

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1115 OF 2015

Afaque Ahmed Siddiqui. ... Applicant.

Versus

The State of Maharashtra & anr. ... Respondents.

Ms. Nazneen Khatri i/b. Raeesuddin Khatri, advocate for applicant.

Mr. S.H. Yadav, APP for State.

Mr. S.B. Dombe, PI, Sheel-Dhighe Police Station, Thane.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 27, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 5th May, 2015
in Crime No. 70 of 2015 registered at Sheel Daighar Police Station,

Thane for offence punishable under Section 370 of the Indian Penal Code and Section 3, 4, and 5 of PITA 1956.

3 It is the case of the prosecution that on the basis of the secret information they had raided Room No. 304 of Suraj Apartment, third floor. The information reveals that woman namely Badrunisha Aslam Sayyed is taking undue advantage of poor financial conditions of women and forcing them into prostitution. It is also alleged that she is living upon the earning of the said victims. At the time of raid, the police authority had rescued some girls who were aged about 18 and 19 years and other women aged about 25 years of age. The investigating agency had recorded the statement of the victim, rescued them and filed a report at the police station, on the basis of which Crime No. 70 of 2015 is registered.

4 In the course of investigation, it had transpired that room No. 304 of the said premises belong to the present applicant and he happens to be the owner of the said premises. The applicant was

arrested on 5th May, 2015 and after completion of investigation, the charge-sheet is filed on 22nd May, 2015.

5 The learned Counsel for the applicant submits that at this stage, it cannot be said that the applicant was aware that his tenant would use the said premises for running a brothel and therefore, he cannot be held responsible for the said offence.

6 It is pertinent to note that the investigating agency had not made any application to the Magistrate under Section 18 of the said Act and the premises have not been sealed. Section 18 of the PITA reads thus :

“18. Closure of brothel and eviction of offenders from the premises .—(1) A Magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred metres of any public place referred to in sub-section (1) of Section 7 is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner,

lessor or landlord or such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper use thereof, and if, after hearing the person concerned, the Magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders,—

- (a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place, or portion;
- (b) directing that before letting it out during the period of one year or in a case where a child has been found in such house, room, place or portion during a search under Section 15, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate;

Provided that, if the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place, or portion, he may cause the same to be restored to the owner,

lessor or landlord or the agent of the owner, lessor landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper use therein.

(2) A court convicting a person of any offence under Section 3 or Section 7 may pass orders under subsection (1), without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the Magistrate or court under subsection (1) or sub-section (2), shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal, and the said orders shall cease to have validity after the expiry of one year or three years, as the case may be:

Provided that where a conviction under Section 3 or Section 7 is set aside on an appeal on the ground that such house, room, place, or any portion thereof is not being run or uses as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a Magistrate passes an order under sub-section (1), or a Court passes an order under sub-

section (2), any lease or a agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2), of Section 3 or clause (c) of sub-section (2) of Section 7, as the case may be, and punished accordingly.”

It is pertinent to note that the investigating officer had not issued any notice to the present applicant under Section 18 of the said Act, although it was revealed that the applicant happens to be the owner of the said premises.

7 The learned Counsel for the applicant submits that the said premise is not in locked condition. It is further submitted by the learned Counsel for the applicant that wife of the applicant is being

harassed at the hands of the investigating agency. As against this, the learned APP submits that the address of the applicant as mentioned in the cause title is incorrect. According to the learned APP, the address mentioned in the cause title of the applicant is the place where he resided 8 years ago. The learned APP submits that the applicant has deliberately given incorrect address in order to mislead the investigating agency and therefore, it was incumbent upon the police to call upon the wife of the applicant to verify the correct address. All these issues would be irrelevant in view of the fact that the investigating agency has not filed an application before the Magistrate nor issued notice to the applicant. The learned APP upon instructions submits that the investigating agency would now take steps under section 18 of the said Act.

8 The learned Counsel for the applicant shall give an undertaking before the Investigating Officer after release that the applicant will not create any third party interest in the said premises till the conclusion of the trial.

9 It appears from the papers of investigation that the investigation is completed and charge-sheet is filed. The principal accused who was taken into custody on the date of the raid, has been enlarged on bail. Upon perusal of the order granting bail to the principal accused, it appears that she was enlarged on bail on 9/6/2015 i.e. after filing of the charge-sheet only on the ground that there was a submission made by her advocate that the applicant is a diabetic patient and has high blood pressure. On the date of passing of the order, she was in J.J. Hospital. The learned Counsel for the applicant submits that the applicant also deserves grant of bail.

10 In view of the facts of the present case and the submissions advanced across the bar, the applicant deserves grant of bail.

11 It is made clear that the observations made hereinabove are restricted to an application under Section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding

the application for discharge or for quashing of FIR or at the time trial. The learned Trial Court shall decide the matter uninfluenced by the above said observations and arrive at a conclusion only on the basis of the substantive evidence adduced by the prosecution at the time of trial.

12 Hence, following order is passed:

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.
- (iii) The applicant shall furnish his residential address where he is going to reside during the pendency of the trial, cell number, landline number and all other details as required by the investigating agency and also inform the change, if any, to them. The Investigating officer shall verify the same.

- (iv) The applicant shall report to the concerned police station on 1st Sunday of every month till the conclusion of the trial.
- (v) The applicant shall also attend each and every scheduled date before the trial court. Upon failure to attend any two consecutive dates, the prosecution is at liberty to file an application seeking cancellation of bail.
- (vi) The investigating agency shall file an application under Section 18 of the PITA before the concerned Magistrate after issuing notice to the applicant and shall obtain necessary orders on the same.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)