

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.899 OF 2017

TISHA KHATOON SHEIKH)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.S.R.Pawar, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 13th NOVEMBER 2017

P.C. :

1 The applicant/accused in Crime No.I-695 of 2015 registered with Police Station Kashimira, for offences punishable under Section 370(3) of the Indian Penal Code (IPC) and under Sections 4, 5, 6 and 7 of Immoral Traffic (Prevention) Act as well as under Sections 3, 8 and 16 of the Protection of Children from Sexual Offences Act (POCSO Act), by this application, is seeking his release on bail during pendency of the trial.

2 The learned advocate for the applicant/accused argued that the applicant/accused is behind bars for a period of two years. By drawing my attention to the statement of the alleged victim of the crime in question recorded by the learned Magistrate, the learned advocate argued that none of them had attributed any role to the applicant/accused in the crime in question.

3 The learned APP opposed the application by pointing out statement of Mariyam and argued that she is sister of the present applicant/accused and the present applicant/accused had forced her into prostitution. The learned APP further argued that the crime in question is serious, and therefore, the applicant/accused is not entitled for bail.

4 I have carefully considered the rival submissions and also perused the entire charge-sheet. The crime in question is registered on the basis of report lodged by Sachin Gavas, Assistant Police Inspector, after conducting raid at Hotel Surya Prakash

located at Kashimira by deploying decoy customer. It is the case of the prosecution that after receipt of secret information and by availing services of a decoy customer, raid was arranged and effected on 9th December 2015. At about 10.10 p.m., the decoy customer gave a pre-arranged signal and the police team gathered in the lodge and found the decoy customer with one woman. After interrogating, the persons present there, the police team found that in all four women were present in the said lodge for the purpose of prostitution. It is the case of the prosecution that the applicant/accused is indulged in trafficking females for the purpose of prostitution and she is keeping a brothel.

5 All females found at the spot of the incident are adult females, though according to the prosecution case, during medical examination, one woman named Mariyam is found to be 16 to 17 years of age. In her statement she had stated her age as 20 years. No certificate of her date of birth is collected during the course of investigation. It is settled that there is margin of error of two years in the age determination in ossification test. Other victim females,

who have given their statement before the learned Magistrate, have not attributed any role to the present applicant/accused in the crime in question. The investigation of the crime in question is over since long. The trial will take its own time. At pre-trial stage, there is presumption of innocence of the accused and the detention cannot be punitive. Therefore, the following order :

ORDER

- i) The application is allowed.
- ii) The applicant/accused in Crime No.I-695 of 2015 registered with Police Station Kashmirira, for offences punishable under Section 370(3) of the IPC and under Sections 4, 5, 6 and 7 of Immoral Traffic (Prevention) Act as well as under Sections 3, 8 and 16 of the Protection of Children from Sexual Offences Act (POCSO Act) is ordered to be released on bail on her executing P.R.Bond in the sum of Rs.25,000/-, and on furnishing surety in like amount.
- iii) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing

such facts to the court or to the Police Officer.

- iv) As a condition of this order, the applicant / accused should not repeat commission of similar offence in future and if this condition is breached, the prosecution shall be at liberty to apply for cancellation of bail granted to the applicant/accused.
- v) The application is accordingly disposed of.

(A. M. BADAR, J.)