

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

ANTICIPATORY BAIL APPLICATION NO.2042 OF 2018

Varun Dineshkumar Agarwal

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Sunny A. Waskar, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP, for Respondent – State.
Mr.Mahesh Patil, API, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 6, 2018.

P.C. :

The applicant is seeking anticipatory bail in connection with C.R.No.105 of 2018, registered with Kasturba Marg Police Station, Mumbai, for offences under Sections 294, 114 read with 34 of Indian Penal Code (“IPC”, for short) and Section 3, 8 (1)(2) (4) of Maharashtra Prohibition of Obscene Dance in Hotel, Restaurant and Bar Room and Protection of Dignity of Women (Working Therein) Act, 2016 and Section 33-W-135 of Mumbai Police Act. The First Information Report (“FIR”, for short) was registered on 24th February, 2018.

2 The prosecution case is that secret information was received by the police about activities conducted at Ellora Bar and Restaurant situated at M.G. Road, Borivali (East), Mumbai. Accordingly, the police gathered their staff members, independent panchas for conducting raid at the said place. It was noticed that 7 females were present in the said premises. The female present were performing indecent dance and the customers were showing them money and with obscene gestures they were accepting the amount. Panchas gave signal to police and hence the police conducted raid at the said premises and arrested the manager Ganesh Patwal (Accused no.2), pm enquiry the manager informed that the bar was conducted by Diesh Kumar Agrawal who had expired two months ago and since then the business is looked after by his son (applicant). He is the owner of the bar. The seven ladies dancing in the Bar stated that they are working as waitresses.

3 The applicant preferred an application for Anticipatory Bail, before the Sessions Court which was rejected on 12th September, 2018.

4 Learned counsel for the applicant submitted that the

applicant has been falsely implicated in the FIR. The applicant has nothing to do with the business of hotel Ellora Bar and Restaurant. The father of the applicant Mr.Dinesh Kumar Agarwal was the owner of the said business and all the licences are in his name. The applicant has annexed the copy of the requisite licences such as licence issued by the Corporation, the licence issued by Shops and Establishment Act, Health Licence, and other requisite licenses. It is submitted that the father of the applicant has passed away in September 2017. He died intestate leaving behind legal heirs being his wife, two sons and a daughter. The certificate of succession is not yet received and all the persons are having heirship in the property of Dinesh Kumar Agarwal. It is submitted that the relations between the legal heirs of Dinesh Kumar Agarwal is not peaceful. Practically there is no owner to hotel Ellora Bar and Restaurant. There are no criminal antecedents against the applicant. He has co-operated with the police. The custodial interrogation is not necessary. Hence, it is prayed that the applicant be released on anticipatory bail.

5 Learned APP submitted that there is sufficient evidence showing the involvement of the applicant in the said crime. It is submitted that when the raid was effected in the

premises. The manager was present and he had disclosed that the owner of the said bar had died two months ago and the applicant is looking after the said business. The police apprehended other accused alongwith the girls who were dancing at the tune of the music and making obscene gestures towards the customers who were enjoying the music and dance in the Bar. It is submitted that the licence to the hotel was given to conduct music in the said Bar with strict condition that dancing in the Bar is not allowed and the said condition was contravened by the applicant. It is submitted that the first raid is dated 21st February, 2018, and, in respect to which another FIR for similar contravention was registered against the applicant and others vide C.R.No.101 of 2018. The girls were induced to dance with indecent gestures in an indecent manner in Bar. It is further submitted that the girls were found detained in the area of admeasuring 10 feet x 2 feet, where there was every possibility of death due to suffocation. The accused have thereby committed the offence under Section 308 of IPC.

6 It appears that the father of the applicant late Dinesh Agarwal had passed away in September 2017. However, successive raids were effected on 21st February, 2018 and 24th February, 2018. It is apparent that illegal activities of obscene

dance in the Bar is being conducted by the applicant and others. The licence issued to the said Bar and Restaurant was only for performing music and the dance was completely prohibited. The statement of the other persons who were arrested and staff were recorded during the investigation and they have stated that the applicant is looking after the said business after the death of his father. Considering the nature of allegations, the case for grant of Anticipatory Bail is not made out and hence, the application deserves to be rejected.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.2042 of 2018,
is rejected.

(PRAKASH D. NAIK, J.)