

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [BA] No. 923 of 2016
[Pankaj Rajendra Bhurle Vs. State of Mah.]
AND
Criminal Application [BA] No. 927 of 2016
[Banu Poteshwarrao Medvarapu & others Vs. State of Mah.]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Cri. Application No. 923/2016 :

Mr. N.R. Bhishikar, Adv., for the Applicant.
Mr. V.P. Gangane, APP for respondent.

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Cri. Application No. 927/2016 :

Mr. R.R. Vyas, Adv., for the Applicants.
Mr. N.B. Jawade, APP for respondent.

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CORAM : P. N. DESHMUKH, J.

DATE : 09th December, 2016.

In Criminal Application No. 923/2016, learned APP has tendered in Court an Affidavit-in-Reply and supplied a copy thereof to the counsel for the applicant.

The said affidavit is taken on record.

Both these applications filed by the applicants-accused for grant of bail are decided together by this common order since they are arising from Crime No. 109/2016 registered by Gadchiroli Police Station, Gadchiroli, for offences under Sections 344, 366-A, 370-A, 372 read with Section 34 of Indian Penal Code and Sections 3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act, 1956, read with Sections 4,8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

Heard learned counsel for both the sides.

It is submitted on behalf of the applicants that except for one girl, who is alleged to be seventeen years' old, all other three girls involved in this crime are major, and were indulged in the business of prostitution on their own willingly. By referring to the definition of "special police officer" as contemplated in Section 2 (I) of the Immoral Traffic (Prevention) Act, 1956, learned counsel for the applicants have submitted that for the purpose of carrying out investigations of offences registered under the said Act, it is necessary for the Govt., to appoint such special police officer. However, in the instant case, no such police officer is appointed. The learned counsel, thus, submitted that entire

investigation itself is liable to be vitiated on this count.

In the circumstances, it is submitted that since investigation is complete and a charge-sheet is also filed, the applicants are entitled to be released on bail and they are willing to furnish local sureties if so directed by this Court, as they are the residents of adjoining State of Telangana.

Learned APPs have opposed the applications by filing their replies on record, and have submitted that there is a direct evidence against all the applicants who were found to have engaged in running a brothel on constructing temporary structures on the banks of river Kathani and were found involved in this act at the time of raid.

With regard to the appointment of a special police officer, learned APPs have contended that present investigation is carried out by an officer of the rank of Sub-Divisional Police Officer and as per the provisions of Section 13 of the said Act, such officer is competent, as, according to Sub-section (2) of Section 13 of the Act, an investigation is to be carried out by the officer who shall not be below the rank of Inspector of Police. It is, thus, contended that applications be rejected.

Perused the copy of charge-sheet.

It appears that on 10th June, 2016 on the strength of information received from one NGO at Pune, the premises on the banks of Kathani river in Gadchiroli district came to be raided where, in the temporarily constructed tin sheds, a brothel was found being run. Some females were found present in these huts along with one minor female to have indulged in prostitution. Though it is the case of the prosecution that said females were forced to indulge into such activity and co-accused - Pankaj who is applicant in Criminal Application No. 923/16, is alleged to have abetted commission of said offences by accepting monthly rent of Rs. 2,000/- for the land where such temporary sheds were erected, no such illegal business was found to have been run by the applicants in Criminal Applicant No. 927/16.

Learned counsel for the applicant appearing in Criminal Application No. 923 of 2016 has countered the said submission by stating that said applicant - Pankaj is falsely implicated in the crime due to personal rivalry with one Avinash Bhandekar.

On further perusal of the documents filed with the charge-sheet, particularly the statements of females alleged to have found on spot recorded under Section 164, Criminal Procedure Code, it is seen that neither of them have stated that they are forced by anyone to indulge as sex workers. In their statements, they say that they, on their own, are willingly working for one

Sitabai, who is applicant no.4 in Criminal Application No. 927 of 2016. In that view of the matter, fact remains that though applicants were indulging in said activity on the say of Sitabai, there is nothing to establish that they were forced to do such business.

Involvement of the applicant - Pankaj when considered against the case of the prosecution, statement of Avinash Bhandekar reveals that lands where temporary structures were erected in which, as per prosecution, brothel was alleged to have been run and on his visit to the above said structures, he was informed by the applicants in Cri. Appln. No. 927 of 2016 that they are paying monthly amount to the applicant - Pankaj on whose land they have erected temporary tin sheds. The statement further reveals that he has thereafter applied for measurement of land. It, thus, appears that relations between the applicant - Pankaj and Avinash Bhandekar were to some extent not cordial on the issue of land of which measurement was got done by Avinash Bhandekar.

Moreover, statement of Narendra Bhandekar, who is the father of Avinash, substantiates said fact of strained relations when he has stated that Pankaj has erected temporary structures on the land belonging to them illegally and for that purpose, they had applied for measurement. It is also stated that applicant Pankaj, prior to incident, had assaulted him on his head by a

rod. Above statements, thus, establish strained relations, as aforesaid.

Coming to the point of investigation having not been carried out by the competent authority, i.e., special police officer, Sub-section (I) of Section 2 of the Act contemplates that a “special police officer” means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of the Act.

Sub-section (1) of Section 13 of the Act contemplates that there shall be for such area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under the Act in that area. Sub-section (2) of Section 13 contemplates that special police officer shall not be below the rank of an Inspector of Police. From above stated two requirements of the Act, it is, thus, clear that the special police officer has to be the officer of Police Department not below the rank of Inspector of Police.

In the light of the above facts, learned APP has referred to the information supplied by NGO to the Superintendent of Police, Gadchiroli, upon which there is an endorsement put by said authority directing Sub-Divisional Police Officer, Gadchiroli, to provide all help which was needed. Though from said endorsement, it

only appears that Sub-Divisional Police Officer, Gadchiroli, was instructed to provide all sort of help, there is nothing to establish that he is the authority who has conducted investigation. However, on perusal of the Final Report, there appears to be a name of Investigating Officer along with his rank as "Sub-Divisional Police Officer, Gadchiroli." In that view of the matter, prima facie, it is found that the investigation is carried out in this case by a competent authority. However, on considering the fact that neither of these applicants forced any of the females who were found on the spot to indulge in prostitution in contravention of the provisions of Immoral Traffic (Prevention) Act, 1956, and as it is found that possibility of applicant - Pankaj having been falsely implicated at the behest of Avinash Bhandekar because of strained relations cannot be ruled out. Since the investigation is complete and charge-sheet is filed, applications are liable to be allowed by imposing suitable conditions on the applicants in Criminal Application No. 927 of 2016 who are the females and residents of Telangana State as per the order below:-

[a] Both Criminal Application [BA] No. 923 and 927 both of 2016 are allowed.

[b] The applicants shall be released on bail on their executing a Personal Bond in the sum of Rs. 25,000/- [rupees twenty-five thousand

only] each with one surety each in the like amount. The applicants in Criminal Application No. 927 of 2016 shall furnish local sureties.

- [c]** While on bail and pending trial, the applicants shall mark their presence at Gadchiroli Police Station, Gadchiroli, once in a quarter on the first day of each such month and shall furnish proofs of their addresses to the said Police Station and update the same in the event of any change therein.

Judge

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