

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

**CRIMINAL APPLICATION NO. 154 OF 2016
IN
CRIMINAL APPEAL NO. 88 OF 2016**

1 Smt. Mamta Akash Raju @ Mumtaz Shaikh.
2 Smt. Aasma Begam Haidarali @ Lily. ... Applicants.

Versus

The State of Maharashtra. ... Respondent.

Mr. Prabhanjay R. Dave, advocate for Applicants.

Mr. M.A. Adenwala h/f. Mr. M.S. Adenwala, advocate for complainant
in Revn/74/16.

Mrs. A.A. Mane, APP for State.

Mr. Shirish Desai, P.I. Main Control Room.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : MARCH 23, 2016**

P.C.:

1 Heard the learned Counsel for the applicants, learned Counsel
for the complainant and the learned APP for State. Perused the
papers.

2 This is an application under Section 389 of the Code of Criminal Procedure, 1973 seeking suspension of sentence imposed upon them. The applicants herein are convicted for the offence punishable under section 344 read with section 34 of the IPC and are sentenced to suffer 3 years R.I. and to pay fine of Rs. 1,000/- each I.d. to suffer further R.I. for 2 months. The applicants are also convicted for the offence punishable under Section 368 read with Section 34 of the IPC and are sentenced to suffer R.I. for 10 years and to pay fine of Rs. 1000/- each I.d. to suffer R.I. for 2 months. The applicants are further convicted for the offence punishable under Section 3 of the Immoral Traffic (Prevention) Act, 1956 and are sentenced to suffer R.I. for 3 years and to pay fine of Rs. 1000/- each in default to suffer R.I. for 2 months. The applicants are further convicted for the offence punishable under Section 4 of the Immoral Traffic (Prevention) Act, 1956 and are sentenced to suffer R.I. for 2 years and to pay fine of Rs. 1000/- each in default to suffer R.I. for 2 months. The applicants are further convicted for the offence punishable under Section 5 of the

Immoral Traffic (Prevention) Act, 1956 and are sentenced to suffer R.I. for 3 years and to pay fine of Rs. 1000/- each in default to suffer R.I. for 2 months. The applicants are further convicted for the offence punishable under Section 6 of the Immoral Traffic (Prevention) Act, 1956 and are sentenced to suffer R.I. for 10 years and to pay fine of Rs. 1000/- each in default to suffer R.I. for 2 months. The applicants are also convicted for the offence punishable under Section 7 of the Immoral Traffic (Prevention) Act, 1956 and are sentenced to suffer R.I. for 3 months and to pay fine of Rs. 200/- each in default to suffer R.I. for 15 days by the Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai in Sessions Case No. 791 of 2012 vide Judgment and Order dated 27th January, 2016.

3 The learned Counsel for the applicants has submitted that the whole case rests upon the evidence of P.W. 6 Pooja and P.W. 8 Jyoti, as they appeared to be the victims of human trafficking.

4 Upon perusal of the evidence of P.W. 6, it appears that she had studied upto 11th standard. She has deposed that in the year 2010 she had gone to Bangalore in search of work. That she met one girl namely Jyoti (P.W.8). That P.W.8 had offered her work in Mumbai. However, P.W. 8 had brought her directly to Jamuna Mansion, where the appellant No. 1 was residing. That she was asked to indulge into prostitution. She had obliged. She worked as prostitute for two years. However, according to her, the income was not sufficient. That on 11th October, 2012 police raided the said premises. She was taken to the police station and then to hospital. In the cross-examination, the contention that the appellant No. 1 had asked her to indulge into prostitution is elicited as a material omission.

5 P.W. 8 Jyoti has deposed before the Court that on 28/6/2012 she had left her grand-mother's house and come to Bangalore on 29/6/2012. She could not find any work since she did not have address proof and identity proof. She had left Bangalore. At bus stop at Garepalya, she had met a lady, whom she had disclosed that she is

in search of work. The said lady had asked her whether she is ready to work at her house, but then she left the place. P.W. 8 came to railway station where she met a man. The said man offered her work. She had been with him. At night, she was subjected to gang rape. She was brought to Munglore and then to Dawangeri. She was brought to Mumbai by the said person. He had called somebody. Two persons had come to meet her. They had summoned the applicant No. 1. She was taken to temple then to parlour and then to Jamna Mansion. At night she was sent with a man. She went with the said person. The said person had sexual intercourse with her. She did not retaliate. Thereafter, she continued with the said work. According to her, the accused No. 1 had kept watch on her. She was not allowed to move freely. She was not allowed to go to her village. When there was raid in Jamuna Mansion, P.W.8 was taken to another place i.e. to the house of the applicant No. 2. The applicant No. 2 had taken her to different places. She was asked to accompany certain girls. She had attempted to escape from the group of girls. She met one man he had taken her to his house. She had narrated her story to

him. Thereafter, the said person called upon the present complainant Anson Thomas. Anson Thomas approached the police Station and lodged report. On the basis of the said report, Crime No. 282 of 2012 was registered. Raid was conducted. She was then taken for medical examination. According to her, P.W. 6 was found in the room of Lily and she was also taken to police station. She stayed in Navjeevan Shelter Home for 3 days. The medical report showed her age as 17 years and therefore, she was taken to Deonar Shelter Home.

6 The learned Counsel for the applicants has submitted that in fact, the testimony of P.W. 8 does not inspire confidence for the simple reason that she has deposed before the Court that for the first time she saw P.W. 6 in the room of Lily. However, according to her, it is P.W. 6 who had brought her to Jamuna Mansion. The learned Counsel for the applicants submits that the applicants deserves to be enlarged on bail during the pendency of the appeal since they are normally being victimised by the NGOs. It is further submitted

that the police station is at a distance of hardly half kilometer from Jamuna Mansion.

