

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 73 OF 2017

Mr. Kishor Jethanand Bhatia Applicant/Accused
Versus
The State of Maharashtra & Anr. Respondents

AND
CRIMINAL BAIL APPLICATION NO. 181 OF 2017

Dilip Jethanand Bhatia & Anr. Applicants/Accused
Versus
The State of Maharashtra Respondent
through Vartak Nagar Police Station.

- Mr. S.S.Butala i/b. S.S.Butala & Associates for Applicant (in BA No.73/2017).
- Mr. Prabhanjay R. Dave for Applicants/Accused (in BA No. 181/17).
- Ms. J.S.Lohokare, APP for Respondent/State (in both Bail Applications).
- Mr. R.R.Daundkar, PI, AHTC, Crime Branch, Thane (in both Bail Applications).

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 23RD JANUARY, 2017.

P.C.

. Heard. These are applications under Section 439 of CR.P.C. The applicants herein are arrested on 4th December, 2016 in Crime No. II-3109/2016 registered at Vartak Nagar Police Station.

2. It is the case of the prosecution that on 1st December, 2016 in the afternoon at about 3.45 p.m. the complainant i.e. Nitin Manohar Pawar, who is officiating as the Executive Engineer of the Public Works Department and is posted at Municipal Corporation, Thane had been to Vartak Nagar area along with his staff to demolish the encroachment. One of the site was Satyam Lodging and Boarding. They had suddenly noticed that the owner and the conductor of the said Hotel were voluntarily demolishing a part of the Hotel. According to the first informant, he had noticed that the owner and the conductor of the said Hotel were hushing up some facts and were asking some women to leave the premises immediately. They suspected the activities, and therefore, according to the complainant, they had enquired with the owner and conductor. They had noticed that there was a building adjoining to Satyam Lodge and it was an illegal construction. It was noticed that the illegal construction was at the rear side of the Hotel and the ingress and outgress to the said building was not in public view.

3. The Officers had summoned the Tax Officer Mr. Mahesh Palwankar to the site and had questioned as to whether the tax on the rear portion was valued or not. At the site itself they had learnt that in the year 1979 Majiwade Grampanchayat had passed resolution and granted permission to the owner of the said land to construct one under-ground floor + first floor and that the owner of the said building was paying the taxes regularly to Thane Municipal Corporation. It was also informed that the owner Mr. Dilip Bhatia is

being prosecuted under M.R.T.P. Act. Upon further inspection of the said building, it was believed that the owner and conductor were running a brothel in the under-ground portion of the said building. Initially, it appeared to be a building of ground + two floors, however, there was an under-ground portion, where they were running the brothel. The squad had taken the videographs of the said inspection and demolition. It is also stated in the First Information Report that upon enquiry they have learnt that the police had knowledge of the fact that the brothel was being run in the under-ground portion and they had conducted raid on the said premises on earlier occasions. The Additional Commissioner of the Municipal Corporation, Thane had directed this squad to demolish the illegal building and by 3rd December, 2016 at 1.00 p.m. the squad had demolished the illegal portion of the said building. On the basis of the report of the Executive Engineer, Crime No. II-3109 of 2016 was registered **only under Section 3 of the Immoral Traffic (Prevention) Act, 1956.**

4. The respective counsel submit that Section 3 of the Immoral Traffic (Prevention) Act, 1956 is punishable with rigorous imprisonment for not less than one year but upto three years which may extend to fine of Rs.2,000/- on first conviction and rigorous imprisonment for not less than two years but upto five years which may extend to fine of Rs.2,000/-. It is in these circumstances that the respective counsel seeking enlargement on bail.

5. The learned counsel submit that the applicants are the co-owners of the said Hotel. They have entered into contracts with several persons in the last 25 years, who conduct the business and that although the building is in exclusive possession of the owners, the business is being conducted by different persons for a limited period and, therefore, according to the learned counsel, the applicants cannot be prosecuted under Section 3 of the Immoral Traffic (Prevention) Act, 1956 nor under Section 370 (1) (2) of Indian Penal Code, and therefore, according to them the applicants deserve to be enlarged on bail.

6. Perused the papers of investigation. In the course of investigation, it is revealed that the land on which Satyam Lodge stands today, originally belongs to Madhya Pradesh Government. The land is not transferred in favour of the State of Maharashtra nor Municipal Corporation, Thane nay much less the present applicants. In the course of investigation, it is further revealed that in fact, the applicants in all probabilities are the encroachers on the said vacant land. They have constructed the Hotel. According to the applicants, the permission was granted by the Grampanchayat in the year 1979. The agricultural land was not converted to any non-agricultural land and it is surprising that the Officers of Municipal Corporation, Thane had not noticed the illegal building for the past 25 years. The plan for constructing the said Hotel was sanctioned by Grampanchayat. Municipal Corporation, Thane had come into existence in the year 1984 and it is surprising that there was no review of the plan nor

there was any objection to the illegal construction. In fact, the action was taken accidentally only because one of the diligent persons in the said squad had noticed the owner and conductor engaging into some suspicious activities at the time of demolition. Moreover, the said action could not have been hushed up since the media was present at the time of removal of the encroachment and the panchanama of removal of encroachment was videographed by the media and was made a part of breaking news between 1st December, 2016 and 4th December, 2016.

7. The learned counsel for the applicants rightly submits that only because the said activities had come to light, the Officers had registered the First Information Report. It is also seen from the papers of investigation that Vartak Nagar Police Station is in close proximity of the said building. The papers of investigation further shows that earlier also police had raided the said premises, but the applicants have not been prosecuted under the provisions of the Immoral Traffic (Prevention) Act and in the year 2011 Dilip Bhatia was prosecuted under the provisions of Immoral Traffic (Prevention) Act and according to the learned counsel for the applicant Kishor Bhatia submits that till today he has not been prosecuted either under the provisions of the Immoral Traffic (Prevention) Act or in any other provisions. All this would reflect negligence, dereliction of duties and deliberate omission on the part of all concerned authorities for the reasons best known to them. The investigation is in progress. Allegedly there were three women, who were rescued from the said spot.

8. The learned counsel for the applicant Dilip Bhatia submits that in fact on the date when the encroachment was being removed, no woman was rescued from the said premises, nor the team had recorded the statement of any women in the said premises. The learned counsel appearing for accused Kishor Bhatia submits that he has the certified copies of the statements recorded under Section 164 of CR.P.C. on 23rd December, 2016. The learned counsel for the applicant submits that on the basis of the said statement that there is no iota of evidence to even remotely indicate that the said women had been forced into prostitution by the present applicant, and therefore, according to the learned counsel, they cannot be prosecuted under Section 370 (1) and (2) of the Indian Penal Code.

9. The learned APP submits that the First Information Report is not an encyclopedia of the events, allegations and the material that is collected in the course of investigation. It would only be the first step to set the law in motion. According to learned APP the applicants would also be prosecuted for serious offences under the Indian Penal Code such as, Sections 467, 468, 471 of Indian Penal Code. That the statements of the responsible Officers and office bearers of the Madhya Pradesh Government are yet to be recorded. It is in these circumstances that the applicants do not deserve to be enlarged on bail. The application being sans merits, stands rejected.

10. The applicants are at liberty to file an application after the investigation is completed and charge sheet is filed.

(SMT. SADHANA S. JADHAV, J.)