

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.202 OF 2017**

IN

CRIMINAL REVISION APPLICATION NO.214 OF 2017

1 Amanul Farukh Sayyed	)...Applicants
2 Nandu Siddge Gauda	
V/s.	
State Of Maharashtra	)...Respondent

Ms. Anjali Patil, Advocate for Applicants.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th April, 2017.

P.C. :

This is an application for suspension of sentence and releasing applicants-revision petitioners-original accused nos.4 and 6 during the pendency of their revision petition.

2 Both applicants are convicted of the offences punishable under Sections 3,4 and 7(1)(b) of the Immoral Traffic (Prevention) Act, 1956(For the sake of brevity '**PITA Act, 1956**') and they are sentenced to suffer rigorous imprisonment for three years apart from fine of Rs.2,000/- for the offence punishable

under Section 3 thereof. As all substantive sentences are directed to run concurrently, it is not necessary to mention sentences on other counts.

3 The learned advocate for applicants argued that the offence was not investigated by the Special Police Officer as per mandate of Section 13 of the PITA Act, 1956 and the alleged victim girl was not examined. She further argued that decoy customer turned hostile to the prosecution and as such, there was no evidence to connect applicants with the crime in question. The learned APP opposed the application by contending that both Courts below have concurrently convicted both applicants and they are, accordingly, sentenced.

4 Prima-facie, error of law as seen from the judgments of the Courts below is to the effect that evidence regarding investigation of the offences by the Special Police Officer as per mandate of Section 13 of the PITA Act is lacunic in-as-much as no order appointing P.W.5-Bhagwan Chate, Police Inspector as Special Police Officer came to be placed on record by the prosecution. P.W.5-Bhagwan Chate assuming himself to be the Special Police

Officer has appointed PW.4-Popat Chavan PSI vide order at Exhibit 32 to conduct proceedings in respect of investigation of the crime in question by carrying out search, etc. His cross-examination reveals that the order authorising PW.4-Popat Chavan to investigate is prepared afterwards.

5 Applicants herein were on bail during the pendency of the proceedings before the Courts below. In the matter of **Delhi Administration v. Ram Singh** reported in **AIR 1962 SC 63**, the Hon'ble Apex Court has held that but for the Special Police Officer appointed under Section 13 of the PITA Act, nobody else can investigate offences under the said Act and an action to quash the charge-sheet by the learned Magistrate in that matter came to be upheld.

6 For the reasons stated in foregoing paragraphs, the application deserves to be allowed and, therefore, the order:

- (1) Substantive sentence of imprisonment imposed on applicants is suspended during the pendency of the revision petition filed by them and they are directed to be released on bail on

executing PR Bond in the sum of Rs.15,000/- each and on furnishing surety in the like amount.

- (2) On request of the learned advocate for applicants, initially for a period of eight weeks, applicants be released on cash security to the tune of Rs.15,000/- each.

(A. M. BADAR, J.)