7 Upon query with the learned APP, it is clear that in the last several so many years, no victim has approached to police station of her own and informed that they have been detained in Jamuna Mansion. The activities of Jamuna Mansion are known to the police. The said area is an area having brothels. It is seen from the records that it is only at the behest of the NGOs that a raid is conducted on the said premises.

8 The learned Counsel for the applicants has drawn the attention of this Court to the order dated 9/7/2012 passed by this Court (Coram : R.C. Chavan, J)(Retired) in Criminal ABA 561 of 2012 and 201 of 2012. The Hon'ble Court had observed that the residents of Jamuna Mansion were constrained to file Writ Petition contending therein that the residents of Jamuna Mansion were harassed by the complainant in the present case forcing them to convert themselves to

Christianity under the garb of rescuing them. The Writ Petition No. 1888 of 2007 was filed by residents of Jamuna Mansion. Learned Counsel for the applicant submits that the residents of Jamuna Mansion have gone to the extent of filing an affidavit demonstrating before the Hon'ble High Court the harassment meted out to them by the complainant in the present case forcing them to convert to Christianity. The Writ Petition was disposed of.

9 In the present application, the learned APP has vehemently opposed the grant of bail to the present applicants on the ground that one Mathew Thomas has lodged a report on 12th March, 2014 against the present applicants and pursuant to his report, a raid was conducted at Jamuna Mansion and the applicants are being prosecuted for the same offence and therefore, the applicants do not deserve to be enlarged on bail, since they have indulged into similar offence while on bail.

10 To refute the said submissions of the learned APP, the learned Counsel for the applicants has submitted that the second FIR was lodged by Mathew Thomas who happens to be P.W.4 in the present case. He was examined as panch for proving the scene of offence panchanama. According to the learned Counsel, this would sufficiently indicate that Mathew Thomas was well aware of the activities in the Jamuna Mansion. There is no reason to file subsequent FIR on alleged similar activities. According to the learned Counsel, Mr. Anson Thomas and Mathew Thomas are working for the same cause. The learned Counsel has further drawn attention of this Court to scene of offence panchanama which is at Exh. 29 which shows that certain tissue papers were seized which bear manufacturing date of December, 2012 i.e. the time when the charge-sheet was filed.

11 According to the learned Counsel, it is incumbent upon the prosecution to prove independently that the girls residing with the present applicants were forced into prostitution against their will. It

prima facie appears that P.W. 8 was also a major as disclosed by her to the police as well as the medical officer. The charges against the applicants are serious in nature. The investigating agency has not made any efforts to collect the school leaving certificates. It is apparent that the FIR was lodged by a private person i.e. Anson Thomas. Panchas were provided by the complainant. The victim was in the custody of the complainant and his friend from 12th October, 2012. The evidence prima facie shows that the girls had left the house of their parents in search of work and had landed in brothel unfortunately. The applicants had filed affidavit before this Court in the Writ Petition as well as in the Anticipatory Bail Applications that they are voluntarily working as prostitutes.

12 The learned Counsel for the applicants has drawn attention of this Court to question No. 204 put to the accused No. 1 under Section 313 of the Code of Criminal Procedure, 1973. The question is : why the prosecution witnesses are deposing against you and it is answered : As Mr. Anson Thomas was distributing bible and forced

them to convert to Christianity, but she refused to accept. The applicants had lodged report at the police station regarding the activities of the complainant. Therefore, he has falsely implicated them in connivance with P.W. 3, P.W.4, P.W.6 and P.W.8 and police officers. It is a matter of record that the applicants and many other residents of the said area had approached the police station against the complainant and similarly placed persons. However, except accepting the reports, the police have neither enquired into it nor have taken any steps. The learned Counsel for the applicants rightly submits that this prompted to the complainant to lodge the said report.

13 In fact, the social service branch of the Police department is created only to check human trafficking and also to see that no girls are detained in any brothel against their will and forced into prostitution. But it is more often seen that it is only at the behest of some private complainant such as International Justice Mission or the present complainant or Mathew Thomas that raids are conducted.

The learned Counsel for the applicants submits that the first information reports are not lodged by the respective police station but the complainant, as in the present case, approaches the higher authorities such as Commissioner of Police or Assistant Commissioner of Police who direct the respective police to lodge the report. In fact, all these issues are not necessary to be discussed in an application seeking bail pending appeal. However, it was the opinion of the learned APP that since the applicants have indulged into similar offences while on bail in the earlier case, all these things need to be addressed.

14 Prima facie, it is clear that P.W. 6 and P.W. 8 were major when they entered into Jamuna Mansion. There is no evidence on record that they were forced into prostitution against their will or confined by the applicants. Hence, the applicants are entitled to be enlarged on bail. It is also necessary to note that as far as the contention of the prosecution that there is a subsequent offence committed by the applicants while on bail also cannot be taken into consideration. The

applicants were residing at Jamuna Mansion while on bail in the present case. Jamuna Mansion is a brothel and therefore, it cannot be said that they had indulged into similar offence. The evidence is to be recorded in the subsequent case. The applicants are women. The appeal is not likely to be taken up for final hearing in the near future.

15 Taking into consideration all the above aspects, the applicants deserve to be enlarged on bail during the pendency of the appeal.

16 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the applicants is hereby suspended. The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 20,000/- each and one or more sureties in the like amount.

(iii) The applicants shall report to the Court of Sessions once in 3 months on the date specified by the learned Sessions Court. Upon failure to report to the concerned Court on two consecutive dates by the applicants, the prosecution is at liberty to move for cancellation of bail.

(iv) The applicants shall furnish their residential addresses, contact numbers such cell phone numbers, landline numbers etc. to the concerned Court.

17 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)