

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

CRIMINAL BAIL APPLICATION NO. 722 OF 2016

Bagi Niguppa Mestry.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent

Ms. Anjali Patil, advocate for applicant.

Ms. R.M. Gadhvi, APP for State.

Mr. Deepak Kundal, Sr. P.I.. Pydhonie Police Station, Mumbai.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : JANUARY 6, 2017.**

P.C.

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

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 29/3/2015 in

Crime No. 61 of 2015 registered at D.B. Marg Police Station. Investigation is completed and charge-sheet is filed against the applicant for the offence punishable under section 342, 343, 366A, 370A, 370(3), 372, 376, 324, 504, 506(2) read with Section 34 of the Indian Penal Code and Section 3, 4, 5 and 7(1)(b) of the PITA.

3 It is the case of the prosecution that Police had received secret information that some girls are detained for the purpose of prostitution in the premises at Rele Building. On 29/3/2015 on the basis of the secret information the police had raided premises at Rele building, Room No. 3, 3rd floor, Grant Road(E), Mumbai. They had sent a decoy customer in the abovesaid premises. The police had conducted raid in the above premises and rescued 7 ladies. One of the victim namely Asma Khatun appears to be a minor. Women were rescued. The minor girl was sent to rehabilitation center in West Bengal. Besides the victim, all other girls who are rescued have specifically stated that they had voluntarily entered into the profession

of prostitution and were not forced by the present applicant.

4 It is the case of the prosecution that the applicant herein runs the brothel in the said Rele building. It is alleged that she had detained the victim and had forced the minor victim into prostitution.

5 Perused the papers of investigation. The victim was examined by the doctor on 9/6/2016. She has disclosed to the doctor that she was misled by one Mukta and was brought to Mumbai where she was residing with a couple namely, Kusum and Raju. Raju had ravished her against her will and tortured her physically and mentally alongwith his wife Kusum. That they had given burns by cigarette butts. She had realised that she was forced into prostitution.

6 It is further the case of the prosecution that Kusum has taken her to brothel of the present applicant. There also she was forced into prostitution, and was detained and assaulted. At the time of medical

examination, it was noticed that the injuries sustained due to cigarette butts were old injuries and were in the process of healing. It is the specific case that the said burns were given by Kusum and Raju. All the injuries were healed. She had been introduced to the brothel of the present applicant only 10 days before the raid.

7 The learned Counsel submits that those were the old injuries which she had sustained at the hands of Kusum and Raju. Kusum also appears to be running brothel alongwith the present applicant. Offences under section 370 would be applicable to Kusum and Raju. The applicant is reported to be diabetic. She is about 50 years old. The applicant deserves to be enlarged on bail, as she is in custody for more than 2 years and till today, the charge is not framed.

8 The learned APP upon instructions submits that there are no criminal antecedents. This is first offence registered against the present applicant in the provisions of PITA Act.

9 It is in these circumstances, the applicant deserves to be enlarged on bail.

10 However, it is made clear that the co-accused Kusum shall not claim parity with the applicant as the victim was detained by Kusum. She was subjected to physical and mental torture by Kusum and she was forced into prostitution by Kusum.

11 It is made clear that the observations made herein above are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered at the time of deciding the application for discharge or quashing of FIR or at the time of trial.

12 Hence, the following order is passed :

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing PR. Bond in the sum of Rs. 50,000/- and one or more solvent local sureties in the like amount.

(iii) The applicant shall not leave Mumbai, Thane and Palghar without prior permission of the Court.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)