

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

CRIMINAL BAIL APPLICATION NO. 488 OF 2017

1 Gopal Prasad Rajendra Prasad Gupta.
2 Rakeshkumar Shyamlal Saroj. ... Applicants.

Versus

The State of Maharashtra. ... Respondent.

Mr. Prabhanjay R. Dave, advocate for Applicants.
Ms. J.S. Lohokare, APP for State.
Mr. Balasaheb Tambe, PSI, Kasarwadvali Police Station.

CORAM : SMT. SADHANA S. JADHAV, J

DATE : MARCH 24, 2017

P.C.:

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

2) This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicants herein are arrested on 30/9/2016 in Crime No. 256 of 2016 registered at Kasar Wadavali Police station. The

investigation is completed and charge-sheet is filed against the applicants on 15/12/2016 for offence punishable under section 370(2)(3) of the Indian Penal Code and Section 4 and 5 of the Prevention of Immoral Trafficking Act.

3) It is the case of the prosecution that PI AHTC Crime Branch, Thane had received a secret information that there is advertisement in Mumbai Mirror dated 28/09/2016 on page no. 41 as follows:

“DREAM Girl Escort Service by Decent, Edu Staff 24 x 7 H/H Juhu, Bandra, Andheri, Airport All Mumbai Anjali - 9819444243”.

4) It is in fact an agency indulging into immoral trafficking and immoral activities and women/girls are supplied as per demand. The Crime Branch had secret information and had decided to verify the same. Accordingly, Crime Branch had summoned two persons to act as panchas and a decoy customer who had called the agency on the given cellphone number. The decoy customer had demanded a girl. The receiver of the phone call had quoted Rs. 4,500/- for one girl and Rs. 9,000/- for two girls. The decoy customer had inquired the place where he could meet the girls. The receiver of the phone had informed the decoy customer that he would receive a phone call within a

short while. Accordingly, he had received a phone call from a person who had first questioned “Do you want a girl?”. Upon receiving answer in the affirmative he had asked decoy customer who reached Hiranandani Estate at Ghodbunder Road. He was further directed to give the amount to the rickshaw driver. He was to send two girls. Accordingly, trap amount of Rs. 9,000/- was arranged and marked. The decoy customer and the police had reached the scheduled spot. The rickshaw driver had repeated the code question to the decoy customer. He accepted the amount of Rs. 9,000/-. In the meanwhile, two women had alighted from the rickshaw and the raid was conducted. The amount of Rs. 9,000/- was recovered from the rickshaw driver.

5) Police had then recorded statement of two women who were apprehended at the spot. Both had categorically stated that they were unemployed and when they were in search of job, they met Gopal. He had induced them with lucrative returns and he used to call upon them, send the same rickshaw driver Rakesh Saroj who used to take them to the given spot. Both women had come from a meagre background.

6) The learned counsel for the applicants submits that there is no material on record to indicate that the agency was being run by the applicants or that applicants had called upon women.

7) Perused papers of investigation. In Mumbai Mirror dated 28/09/2016, under the caption of 'Escorts, the advertisement was given. The next caption is 'Party Entertainers' wherein there is advertisement as follows:

“DIVYA Friendship club fun & earn Unlimited A-Z Service All Mumbai”.

8) There are two similar advertisements. It is incumbent upon the police to inquire and investigate the licences of the said firms. It would also be incumbent upon the Social Service Branch/Crime Branch to take steps to prevent immoral trafficking as vulnerable unemployed young girls are victimized.

9) The learned counsel for the applicants submits that no offence under the provisions of Immoral Traffic (Prevention) Act, 1956 is spelt out.

10) It is clear that applicants have rather indulged into offence under section 4 & 5 of the Immoral Traffic (Prevention) Act, 1956.

11) Section 4 of the Immoral Traffic (Prevention) Act, 1956 reads as follows:

“4. Punishment for living on the earnings of prostitution – (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of [any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both [and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years]”.

12) Applicants herein are arrested on 04/09/2016. Investigation is completed. Charge-sheet is filed. Statements of rescued women indicate that they were apprised of the nature of the work in 'DREAM Girl Escort Service'

and they had willingly and voluntarily accepted the work which would be assigned to them.

13) The learned counsel for the applicants submits that offence under section 4 of Immoral Traffic (Prevention) Act, 1956 is a bailable offence. This is the first offence allegedly committed by the applicants. Hence, further incarceration would not be imperative after they have been in custody for six months.

14) In view of the fact that the rescued women had voluntarily and willingly accepted the job and had entered into the said profession, applicants deserve to be enlarged on bail.

ORDER

(i) Application is allowed.

(ii) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each with one or more local solvent sureties in the like amount.

(iii) The applicants shall attend the police station on 1st and 3rd Sunday of each month till the conclusion of the trial. Upon failure to attend two consecutive dates, the prosecution is at liberty to move for cancellation of bail.

(iv) The applicants shall not tamper with the evidence.

(v) The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)