

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.201 OF 2016
IN
CRIMINAL APPEAL NO.117 OF 2016**

Mamunoor Rashid Rafique Siddiqui ... **Applicant**
V/s.

The State of Maharashtra ... **Respondent**

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Mr.V.V.Purwant, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 12th JANUARY 2017.

P.C . :

1 This is an application by appellant/convicted accused No.2 for suspension of sentence and releasing him on bail during pendency of appeal before this Court. The applicant/accused was convicted of offence punishable under Sections 3 and 4 of the Immoral Traffic (Prevention) Act, 1956 ("PITA" for the sake of brevity) and is sentenced to suffer rigorous imprisonment for two years each with fine of Rs.2,000/- each in default to suffer simple imprisonment for three months. He is also convicted of the offences punishable under Sections 5 and 6 of the PITA read with Section 317(A)(2) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for seven years along with fine of

Rs.5,000/- in default to suffer simple imprisonment for six months. The appeal filed by the applicant is already admitted for final hearing.

2 I have heard the learned counsel appearing for the applicant/accused. He argued that the entire trial is vitiated as the investigation of offence punishable under PITA is not conducted by the Special Police Officer as per mandate of Section 13 of the said Act. The learned counsel further argued that evidence of the prosecution is discrepant and it is not sufficient to prove that the applicant had kept a brothel and was earning his living out of earnings of prostitutes. The learned counsel further argued that other offences are also not proved by adducing sufficient evidence by the prosecution. He submitted that the applicant/accused has undergone more than half of the sentence imposed upon him by the learned trial Court and, therefore, as there is no likelihood of hearing of the appeal in the near future, he is entitled for suspension of sentence and release him on bail. He placed reliance on the Judgment of the Honourable Apex Court in the matter of *Delhi Administration v. Ram Singh* reported in 1962 SCR (2) 694.

3 As against this, the learned Additional Public Prosecutor submitted that in view of the corrigendum dated 07/07/2008 to the Notification No.PPA-0206/CR-57/SPL-6 dated

14th March 2016 in absence of Inspector of Police all police officers including woman police officers subordinate to him are required to be recommend as Special Police Officer in terms of Section 13 of the PITA and, therefore, the investigation is properly done and there is no question of vitiating the trial. The learned Additional Public Prosecutor further argued that evidence of the victim of the crime, who is examined as PW.No.1 establish the offences punishable under Sections 3 and 4 as well as Sections 5 and 6 of the PITA and, therefore, the applicant/accused is not entitled to be released on bail.

4 I have carefully considered the rival submissions and also perused the impugned Judgment and Order. Apart from depositions of witnesses, it is seen from the impugned Judgment and Order that the applicant/accused is principally convicted for the offence under Section 3,4,5 and 7 of the PITA read with Section 370(A)(2) of the Indian Penal Code. Section 3 of the PITA provides for punishment to a person who keeps or manages or acts or assists in the keeping or management of a brothel. Section 4 prescribes punishment for living on earning of prostitution. Any person who knowingly lives wholly or in part on the earnings of the prostitution can be punished as per the provisions of this Section provided such person is more than 18 years of age. Section 5 of the PITA deals with procuring or taking person for the sake of prostitution, whereas Section 6 deals with criminal liability

of a person who detained a person in premises where the prostitution is carried out. The investigation of offences under this Act is required to be done by a Special Police Officer and such office can seek assistance of subordinate police officer as per Section 13 of the said Act. Section 13 of the PITA defines the Special Police Officer as a officer who is not below the rank of a Inspector of Police. Such officer during investigation of the crime under the PITA is assisted by such number of subordinate police officer as the State Government may think fit.

5 In the case in hand, the investigation of the crime in question was conducted by P.W.No.11 Vijay Dhondiba Bhise and his evidence shows that at the relevant time he was attached to Mahatma Phule Chowk Police Station as Police Inspector. The learned Additional Public Prosecutor does not dispute the fact that P.W.No.11 Vijay Bhise had conducted the investigation of the crime in question and he was Inspector of the concerned police station at the relevant time. Nothing is pointed out to this Court to show that P.W.No.11 Vijay Bhise, at the time of investigation of crime in question was Inspector of Police (Social Service Branch) Mumbai and other Commissionerate where such branch exists. The corrigendum pressed in service by the learned Additional Public Prosecutor is in respect of appointment of police officer under Section 13(1)(2) of the PITA and it states that the Inspector of Police (Social Service Branch) Mumbai and other

Commissionerate where such branch exists is a Special Police Officer under the PITA can be the Special Police Officer. Nothing was pointed out to demonstrate that the P.W.No.11 Vijay Bhise was at the relevant time empowered as the Special Police Officer under PITA though this point is specifically raised in the instant application.

6 In the matter of *Delhi Administration v. Ram Singh* (supra) relied upon by the learned counsel for the applicant, respondent Ram Singh was suspected of having committed an offence punishable under Section 8 of the PITA. After filing of the charge-sheet against him, the learned Magistrate in the matter quashed the charge-sheet holding that the Special Police Officer alone was competent to investigate into the offence. The order of the learned Magistrate in that case was upheld by the High Court and revision petition challenging that order was dismissed. The matter was carried to the Supreme Court by the Delhi Administration. The Honourable Supreme Court per majority considering the provisions of PITA ruled that the Special Police Officer and his Assistant Police Officers are the only officers competent to investigate offences under the PITA and that police officer not appointed as Special Police Officer cannot investigate the offence under PITA though such offences are cognizable. The appeal was ultimately dismissed. The learned single Judge of this Court in the matter of Criminal Appeal No.704 of 2009 between

Mumtaz Dastgir Mulla and Another v. State of Maharashtra decided on 11/12/2012 relied on this Judgment and the said appeal was allowed by acquitting the appellants therein of the offences punishable under PITA as well as under the IPC.

7 In the case in hand, the only victim of the crime in question examined before the Court is P.W.No.1. Other alleged victims of the crime in question are not examined. The learned trial Court has held that the applicant/accused had committed offences punishable under Sections 3 and 4 of the PITA by allowing his premises as well as lodge to be used as a brothel and was living on earning of the prostitution. Similarly, it is held that that he had induced the victim prostitutes by taking them to one place and another place and detained them in premises. Prima facie evidence of P.W.No.1 does not show that she was detained by the applicant/accused.

8 Considering the fact that it is not pointed out that the offence was investigated into by the Special Police Officer as contemplated under Section 13 of the PITA and the applicant/accused had undergone major part of the sentence imposed upon him, keeping in mind verdict of the Honourable Supreme Court in the matter of Ram Singh (supra), the appellant deserves liberty and, therefore, the order :

- i) The application is allowed.
- ii) The substantive sentence if imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail during pendency of the appeal on executing PR bond of Rs.30,000/- and on furnishing one or two sureties in the like amount.
- iii) As a condition of this order, the applicant/accused to furnish his correct residential address to the Mahatma Phule Chowk Police Station and to attend the said police station on every first Sunday in each month in between 11.00 a.m. to 12.00 noon till disposal of the appeal.

He should duly intimate change in his address to the concerned police station till disposal of the appeal.

(A. M. BADAR J.)