

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1363 OF 2018

Mohammed Samrat Shadat Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. S. V. Marwadi, i/b Khusbu Marwadi, for the Applicant.
Mr. A. R. Kapadnis, for the Respondent/State.

CORAM: PRAKASH D. NAIK, J

DATED: 5th December, 2018

PC:-

1. The applicant is seeking bail in CR No.I-156 of 2017 registered with Palghar Police Station for the offences punishable under Sections 370-A, 376, 328, 341, 120(B), 323, 504, 506 of Indian Penal Code read with Section 4 and 5 of Immoral Traffic (Prevention) Act, 1956 ('PITA', for short) and Sections 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act, 2012.

2. The prosecution case is based on the first information report ('FIR', for short) lodged by the informant. She is the national of Bangladesh. She was married before two years. On getting acquainted with one Akbar with a view to join employment she crossed the border and entered in India. It is alleged that accused no.1 Akbar brought her to Mumbai and she was subjected to prostitution by accused no.2 Ashokkumar

@ Dipak. Thereafter she came in contact with applicant – accused and at his instance she had visited several places for the purpose of prostitution. It is alleged that she has earned money by indulging with prostitution. She used to hand over the earned amount to the applicant. The applicant had threatened her that her nationality will be disclosed to the police in case she do not indulge in prostitution. The applicant used to provide her tea, coffee, coconut water etc.. After consuming the same she used to feel dizziness. On 2nd September, 2017, the accused had outraged her modesty. On 3rd September, 2017 the accused had sexually assaulted the complainant. On 5th September, 2017 she managed to run away from the premises and lodged complaint with the police. The applicant was arrested on 6th September, 2017. Investigation is completed. Charge-sheet is filed.

3. The learned Counsel for the applicant submitted that the applicant had been falsely implicated on account dispute regarding the payment to the complainant. Section 370-A will not be applicable to the applicant as the victim was allegedly brought by other accused from Bangladesh and her custody was handed over to accused nos. 2 and 6. The applicant had not exploited the complainant. She had attended several hotels as per instruction of accused nos.2 and 3. The allegations of sexual assault is not corroborated by medical evidence or any other evidence. The complainant has stated that the applicant and his wife Dolly were residing in the same premises and it is difficult to accept that the applicant accused has committed sexual assault. The applicant is in custody from 6th September, 2017. There are no criminal antecedents against him.

4. Learned APP submitted that the applicant is involved in serious crime. The complainant was sexually assaulted by accused. She was also administered tea, coffee, coconut water etc. which resulted into dizziness and thereby Section 328 of IPC is attracted. The victim was subjected to prostitution which amounts to the offence under Section 4 and 5 of PITA. There is no reason to disbelieve the version of the complainant. Ossification test carried out indicates the age of victim as 18 to 19 years.

5. Having heard both the sides, I have also scrutinized the documents on record. After registration of FIR on 5th September, 2017 the investigation was proceeded. On completion of investigation, charge-sheet has been filed. As per the version of the complainant she was married to some person in Bangladesh and in search of employment she had approached accused no.1 and with his help crossed the border and came to India. The said accused then introduced her to co-accused and since then she has made indulging prostitution. The statement indicate that she had visited several hotels for prostitution and has earned money. Subsequently, she came in touch and got acquainted with the applicant and at his instance allegedly she visited several places for the purpose of prostitution. At the instance of co-accused Dipak and Rajesh she had visited several hotels for prostitution. Even at the instance of the applicant she went to Hyderabad and stayed there for a week and earned money from prostitution. FIR indicates that there was dispute with regard to the payment as the applicant was not returning the entire payment to the complainant. There is no evidence of the victim having

administered any stupefying and no substance found in medical examination. After the alleged incident she was medically examined. The same doesn't indicate that there was sexual assault. There is no other corroborative evidence. The wife of the applicant was also residing in the same premises, which is apparent from the statement of the complainant. In her statement under Section 164 of Criminal Procedure Code, she has disclosed her age as 19 years whereas in the FIR she has disclosed her age as 21 years. There is no evidence to indicate that she was minor when she got acquainted with the applicant. The other accused subjected her to prostitution. Accused Ashokkumar @ Dipak Gopal Saw was granted bail by this Court by order dated 14th June, 2018 in Bail Application No. 844 of 2018. Accused Vishwaji @ Raju (Rajesh) Kishorimandal was granted bail by this Court by order dated 9th August, 2018 in Bail Application No.1153 of 2018 and accused Ram Lakhan @ Ramu Sevalprasad Gupta was granted bail by this Court by order dated 15th March, 2018 in Bail Application No.258 of 2018. The applicant is in custody from 6th September, 2018. There are no antecedents against him. In view of the above, bail can be granted to the applicant.

6. Hence the following order:

: O r d e r :

- (i) Bail Application No.1363 of 2018 is allowed.
- (ii) The applicant be released on bail in CR No.I-156 of 2017 registered with Palghar Police Station for the offences punishable under Sections 370-A, 376, 328, 341, 120(B), 323, 504, 506 of Indian

Penal Code read with Section 4 and 5 of Immoral Traffic (Prevention) Act, 1956 and Sections 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act, 2012, on furnishing P. R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

- (iii) The applicant shall report the Investigating Officer once in a month on first Saturday of the month between 12.00 noon to 1.00 pm. till conclusion of the trial.
- (iv) After filing of the charge-sheet the applicant shall attend the Trial Court regularly unless exempted by the Trial Court.
- (v) The applicant is permitted to furnish cash security of Rs.25,000/- for six weeks.

7. Application stands disposed of.

[PRAKASH D. NAIK, J.]