

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1770 OF 2015

1. Navin Divakar Kotiyan
2. Ratnakar Sunder Hegde ... Applicants
Vs.
The State (at the instance of Panvel
City Police Station) ... Respondent

Mr. Milan Desai i/b. Mrs. Ashwini Milan Desai, Advocate for the applicants.

Mrs. Veera Shinde, APP for the State.

I.O. Mr. Shrinath Mahadik, P.S.I., Panvel City Police Station present.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE : 26th October, 2015

P.C.:

This second Bail Application is filed by the applicants/accused. Their Bail Application Nos. 75 of 2015 and 192 of 2015 were rejected by me by a common order dated 30th March, 2015. The present application is made on the ground of change of circumstances, i.e., delay in trial and that the police have not collected the birth certificates of minor girls. Moreover, this Court while rejecting the first bail application has granted liberty to the applicants/accused to make a fresh bail application before this Court after recording of the evidence of 9 minor witnesses as alleged, within the specified period, i.e., on or before 30th April, 2015, however, said evidence is not recorded till today. So also, second Bail Application No. 955 of 2015 filed by Raju Dejana Shetty, whose first bail application

was also rejected by a common order, was allowed by an order dated 1st September, 2015. Thus, this Application is made on the ground of parity also. The applicant Ratnakar Hegde was working as waiter in Kapal Bar & Restaurant and applicant Naveen Kotiyan was working as Manager of the said hotel.

2. The learned APP as well as Investigating officer is present in the Court. Learned APP opposed the Bail Application and submitted that the learned Sessions Judge is proceeding with the trial. There is a delay not only because of prosecution but also because of the defence.

3. The facts and circumstances of the case of Raju Dejana Shetty and these two applicants/accused are same. Same submissions are made by the learned counsel for the applicants/accused. The said order dated 1st September, 2015 is adopted.

4. 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. Co-accused Raju Shetty 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. These applicants/accused were arrested on 3rd May, 2013 and they were 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 applicants/accused have availed of the liberty in filing this fresh Bail Application, as the order given by this Court is not complied with. The applicants/accused are mainly facing serious charges under section 4 of Prevention of Immoral Trafficking Act, as per the allegations that they were 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.

5. 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 applicants/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 applicants 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.

6. In order to verify submissions only on delay, this Court asked the Investigating officer earlier while dealing with Bail Application No. 955 of 2015 to file the affidavit and also called the progress report from the learned Sessions Judge. The affidavit was filed in the said Bail Application 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. This Court has 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. This Court therefore gave directions to the District Collector to take strict action in respect of the said Hotel and bar.

7. 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 in Bail

Application No. 955 of 2015 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 also, 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 applicants/accused are in prison since last 2 years. Considering these change of circumstance and liberty given earlier, I allow this Bail Application on the following terms and conditions:

ORDER

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

all Court dates;

vi) The applicants shall not abscond and furnish their permanent addresses to the police along with address proof;

vii) The applicants shall not leave India without the prior permission of the Court and shall deposit their 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.

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

(MRS.MRIDULA BHATKAR, J.)