

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

CRIMINAL BAIL APPLICATION NO. 2606 OF 2018

1. Sunil Vitthal Kunder
2. Rupesh Jairam Pawar

... Applicants

Vs.

State of Maharashtra

... Respondent

...

Mr. Diwakar R. Singh for the applicant.

Ms. A.A. Takalkar, APP for the Respondent-State.

Mr. Balwant V. Deshmukh, Police Inspector, Powai Police Station is present.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 29th OCTOBER, 2018.

P.C.

1. This is an application for bail in connection with C.R. No. 372 of 2018 registered with Powai Police Station for the offence punishable under Section 370(3) read with 34 of Indian Penal Code read with 3, 4, 5 of Immoral Traffic Act, 1956. The applicants were arrested on 27th March, 2018. First Information Report was lodged on the same day. Investigation is completed and chargesheet has been filed.

2. Prosecution case is that on 23rd July, 2018, information was received by the Police through their informer that prostitution activities are conducted at “Crystal Thai Spa”, First floor, Lake

Creamrose Shopping, Lake Home, Chandivali Farm Road, Powai, Mumbai. After verifying the information, it was decided to take action against the accused. Bogus customer and two panchas were arranged and the investigating machinery decided to raid the premises. The bogus customer and panch witnesses then proceeded to premises. On inquiry made by the panch witnesses and the bogus customer, it was revealed that accused were conducting massage activities at the said Spa. Accused shown four girls to the panchas and bogus customer and stated that they would charge Rs.1000/- for massage. It is further alleged that bogus customer had demanded extra service from the said therapist and in lieu of that accused had demanded Rs.1000/-. Bogus customer selected one girl and cash amount was paid to them and after inquiry with the victim girl, it was revealed that Spa owners had ordered the victim girls to do activities of prostitution with the bogus customer. It is alleged that they are being paid salary every month and from revenue generated from the activities, they were provided with the commission for the alleged activities. All four girls were brought to the police station. Investigation proceeded. Accused were arrested and since then they are in custody.

3. Learned counsel for the applicant submitted that offence under Section 370(3) of Indian Penal Code is not made out. There is no contravention of provisions of Section 3,4, 5 of PITA Act. It is not the case of the prosecution that sexual activity was being carried out at the Spa. The girls are major. There is no evidence of prostitution, therefore, Section 370(3) of Indian Penal Code would not be applicable as there was no exploitation of the girls at the said Spa. It is further submitted that applicants are in custody from the date of arrest and further detention is not necessary. There are no criminal antecedents against the applicant.

4. Learned APP submitted that on receipt of the information, the police had raided the premises. It is however revealed that the girls were used for massage to the customer and for additional payment they were indulging in prostitution. It is further submitted that when the police have raided the premises, the girl was found half nude with the bogus customer. It is therefore submitted that Section 370(3) of Indian Penal Code as well as PITA Act is applicable in the present case.

5. I have perused the chargesheet. The applicants are in custody from the date of arrest. Chargesheet has been filed after completing the investigation. The statement of girls who were

found in the Spa were recorded. It is noted that they were major in age. They were getting monthly salary as well as commission from the Spa owner for the activities conducted by them. It is not the case of the prosecution that victim girls were found carrying out any sexual activity. Statement of the girls did not indicate that they were exploited by the accused No.1 and 2. In the circumstances, application of Section 370(3) of Indian Penal Code is debatable and the trial court would consider the said aspect at the appropriate stage. However, considering the circumstances that as stated above bail can be granted to applicant. Hence, I pass the following order.

ORDER

- i) Criminal Bail Application No. 2606 of 2018 is allowed;
- ii) Applicants are directed to be released on bail with C.R. No. 372 of 2018 registered with Powai Police Station on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- iii) Applicants are permitted to furnish cash security in the sum of Rs.25,000/- each for a period of four weeks;
- iv) Applicants shall report the concerned police station once in a Month on first Saturday of the month between 10:00 a.m. to 12:00

noon till conclusion of the trial.

- v) Applicants shall not tamper with the evidence;
- vi) Applicants shall attend the trial Court on the date of hearing unless exempted by the Court for some reasons;
- vii) Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
Date:
2018.10.31
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