

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

ANTICIPATORY BAIL APPLICATION NO. 1073 OF 2019

Rahul Dattatraya Jadhav	...Applicant
Vs.	
State of Maharashtra	...Respondent

- Mr. Satyavrat Joshi alongwith Mr. Nitesh J. Mohite, Advocate for the Applicant.
- Mr. Prashant Jadhav, APP for the State.
- Ms. Seema Chaudhari, PSI, Sinhagad Road Police Station, Pune.

**CORAM : SARANG V. KOTWAL, J.
DATE : 20th AUGUST, 2019**

P.C. :

1. The applicant is seeking anticipatory bail in connection with CR No. 218/19 registered at Sinhagad Road Police Station, Pune for the offences punishable under Sections 3,4,5,7 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as 'PITA') and under Section 370 read with 34 of the IPC.
2. The FIR in this case is lodged by police constable Ms. Nanita Yele, attached to Social Security Division, Crime Branch, Pune City. She has stated in the FIR that, on 12th September 2019, informant and other police staff were present in the police station.

They had received secret information that prostitution was conducted in a massage spa center at Narhe. The information was verified by making a phone call to the number mentioned in the information. A bogus customer was arranged. Panchas were called. The amount of Rupees Four Thousands Five Hundred was given to the bogus customer. Numbers on the currency notes were noted. The customer went ahead. He paid amount to one lady who was present in that center. The bogus customer went to a room with one of the victims. He gave prearranged signal by making a phone call. Raiding party entered the massage center and found bogus customer with one of the victims. Another victim was found from another room. The lady who accepted money, was also in the centre. Raiding party was convinced that the prostitution was going on in that massage center and therefore this FIR was lodged.

3. Admittedly the present applicant was not present there. He is seeking anticipatory bail in connection with this offence. His sister, who was found in the massage center was arrested and is released on bail.

4. Heard, Mr. Satyavrat Joshi, learned counsel for the applicant

as well as Mr. Prashant Jadhav, learned APP for the State.

5. Mr. Joshi submitted that the statements of two victims, who were found in the massage center were recorded under Section 164 of the Cr. P.C. on 4th April 2019. Both these victims have categorically denied that they were into the prostitution or that they had indulged in any such activity. They have not stated a word about the present applicant. He, therefore, submitted that the allegations in the FIR are falsified by their statement recorded under Section 164 of the Cr. P. C. He further submitted that assuming that the allegations in the FIR to be true, no non bailable offence is made out. He submitted that offences under Sections 3 and 4 of the PITA Act are bailable. He submitted that the offence under Section 5 of the PITA Act and Section 370 of the IPC are not made out from the allegations.

6. Mr. Joshi also relied on the judgment of a division bench of this court passed in writ petition no. 3184/16, dated 15th October 2016. He submitted that the ratio of this judgment shows that if the statement under Section 164 of the Cr. P. C was not in consistent with the FIR, the allegations in the FIR had to be

ignored.

7. As against these submissions, learned APP relied on the investigation carried out so far. The investigation contains statements of both the victims. They have stated in their statements that the present applicant and the other lady, who was arrested; had kept both these victims as therapists in the massage center. However, after a few days instead of promised amount of Rupees Twenty Five Thousands per month, they were paid only Rupees Sixteen thousand per month and they were forced to indulge in prostitution. Since the victims were in dire need of money, they accepted the said proposal and were carrying on prostitution. It is mentioned that on 12th March 2019, police party raided the premises and the victims were taken to the police station.

8. I have considered these submissions and more particularly the statements of the victims. The statements of the victims under Section 161 of the Cr. P. C. do corroborate the allegations in the FIR. Though the statements under section 164 of the Cr. P.C. are silent in respect of the present applicant, in those statements the

victims have denied even their own participation in such act. In these statements they have denied any connection with the allegation of carrying on prostitution. However, earlier statements recorded on 13th March 2019 under Section 161 of the Cr. P.C. clearly make out the case that they were forced in the prostitution by the present applicant and other co-accused lady. So far as the submissions of Mr. Joshi that section 5 of PITA is not made out, is concerned, ingredients of section 5(1)(a) are clearly made out. Said subsection reads thus:-

“5(1)(a) Any person who procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; ”

9. The statement of victims show that the applicant had procured their services for massage center on the pretext that they would be get the job as therapists. However, subsequently they were forced to indulge in prostitution. This would clearly fall within the meaning of section 5(1)(a) of PITA. Therefore, in my opinion offence under section 5(1)(a) of the PITA Act is clearly made out. Apart from that the reliance placed by Mr. Joshi on the

judgment of a division bench of this court referred to herein above is misplaced. In that case, the statement allegedly made in the FIR were not supported by the statements of the victims recorded under Section 164 of the Cr.P.C. However, in that case, the statements of the victims under section 161 were not recorded and the FIR was lodged by the police officer who had relied on the information supplied by the victims. In the present case, there are statements recorded under Section 161 of the Cr.P.C, which have supported the allegations in the FIR. Therefore, ratio in that particular judgment is not applicable in the present case.

10. Considering all these aspects, custodial interrogation of the applicant is necessary. Hence, no case for grant of anticipatory bail is made out. Application is rejected.

(SARANG V. KOTWAL, J.)