

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

CRIMINAL BAIL APPLICATION NO.437 OF 2018

Sunil Babu Pathak

..Applicant

vs.

The State of Maharashtra

...Respondent

Mr.Satyavrat Joshi for the Applicant .

Mr. Y. M. Nakhwa, APP for the Respondent.

Mr. B. K. Muthe, PSI Sahakar Nagar Police Station, Pune

CORAM : P. N. DESHMUKH, J.

DATE : 7th MARCH, 2018

P.C.:

. Heard Mr. Joshi, learned counsel for the Applicant and Mr.Nakhwa, learned APP for the State. Perused the charge-sheet. A copy of which is filed with the application.

2. Mr.Joshi, Learned counsel for the Applicant had contended that according to the case of prosecution four girls are involved in the present crime which is registered for the offence punishable under sections 3, 4, 5, 6, 7 of the Immoral Traffic Prevention Act (PITA), under sections 376, 363, 366(A), 374, 370, 341, 342, 323, 467, 468, 471 of the Indian Penal Code and under sections 4, 6 and 17 of the Protection of the Children from Sexual Offences Act, 2012.

3. By referring to the registration of offence under POCSO Act, it is contended that from the medical certificate and the statements of the girls involved in the offence establish that neither of the 4 girls involved were minor on the date of incident. It is therefore submitted that if the provisions of POCSO are deleted from the present charge-sheet, applicant is no way concerned with the rest of the offences applied in the present

crime. Another ground contended for grant of bail is that out of 19 accused involved in the present crime 17 are arrested out of which 3 are granted bail whose involvement to larger extent is like that of applicant who according to the prosecution is stated to have acted as an agent for arranging girls for indulging into prostitution. Thus, since the investigation is complete and there is no other evidence except as aforesaid against the applicant, he be released on bail on imposing suitable conditions.

4. Mr.Nakhwa, Learned APP has opposed the application contending that there is direct evidence establishing involvement of the applicant in the present crime and that applicant is involved in such cases as prior to the present incident, two crime are registered against him by Pune City and Pune Rural under the provisions of PITA and therefore prayed that if the applicant is released on bail he will indulge in similar cases. The prosecution therefore opposes for grant of bail.

5. Perusal of charge-sheet reveals that on specific information received by the police authorities of Social Branch from the NGO's raid came to be carried out on 19/4/2017 at the Hotel. From the report lodged, it appears that the Assistant Police Inspector, Social Security Branch, Pune City have effected raid, two persons viz., Yusuf Shaikh and Javed Khan who informed the members of the raiding team that they were required to contact one Sunil Apte on mobile phone who instructed them to come near Dhanakwadi Petrol Pump and on reaching there accordingly both of them contacted him who in turn informed them to contact one Vitthal Ingle and when contacted Vitthal Ingle himself came to the Petrol Pump and took both of them to the lodge and provided two girls for indulging into prostitution.

6. Perusal of the report along with the role attributed to the applicant in the chargesheet prima facie reveals that applicant has acted as an agent for providing girls for prostitution purposes. From the contents of charge-sheet it reveals that co-accused Jitu Narentra Singh, Vishal Pandhari Shinde, Sachin Datta Ingle, Vikas Maniram Giri, Vitthal Gulab Ingle are involved in this crime as they are found directly linked with the offence, who were working in the said lodge as waiters for the purpose of earning their livelihood. All the above name co-accused are admittedly released on bail.

7. In view of the above fact it cannot be said that the case of the applicant is at par with that of co-accused named aforesaid. Having considered the fact that investigation is complete there appears no reason to keep the applicant behind bars.

8. Moreover from the documents filed with the charge-sheet, it reveals from the statement of one of girls that though she claims to be aged 16 years on the date of incident from the test report her age is certified to be between 17-19 years, with margin of error of 2 years on both sides, the second girl claims to be aged 23 years, the third girl claims to be aged 24 years and though the fourth girl claims to be aged 17 years when referred for medical examination is certified to be between 17-18 years. In view of age of girls involved in the crime, there is substance in the case of Applicant for non application of provisions of POCSO. which aspect can be duly considered at the time of framing of the charge.

9. Having considered the role attributed to the applicant, who has acted as agent and in view of the fact that in addition to present crime, similar crimes are registered earlier against him, applicant is entitled for

bail by imposing conditions. Hence, the following order:

ORDER

- i) Applicant be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount;
- ii) Applicant shall not enter the territorial limits of Pune City, Pune Rural District, pending trial, except for attending the Trial Court on each date of hearing and in addition on the same day he shall mark his presence with Shivaji Nagar Police Station. Applicant shall mark his presence with the Sahakar Nagar Police Station pending trial within whose jurisdiction he prefers to reside while on bail, on 1st day of each month;
- iii) Applicant shall supply a copy of his residential address where he shall stay pending trial to Shivaji Nagar Police Station and also to the Sahakar Nagar Police Station.

(P.N. DESHMUKH, J)