

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1580 OF 2016

AND

CRIMINAL APPLICATION NO.1581 OF 2016

IN

CRIMINAL APPEAL NO.834 OF 2016

SADHANA @ SIMA VISHWAJIT KAVIRAJ)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Anand H. Singh, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 18th JANUARY 2017.

P.C. :

1 These are applications for suspension of sentence and releasing the applicant / accused on bail during the pendency of the appeal filed by her before this court. The applicant / accused has been convicted of the offence punishable under Section 372 read with Section 34 of the IPC, apart from offence punishable under Section 4 and 5 of Immoral Traffic (Prevention) Act. For the

offence punishable under Section 372 read with Section 34 of the IPC, the applicant / accused has been sentenced to suffer rigorous imprisonment for 7 years, apart from payment of fine of Rs.25,000/-, in default, to undergo further rigorous imprisonment for 5 months. For the offence punishable under Sections 4 and 5 of the Immoral Traffic (Prevention) Act, the applicant / accused has been sentenced to suffer rigorous imprisonment for 2 years and 7 years respectively, apart from imposition of fine of Rs.1,000/- and Rs.2,000/- respectively.

2 Heard the learned counsel for the applicant / accused at sufficient length of time. He argued that the applicant / accused is a woman having family to be maintained. According to the prosecution case, she had been to the spot of incident along with her young daughter and this fact shows that there was no question of any intention to sell out or let to hire a minor for the purpose of prostitution. The learned counsel further argued that alleged victim Puja is not a minor and she is not examined by the prosecution. It is further argued that Mr.Tawde, Assistant

Commissioner of Police, who is contended to be a Special Police Officer, is not examined by the prosecution. Provisions of Section 65B of the Evidence Act are also not followed by the prosecution while conducting the trial. The learned counsel further argued that PW2 Kajal has stated the date of alleged offence as 4th April 2009 and infact it is not the case of the prosecution that the offence took place on 4th April 2009. The learned counsel further argued that there is no room in Hotel Shreya where the alleged incident took place and even waiter from that hotel is also not examined by the prosecution. Marked currency notes were infact not recovered as the recovered currency notes were not having pencil marks. With this, the learned counsel argued that the applicant / accused deserves to be released on bail.

3 The learned APP opposed the application contending that the crime in question is serious and the same is proved by adducing clear and cogent evidence. He argued that the evidence of decoy customer corroborates the version of victims of the crime in question.

4 I have carefully considered the rival submissions and also perused the impugned judgment and order, apart from copies of deposition of witnesses. Wheels of investigation were set in motion by the NGO named International Justice Mission. Though it is attempted to demonstrate that this is not a registered NGO, it is well settled that the criminal law can be set in motion by anybody. It is the case of prosecution that on the basis of information received by PW6 Jitesh, a meeting was held to verify the authenticity of the information. Proceedings of that meeting are stated to be recorded and video-graphed. First meeting was then followed by subsequent meeting. The activists confirmed themselves that minor girls are employed, used and let on hire for the purpose of prostitution by the accused persons. Then, Officers of Ghatkopar Police Station laid a trap by availing services of a decoy customer. PW6 Jitesh acted as decoy customer. On 3rd April 2009, PW6 Jitesh, PW1 Navin and panch witness went to Hotel Shreya. Accused persons, according to prosecution case, brought three girls. Victims of the crime are examined by the prosecution

as PW2 and PW3. It is case of prosecution that decoy customer paid an amount of Rs.5,000/- to the co-accused and an amount of Rs.10,000/- to the present applicant / accused for indulging in sexual acts with victim girls.

5 For convicting the applicant / accused as well as co-accused, the trial court relied on evidence of victim girls PW2 and PW3. Evidence on record prima facie establishes that PW2 victim girl is a child below the age of 18 years. Evidence of decoy customer PW6 Jitesh prima facie shows that minor child was being let to hire for the purpose of prostitution. Similarly, it was also found that accused persons have taken Hotel Shreya for carrying on prostitution and they were living on the earnings of prostitution by procuring minor girls for that purpose.

6 When notification appointing ACP Tawade as Special Officer was produced on record, at this stage, it cannot be said that trial was vitiated as the investigation was not carried out by the Special Police Officer in terms of mandate of Section 13 of the

Immoral Traffic (Prevention) Act. Official acts are regularly done is wise presumption of law even recognized by legislature. Similarly, Section 3 of the Evidence Act defines the term “proof” and satisfaction envisaged in that definition is that of a prudent person. In criminal trial, proof of mathematical precision is not required and therefore, at this stage, I find the argument that there was no room in Hotel Shreya, waiters were not examined and marked currency notes were not recovered without any substance. What is important is evidence of victim child and that of decoy customer, which prima facie demonstrates and proves ingredients of the offence alleged and held to be proved against the accused persons. Mentioning incorrect date by the victim child while in the witness box cannot be construed as entire deposition in respect of the incident as false. What is material is the incident disclosed by the victim child and not the date on which it allegedly occurred.

7 Nature and seriousness of crime are important considerations for granting bail. In the case in hand, the offence

alleged against the present applicant / accused is serious and heinous.

Therefore, no case for grant of bail is made out.

8 Both the applications are therefore rejected.

9 Hearing of the appeal is expedited.

(A. M. BADAR, J.)