

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

CRIMINAL BAIL APPLICATION NO. 2585 OF 2016

Shriniwas Giriya Nayak.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Anish Ashok Desai, advocate for Applicant.

Mr. Ajay Patil, APP for State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : FEBRUARY 14, 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 29/6/2016 in Crime No. 168 of 2016 registered at Shil Diaghar Police Station on 29/6/2016. The investigation is completed and charge-sheet is filed against the applicant on 26/9/2016 for offence punishable under

section 370(2)(3) of the Indian Penal Code and Section 3,4,5 of the PITA Act and Section 4, 8 and 17 of the Protection of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that on the basis of the secret information that Mayur lodge is being used as brothel, raid was conducted on the said premises. Crime Branch had sent a decoy customer. The raid was conducted in accordance with law and two girls were rescued. It is the case of the prosecution that the applicant, who happens to be the manager, has allowed the premises to be used as brothel.

4 After rescuing, the statement of the victims were recorded. Ms. X has disclosed the police that she hails from a economically backward family. That she alongwith her friend had accompanied one Mijapur @ Ajgar to the said hotel. Ajgar had informed the girls that they should oblige the manager. The statement of another victim was recorded. She has also reiterated that due to economic

stringencies, they could not make both ends meet. That she alongwith her friend had been to Mayur lodge at the instance of Mijapur @ Ajar and he had told them to act as per the wishes of the manager of the said hotel. That they had voluntarily been to the said hotel. They had received consideration also.

5 The learned Counsel for the applicant rightly submits that the applicant in the given circumstances cannot be held liable for offence punishable under section 370 of the Indian Penal Code. That the applicant at the most will be held liable for offence punishable under section 3 of the PITA, 1956.

6 Section 3 of the Act reads as under :

3. Punishment for keeping a brothel or allowing premises to be used as a brothel.—(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.
(2) Any person who—

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

[(2A) For the purposes of sub-section (2), it shall be presumed until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,—

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.]

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

7 Learned Counsel submits that the applicant was working as a manager. The sentence contemplated is not less than one year and not more than 3 years on conviction. It is also submitted that there are no criminal antecedents. The applicant had no knowledge about the age of the girls, who were brought by Ajgar.

8 Taking into consideration the material collected in the course of investigation and the role attributed to the present applicant and the submissions made, this Court is of the opinion that the applicant deserves to be enlarged on bail.

9 The observations are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial.

10 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more local solvent sureties in the like amount.
- (iii) The applicant shall not leave Mumbai without prior permission of the Court.

(iv) The applicant shall mark his presence before the concerned police station on 1st and 3rd Sunday of each month till framing of charge.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)