

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

BAIL APPLICATION NO. 1236 OF 2018

Rajeshkumar Munna Yadav ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

**WITH
BAIL APPLICATION NO. 784 OF 2018**

Dhirendra Parmeshwar Yadav ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. P.R. Dave, Advocate, for the Applicant in BA No.1236/18.

Mr. Ajay H. Saravde, Advocate for the Applicant In BA.784/18.
Mr. R. M. Pethe, APP for the State.

(Mr. Nitin Rathod, API, Vashi Police Station, is present.)

CORAM : PRAKASH D. NAIK, J.

DATE : FEBRUARY 18, 2019.

PC :

1 The Applicants were arrested on 03rd April, 2017 in connection with the CR No. 0146 of 2017, registered with

Vashi Police Station, Navi Mumbai, for the offence under sections 370, 372 read with section 34 of the Indian Penal Code and under sections 16 and 17 of the POCSO as well as sections 4 and 5 of PITA Act.

2 The case of the prosecution is that on 03rd April, 2017, the concerned Police had received information about the prostitution activities through website. On receipt of information, it was decided by the police to lay a trap and accordingly, a bogus customer was made to call on the mobile number given on the website. With the help of bogus customer and the panch, three women were rescued. The applicants were apprehended at the place of the incident and first information report was registered. The statements of the rescued women were recorded under sections 161 and 164 of the Cr.P.C. They were medically examined and a chargesheet was filed.

3 The learned counsel appearing for the respective applicants submit that the offence under sections 370 and 372 of the Indian Penal Code do not attract in the case. The case would, at the most, fall within the purview of sections 3 and 4 of PITA Act. It is submitted that there is variance in the statements of the rescued women and that the said women had suppressed their nationality and while recording statements they have stated that they are major. The said women have

also stated that they were married, having children. The third rescued woman is admittedly a major woman. It is further submitted that all these women witnesses have not stated that they were exploited or forced to be in the prostitution activities. Amongst the three women, two women were repatriated to Bangladesh, being the citizens of the said country. It is further submitted that the medical examination conducted at the instance of the respondents is contrary to the versions of the rescued women as reflected in the statements recorded under sections 161 and 164 of the Cr.P.C..

4 The learned APP, however, submitted that the medical examination of the victim women discloses that two of them were minor. The applicants are actively involved in the prostitution activities. The CDR record indicates their involvement in the crime. On the website, there is mention of telephone number of the applicant in BA No.1236 of 2018. It is further submitted that the rescued women were repatriated to Bangladesh and one of them claims to be the wife of applicant in BA No. 1236 of 2018. It is submitted that the medical examination report cannot be brushed aside at this stage. The applicant in BA No.1236 of 2018 is also involved in the similar case and while on bail he has committed the present crime.

5 I have perused the chargesheet. During the course of the investigation, the statements of the victims were recorded under section 161 of Cr. P.C.. On 04.04.2017, the first victim stated her age to be 22 years. She has also stated that she is a resident of Bangladesh. She got acquainted with the applicant in BA No. 1236 of 2018. She came to Mumbai alongwith her friend. Thereafter, she is involved in the prostitution activities. The second victim, at the time of recording statement, has disclosed her age as 32 years and stated that she is the resident of West-Bengal and on account of poverty, she came to Mumbai and thereafter got acquainted with the aforesaid applicant and alongwith the other victims, she got involved in prostitution. The third victim is a major woman and has narrated as to how she is involved in the prostitution activities.

6 As stated above, the statements of these victims were recorded under section 164 of the Cr. P.C.. The first victim has stated in the statement recorded under section 161 of the Cr. P.C.. that she is married to the aforesaid applicant four years ago, before meeting him and she got involved in the prostitution activities after the marriage and that she has also delivered a child. She has also stated that she hails from the West-Bengal. Similarly, the second victim in her statement under section 164 of the Cr.P.C., has also disclosed that she is from West-Bengal and had involved in prostitution activities

after she got acquainted with the aforesaid applicant. In the said statement, however, she disclosed her age to be 17 years. The third victim is a major woman and her statement is not recorded under section 164 of the Cr.P.C.. The medical report of the first victim, the consent form filled up by the said victim, discloses her age to be 22 years. However, the radiographic/ radiological opinion indicates that she is 17 years & 6 months of age. The medical examination of the second victim in the consent form has disclosed her age to be 22 years and that she is a married woman. The medical opinion regarding her age indicates that she is of 16 to 16 & ½ years of age. It is contended that the said witnesses have disclosed their age, which indicates that they were major. The medical examination, however, shows that they are 17 & ½ and 16 & ½ years of age. It is also contended that the said victims have suppressed their nationality and the first two victims are repatriated to Bangladesh. One of the victim has disclosed that she had been in the prostitution activities since past and that she is a married woman.

7 In the light of the above evidence, further continuation of the Applicants in custody is not necessary. The investigation is complete and the chargesheet is already filed. Hence, bail can be granted to the Applicants.

ORDER

- i. Both the Applications i.e. Bail Application No. 1236 of 2018 and Bail Application No.784 of 2018 are allowed.
- ii. The Applicants are directed to be released on bail in connection with the CR No. 0146 of 2017, registered with Vashi Police Station, Navi Mumbai, on their furnishing PR Bonds in the sum of Rs. 25,000/- each with one or more sureties in the like amount.
- iii. The Applicants shall report to the concerned Police Station once in a month, on first Saturday of the month between 11 a.m. to 1 p.m. till further orders.

(PRAKASH D. NAIK, J.)

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