

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**CRIMINAL APPLICATION ( BAIL ) NO. 175 OF 2019.**

SAJID SHAIKH, PRESENTLY  
AT CENTRAL JAIL COLVALE.

... Applicant.

Versus

STATE OF GOA, THR. PUBLIC  
PROSECUTOR AND ANR

... Respondents.

Mr. V. Amonkar, Advocate for the applicant.

Mr. G. Nagvekar, Additional Public Prosecutor for the respondents.

**Coram:- PRITHVIRAJ K. CHAVAN, J.**

**Date:-30<sup>th</sup> July 2019.**

**ORAL ORDER**

The applicant has prayed for his release on bail who came to be arrested by respondent no.2 on 11.5.2009 in crime No.53 of 2019 under Section 370(3) read with Section 34 IPC and Sections 4 and 5 of the Prevention of Immoral Traffic Act as alleged.

2. It is contended by Mr. Amonkar that ever since his arrest he has been in the custody. There are no antecedents shown against him. He is married and is responsible for supporting his family. It is also submitted

that he has roots in the society and will not abscond in case of his release. The applicant undertakes to abide by any terms and conditions that would be imposed by this Court as a condition for bail.

3. It is submitted that the applicant is a permanent resident of State of Orissa. The Investigating Officer has also confirmed his address.

4. Shri Amonkar, learned Counsel for the applicant further submits that refusal of the bail to the applicant by Sessions Court was only on the ground that the applicant has not furnished his address in the State of Goa and therefore, incase of his release there is every likelihood of his abscondence. It is submitted that now the Investigating Agency has confirmed the address of the applicant which is furnished to the Investigating Agency. His pre-trial detention would not be proper as investigation is nearly completed. The learned Counsel has, therefore, prayed for release of the applicant on bail.

5. Reliance has been placed on the following Judgments:-

- i. Khemlo Sakharam Sawant Vs. State*<sup>1</sup>
- ii. Mr. Arun Babu Sigata Vs State and another*<sup>2</sup>
- iii. Amar Singh Vs. State of Himachal Pradesh*<sup>3</sup>

6. On the other hand, Mr. G. Nagvekar, learned Additional Public Prosecutor has strongly objected the release of the applicant by contending that there is a large network indulged in the business of prostitution. The applicant used to provide mobiles numbers of the prospective customers to the girls who were involved in the business of the prostitution. It is the modus operandi of the applicant to give different addresses. The learned Additional Public Prosecutor contends that accused no.5 Rehan is absconding and there is every likelihood of present applicant giving him a hint about the case which might result in making accused no.5 alert. It is submitted that all the accused were acting in concert. The learned Additional Public Prosecutor has placed the case diary for perusal of this Court. It is submitted that in case of his release there is every likelihood of his abscondence and he would not be

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1 2001 Bom CR(cri)761a

2 Criminal Application(Bail) No.33 of 2018 dt 13.2.2018.

3 MANU/HP/1457/2018

available for trial.

7. It reveals from the record that after receiving a credible information from the reliable sources, the Investigating Officer, alongwith panchas conducted a raid at Oyo Home, Sunset View, Donapaula at about 22.30 hours of 10.5.2019 to 1.30 hours of 11.5.2019. The applicant and other accused namely Mr. Sajid Shaikh@ Bunty, Mr. Sarfaraz Khan, Mr. Dipendra Singh Bhandari, Mr. Ismail Mohammad Sab Hanabarkadabi and Rehan(full name & address not known) were found involved in prostitution trade by procuring victim girls who were exploited against their will for the purpose of prostitution by forcing them to have sexual intercourse with prospective customers. It appears that mobile handset of the applicant and others were seized and call details record is obtained. The victims were rescued from the clutches of the applicant and other accused and were lodged in Protective Home at Mercedes.

8. It is submitted by the learned Additional Public Prosecutor that the wireless message received from the Police Station Hindol, Orissa

indicates that there were no adverse reports against the applicant at the said police station. However, it appears that the applicant is involved in the trade of prostitution with the help of other accused for illegal financial gains by indulging in human trafficking . Offences in deed are very serious in nature and would affect the society at large.

9. Merely because the permanent residential address of the applicant in the State of Orissa has been confirmed, that would not in itself be sufficient to release him on bail, especially when investigation is in progress and one of the accused is untraceable. No doubt only because the applicant is a non Goan would not be a reason to refuse the bail as observed by this Court in case of *Arun Babu Sigata*(supra), nevertheless, nature of the offence and the manner in which it was conducted cannot be ignored while considering the application for bail.

10. It would be essential for the Investigating Officer to trace the entire network of the traffickers by interrogating the applicant as well as other members of the gang and, therefore, it would not be safe to release the

applicant at this stage. It appears that offence involves trafficking of more than one persons which provides for rigorous life imprisonment with fine.

11. There is a reasonable apprehension in the mind of the Investigating Agency and rightly so, that in case of release of the applicant there is likelihood of threatening the witnesses as it is an organised racket which is an evil against the society.

12. In case of **Amar Singh**(supra) it is stated in paragraph 11 thus:-

*“11. Seriousness of the allegations or the availability of the material in support thereof is not only the considerations for declining the bail. After-all, at the pre-conviction stage, there is presumption of innocence. That apart, the object of keeping a person in custody is only to ensure his availability to face the trial and receive the sentence that may be passed. This was so held by the Hon'ble Supreme Court in its judgment in Dr.Vinod Bhandari versus State of Madhya Pradesh 2015 AIR SCW 1052, wherein it was held:-*

*"12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not*

*supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. Reference may be made to decisions of this Court in Kalyan Chandra Sarkar vs. Rajesh Ranjan (2005) 2 SCC 42:(AIR 2005 SC 921), State of U.P. vs. Amarmani Tripathi (2005) 8 SCC 21: (AIR 2005 SC 3490), State of Kerala vs. Raneef (2011) 1 SCC 784: (AIR 2011 SC 340) and Sanjay Chandra vs. CBI(2012) 1 SCC 40 :(AIR 2012 SC 830).”*

13. No doubt, seriousness of the allegations or availability of material in support thereof is not the only considerations for declining the bail however, in the case at hand, the modus operandi and network of the accused persons is a factor which cannot be taken lightly.

14. It is more particularly in the light of the fact that the investigation is still in progress. The detention of the applicant, therefore, cannot be said to be punitive. The ratio therefore, can be distinguished accordingly.

15. In the case of ***Khemlo Sakharam Sawant***(supra) the ratio is that

bail cannot be refused only on the ground that other accused is absconding especially when principal offender has been booked and the applicant therein was merely charged of abetment. Here, in the case at hand, abscondence of accused no.5 is not the ground for refusing the bail but other circumstances as discussed herein above which are quite crucial. It is not the case that the absconding accused is the main accused in this case. The ratio of this case law can be distinguished accordingly.

16. For the reasons stated herein above, the application stands rejected. Case diary to be returned to the learned Additional Public prosecutor forthwith.

**PRITHVIRAJ K. CHAVAN, J.**

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