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*IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
CRIMINAL APPELLATE JURISDICTION*

*CRIMINAL APPLICATION No. 421 of 2015
IN
CRIMINAL APPEAL No.401 of 2015.*

Rajendra Baldev Yadav ..Applicant/Appellant.
Vs
State of Maharashtra ..Respondent.

*Mrs Anjali Patil, Advocate for the Applicant.
Mrs P.P. Bhosale APP for the State.*

CORAM : A.R.JOSHI,J
DATE : 24th JUNE, 2015

P.C. :

- 1) *Appeal is already admitted.*
- 2) Heard learned counsel for the applicant on the application for bail during the pendency of the appeal. Also heard the learned APP for the State.
- 3) The applicant/appellant is convicted for the offence punishable under Section 370(3) read with section 34 of IPC and was sentenced to suffer RI for ten years and to pay fine of Rs.50,000/-. He is also convicted for offence under sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and was sentenced to suffer RI for one year and three years respectively. Some fine amounts were also imposed. It is reported that fine

amount is yet to be deposited.

4) During the trial, the appellant was on bail. He is original accused no.1. Original accused no.2 was absconding during the trial and original accused no.3 was acquitted.

5) The case of the prosecution is that the present applicant was associate of the absconding accused Dipak. According to the case of the prosecution, the secret information was received by one NGO regarding one Dipak indulging in trafficking in women and as such raid was conducted at the hotel on a given date, when according to the case of the prosecution, the present applicant was in the company of said absconding accused Dipak. One girl who is subsequently examined, as, PW 3 was selected by the dummy customer on payment of Rs.5000/-. During the raid, the present applicant and said Dipak were arrested. Subsequently, on their interrogation name of accused no.3 was revealed and he was also subsequently arrested as an accused, who is now acquitted by the trial Court.

6) The substantive evidence of the girl PW 3 is of much importance. This evidence is brought to the notice of this Court in which she did not mention anything regarding transaction of money between the dummy customer and the accused Dipak. She did not mention anything regarding the present applicant except taking his name as Rajendra and identifying him during the trial. In her substantive evidence, she mentioned that during

the raid conducted by the police in the hotel this applicant was present and was sitting on one table. Apart from this, she did not say anything regarding this applicant.

7) The substantive evidence of the panch witness and also of the dummy customer is brought to the notice of this Court on behalf of applicant which reveal that according to the case of the prosecution the girl which was chosen by the dummy costumer was this PW 3. But this is not the substantive evidence of PW 3 as seen form her evidence. It is also a factual position that according to the case of the prosecution, the present applicant came to the hotel in an auto-rickshaw and brought three girls to the hotel. However, the said girls were not examined before the Court in order to identify the present applicant. As such, considering this material, in the opinion of this Court, the present applicant can be released on bail during the pendency of the appeal, when during the pendency of the matter before the trial Court the present applicant was granted bail and was all along present and faced the trial.

8) Counter to the above arguments, the learned APP stated that the original accused no.2 after grant of bail by the trial Court has absconded and was not available for trial. She further expressed the same fear that the present applicant may also abscond now as he has been already been convicted and if enlarged on bail will not be available for final adjudication of his appeal. On the earlier date, the time was given to the State

to secure the presence of the I.O. to ascertain whether there are any criminal antecedents against the present applicant. Today the learned APP for the State, on instructions from the IO, who is present in the Court, stated that he could not find out any criminal antecedents against the applicant.

9) Considering the above factual position and the effect of evidence as against the present applicant, as mentioned earlier, he can be released on bail, hence present application is allowed. The applicant be released on same bail as granted by the trial Court with fresh bonds to be executed before the trial Court. The applicant also to give his residential address where he is at present residing along with his contact mobile/phone number to the concerned police station and also to attend the concerned police station on first Sunday of each alternate month.

10) With these directions, the application is disposed of.

(A.R.JOSHI, J.)