaust fan in the said room. He submitted that the room contained an A.C and an exhaust fan.

5. Learned APP opposed the bail application. She submitted that the statement of the victim girls reveals the name of the applicant, as the person who asked them to wait till late to entertain the customers. She submitted that the applicant was the Manager of the said premises. It appears that the room contained an A.C. Whether or not the same was working or not, is not known. Learned APP on being asked, states that the present applicant has no antecedents.

6. Perused the papers of investigation and the affidavit of the investigating officer. The victim girls have specifically disclosed the name of the present applicant, that he told them that they would get more money, if they stayed on for a longer time. It is not the prosecution's case, that the victim girls were being compelled into prostitution. The allegations are that they were made to dance wearing revealing/scanty clothes. As far as applicability of Section 308 is concerned, the same is debatable, in the facts of the present case, inasmuch as, from the photographs tendered by the learned counsel for the applicant, it appears that it was a make-up room with mirrors on two sides and there was an A.C, in the said room. Whether or not Section 308 will apply or not in the facts of the present case, will be decided by the learned Trial Judge, and hence no opinion is been expressed by this Court. Except, Section 308 of the Indian Penal Code, rest of the Sections applied are bailable.

7. Considering the material on record ; the fact that no prostitution activities were going on; and the fact that the applicant has no antecedents, the applicant is entitled to pre-arrest bail on the following terms and conditions :-

ORDER

- i) In the event of arrest, the Applicant be enlarged on bail on furnishing PR.Bond in the sum of Rs.50,000/-, with one or two sureties in the like amount ;
- ii) The Applicant shall report to the Wagle Estate Police Station, Thane, on every Saturday between 10.00 a.m. to 11.00 a.m., till the filing of the charge-sheet and thereafter as and when called for by the Investigating Officer ;
- iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Wagle Estate Police Station, Thane ;
- iv) The Applicant shall not tamper or attempt to influence the complainant or any persons concerned with the case;
- v) The Applicant shall co-operate in the conduct of the trial.

8. The Application is allowed and disposed of in above terms.
9. It is made clear, that the observations made herein, are prima-facie, for the purpose of deciding this application.
10. Parties to act upon the authenticated copy of this order.

(REVATI MOHITE DERE, J.)