

BAIL APPLICATION NO. 955 OF 2015

Mr. Milan Desai i/b. Mr. T.R. Patel, Advocate for the applicant.
Ms. Veera Desai, APP for the State.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE : 1st September, 2015

P.C.:

This is the second Bail Application filed by the applicant/accused. Earlier, Bail Application No. 1429 of 2014 filed by the applicant/accused was rejected on 30th March, 2015 by me. The present application is made on the ground of change of circumstance, i.e., a delay in trial and so also the police have not collected the birth certificates of the minor girls. It is further contended that this Court while rejecting first bail application has granted liberty to the applicant/accused to make fresh Bail Application before this Court after recording the evidence of 9 minor victims, within specified time, i.e., 30th April, 2015.

2. It is necessary to give background of this matter. The applicant/accused is facing charges under section 372, 373, 376(1), 109, 114 of the Indian Penal Code and under section 3, 4, 5, 6(2-A) & 7 of the

Prevention of Immoral Trafficking Act and under sections 6 and 8 of the Protection of Children from Sexual offences Act, 2012. The complaint was registered at C.R. No. 173 of 2013 with Panvel city Police Station, Navi Mumbai. The applicant/accused is the owner of Kapal Bar and Restaurant and co-accused Shobha Shetty was the owner of Dimple Lodge where the prostitution was going on. The premises was raided by the police on 3rd May, 2013 and they arrested six accused and 40 waiters. As per the case of the prosecution, they found nearly 90 women and 14 minor girls at the said premises. Out of 14 minor girls, 9 were involved in prostitution. This applicant/accused was arrested on 19th June, 2013 and he is in prison since last two years. Today, without going into the merits of the matter, this application is made only on the change of circumstance, i.e. the applicant/accused has availed of the liberty in filing this fresh Bail Application, as the order given by this Court is not complied with. The applicant/accused is mainly facing serious charges under section 4 of Prevention of Immoral Trafficking Act, as per the allegations that he was living on the money which was collected out of immoral trafficking of minor girls. The Hon'ble Supreme Court while rejecting the Application of co-accused Shobha Shetty who is owner of Dimple Lodge, on 17th November, 2014 has directed the learned trial Judge to proceed with the matter as has been committed to it by the Competent Court ,

3. I have considered that aspect and have also observed in the earlier order that till 30th March, 2015, the trial Court did not proceed with the matter. Therefore, this Court specifically directed in paragraph 11 of the earlier order that the trial Court shall frame charges on or before 10th April, 2015 and thereafter the evidence of minor girls is to be recorded on day-to day basis. The present application was filed in May, 2015 and the learned counsel for the applicant/accused has informed that the progress of the matter is very slow and though the trial Court has recorded evidence of one victim on 22nd April, 2015, thereafter no evidence of other minor girl or any girl was recorded. He submitted that in fact the girls before the Court are not minor girls and not a single birth certificate of the girl is collected by the police. The learned counsel for the applicant placed in writing that the mother of victim girl who was examined, wanted to produce Aadhar card of girl disclosing that she was major, however, it was not collected by the police as evidence.

4. In order to verify submissions only on delay, this Court asked the Investigating officer to file the affidavit and also called the progress report from the learned Sessions Judge. The affidavit was filed by the Investigating officer and the progress report dated 25th June, 2015 was sent and is taken on record in this matter. In the report, the Principal District Judge, Raigad Alibag gave the details of the dates of the

proceedings which shows that the witness summons were issued on 9th June, 2015 and made returnable on 23rd June, 2015, witnesses summons were also issued to victims and matter was kept on 7th July, 2015. The affidavits dated 12th August, 2015 and 29th August, 2015 were filed by ACP, Rajendra Murlidhar Bhamere, Crime Branch, CBD, Belapur on 12th August, 2015. I have asked the ACP to make statement in respect of query regarding cancellation of licence of Dimple Lodge so also of Kapal Bar & Restaurant. ACP has mentioned in paragraph 18 of his affidavit dated 12th August, 2015 that notice upon Kapal Bar & Restaurant under Bombay Prohibition Act for cancellation of FL-III licence and though the hearing was conducted on 16th September, 2013 before the District Collector, Raigad, till today no final decision is taken, as the applicant is in jail. It is expected that investigating agency will place it again before the District Collector and the District Collector to take strict action in respect of the said Hotel and bar.

5. I do not want to discuss the evidence of one victim who has adduced evidence before the Sessions Court in the present matter. However, I am informed that the police have not collected a single birth certificate of any victim till today. As per the prosecution, the case stands on the medical evidence on the point of minority. It was necessary for the investigating agency to get the witnesses, i.e., victim minor girls and

make them available for recording of their evidence before the Sessions Court. The affidavit produced by the Investigating officer discloses that these girls are either not found or they are not cooperating. The learned APP informed that the prosecution wants to examine minimum 50 witnesses out of more than 100 witnesses. Till today, three witnesses are over. The trial is not taken up day-to-day though there was orders of the Hon'ble Supreme Court and High Court, that may be because the Court is overburdened and victims are not produced before the trial Court for evidence after recording of evidence of one victim in the month of April. Considering this position, it looks that the trial may take a long way. The applicant/accused is in prison since last 2 years. It is also informed that during his stay in prison, his wife has delivered a child. Considering these change of circumstance and liberty given earlier, I allow this Bail Application on the following terms and conditions:

ORDER

- i) The applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/-, with one or two local sureties in the like amount;
- ii) The applicant shall not tamper with the evidence;
- iii) The applicant shall not indulge in any criminal activity especially any activity under Prevention of Immoral Trafficking Act;
- iv) The applicant shall not pressurize any witnesses especially

the victim girls;

v) The applicant shall make himself available and attend all Court dates;

vi) The applicant shall not abscond and furnish his address to the police along with address proof;

vii) The applicant shall not leave India without the prior permission of the Court and shall deposit his passport with the Investigating officer;

viii) Violation of any of the conditions imposed will be a ground for cancellation of bail and accordingly, prosecution may apply to the Sessions Court, which is to be considered by the Sessions Court afresh.

ix) The request of the learned counsel for the applicant of paying the cash bail amount of Rs.1,00,000/- for a period of four weeks is accepted. The cash bail amount of Rs.1,00,000/- is to be paid temporarily for a period of four weeks on furnishing P.R. Bond, as the time granted to the applicant/accused to make arrangement of surety.

6. The Application stands disposed of on the above terms.

(MRS.MRIDULA BHATKAR, J.)