

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

**CRIMINAL APPLICATION NO. 1044 OF 2017
IN
CRIMINAL APPEAL NO. 243 OF 2017**

Mohmad Murshid Jalal Ahmed AnsariApplicant
Versus
The State & Anr.Respondents

Mrs. Teja Katdare with Alpa Jhaveri for the applicant.
Mr. P.H. Gaikwad, APP for the respondent/state.
Mrs. Purnima H. Kantharia, Special PP for respondent no.2.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 12th OCTOBER, 2017***

P.C. :

1. The applicant herein was the accused no.1 in Sessions Case No. 16 of 2015 on the file of Sessions Judge, Daman. By this application, the applicant has sought suspension of execution of substantive sentence of imprisonment imposed vide judgment dated 03rd February, 2017 in the said case and has prayed for release on bail.
2. Heard the learned counsel for the applicant and the learned APP and Special Public Prosecutor for respondent nos.1 and 2 respectively. Perused the record and considered the submissions advanced by the learned Counsels for the respective parties.
3. The applicant herein was prosecuted for offences under Section 370(3) of the Indian Penal Code and sections 3, 4, 5 and 6 of the

Prevention of Immoral Traffic (Prevention) Act, 1956 (for short 'PITA Act') and sentenced to suffer rigorous imprisonment for ten years and also directed to pay fine of Rs.2,000/- in default to suffer further rigorous imprisonment for three months.

4. The case of the prosecution in brief is that the applicant alongwith other absconding accused had procured the victim girls from Swapnerpur, Bangladesh under the pretext of providing job. The applicant and other accused had exploited the victim girls by trafficking them and inducing them to prostitution.

5. Upon receipt of the information, Utsav Hotel situated at Devka was raided and the applicant and other co-accused were caught red handed and the victims were rescued. Pursuant to the first information report lodged by PW5 Nikesh Kadam, who was one of the members of the raiding party, crime no. 111 of 2016 was registered. Upon completion of investigation, charge sheet was filed against the applicant and other co-accused under section 370(3) of Indian Penal Code and other offences under sections 3, 4, 5 and 6 of the PITA Act.

6. The case was committed to the Court of Sessions. The learned Sessions Judge, Daman upon considering the evidence adduced by the prosecution, held the aforesaid applicant guilty of offences under Section 370(3) of Indian Penal Code and under sections 3, 4, 5 and 6 of the PITA Act and sentenced him as stated above.

7. Mrs. Teja Katdare, learned counsel for the applicant has submitted that the applicant was not involved in trafficking the victim girl and that the only evidence against applicant is that he was residing in the room of the sister of the victim, who was instrumental in bringing her to India from Bangladesh. She has further submitted that there is no evidence to show that the applicant/accused was in any manner, involved in exploiting the victim girl and/or forcing her into prostitution. She submits that the evidence as regards trap and raid suffers from severe discrepancies and hence, cannot be believed. She submits that there is no *prima facie* evidence to hold the applicant guilty of offence under section 370(3) of Indian Penal Code.

8. Mrs. P.H. Kantharia, the learned Public Prosecutor who is representing the respondent no.2 has submitted that the victim was brought to India by her sister Kulsum, who is an absconding accused. She has further submitted that the evidence of the victim girl indicates that the applicant was residing with Kulsum and that he was associated with the absconding accused Kulsum. He was also caught red handed in the trap laid by the police party and money was recovered from him. She has submitted that the evidence of PW5 and PW6 sufficiently proves the role played by the applicant in the above offence.

9. The applicant herein has been convicted for offence under section 370 of Indian Penal Code, which reads thus :-

“ 370. *Trafficking of person – (1) Whoever, for the purpose of exploitation (a) recruits, (b) transports, (c)*

harbours, (d) transfers, or (e) receives, a person or persons, by -

First. – using threats, or

Secondly. - using force, or any other form of coercion, or

Thirdly. - by abduction, or

Fourthly. - by practising fraud, or deception, or

Fifthly. - by abuse of power, or

Sixthly. - by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1. – The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2. - The consent of the victim is immaterial in determination of the offence of trafficking. ”

10. A plain reading of Section 370 would indicate that the term 'trafficking' includes not only recruitment but also takes within its ambit other acts such as transportation, harbouring, transfer or receipt of person for the purpose of exploitation either by threat, force, coercion, abduction, deception, etc.

11. In the instant case, the evidence of PW1 who is a victim of the crime *prima facie*, indicates that her sister Kulsum had brought her to India from Bangladesh under the pretext of providing employment. Said Kulsum had kept PW1 in a room and the applicant i.e. accused no.1 was residing in the said room alongwith Kulsum. Her evidence

prima facie indicates that Kulsum had forced her into prostitution and that the applicant herein was also associated with Kulsum in the said act. Her evidence further reveals that the applicant and the other girls were taking her to different hotels for prostitution. The evidence of PW1 *prima facie*, proves the involvement of the applicant in committing the offence under Section 370 of Indian Penal Code.

12. The evidence of PW5 Nikesh Kadam, who is working for NGO, *prima facie*, indicates that he had received information that the applicant herein was forcing the trafficked girls into prostitution. He had verified this fact by making a call to the applicant and telling him that he wanted a girl. In the said conversation, the applicant had agreed to provide a girl at Utsav Hotel on payment of Rs.2,000/-. PW5 reported the matter to the police. Subsequently, a trap was laid wherein PW6 had acted as a decoy. The evidence of PW5 and PW6 *prima facie*, reveals that the applicant was present at the said hotel. PW6 decoy had paid Rs.2,000/- to the applicant herein for procuring the victim girl for prostitution. The testimony of these witnesses further indicates that the victim and the other girls who were present in the said hotel were rescued and the applicant herein was caught red handed and the money paid by PW6 was recovered from him.

13. The evidence of the victim as well as PW5, PW6 and the Investigating Officer *prima facie*, reveals the involvement of the applicant in committing offence under section 370(3) of Indian Penal Code. The offence is not only of serious nature but in fact is a crime

against the women and in turn a crime against the society. Considering the nature of the charge as well as the evidence in support thereof, in my considered view, this is not a fit case for suspension of the execution of substantive sentence. Hence, Criminal Application No. 1044 of 2017 is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)