

NSC.

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

CRIMINAL BAIL APPLICATION NO.1477 OF 2019

Farzan Salim Shaikh

...Applicant
(Original Accused No.5)

Versus

The State of Maharashtra

...Respondent

Mr.M.S.Mohite i/b Mr.R.D.Suryawanshi, for the Applicant.

Mr.A.R.Kapadnis, A.P.P for the Respondent - State.

API – Sunil Lokhande, Borivali Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 3rd JUNE, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.168 of 2016 registered with the Borivali Police Station, Mumbai, for the alleged offences punishable under Sections 370(3), 114, 34 of the Indian Penal Code and under Sections 3, 4, 5, 7(1)(b) of Immoral Traffic (Prevention) Act, 1956 (PITA Act).

3. Learned Counsel for the applicant submits that the applicant was the Manager of 'Aura Wellness and Healing Services Private Limited' (Spa), a company run by the Accused No.4 – Malik Kashiff Khan (absconding accused and original accused no.4). He submits that the applicant was granted interim anticipatory bail, however, the said interim relief was later vacated and the Anticipatory Bail Application filed by the said applicant was withdrawn. Learned Counsel further submitted that on learning that charge-sheet was filed as against him, the applicant suo-motu appeared before the trial Court and applied for bail, which was rejected by the learned Metropolitan Magistrate, Special Court for ITPA vide order dated 20th April, 2019. He submitted that the ground on which the Bail Application was rejected was that the applicant was unavailable for two years after his Anticipatory Bail Application was withdrawn by him. Learned Counsel for the Applicant submitted that the said observation is incorrect inasmuch as, the Applicant on learning that charge-sheet was filed, as against him, had appeared before the Court of the learned Metropolitan Magistrate and had applied for bail. He further submitted that the Applicant was only an employee of Aura Wellness and Healing Services Private Limited and admittedly was not present on the day when the raid was

conducted in the said Spa.

4. Learned APP on instructions of API – Sunil Lokhande, Borivali Police Station, does not dispute that the Applicant was a Manager of the Aura Wellness and Healing Services Private Limited and that he was not present on the day when the raid was conducted. He also does not dispute the fact that the Applicant himself had approached the Court of learned Metropolitan Magistrate and had filed an application for Regular Bail after filing of the charge-sheet on learning that charge-sheet has been filed as against him.

5. Learned Counsel for the Applicant, on instructions, submits that although there is one criminal case registered as against the applicant, the applicant has not been prosecuted under the PITA Act.

6. Perused the papers. Admittedly, the Applicant was working as a Manager of Aura Wellness and Healing Services Private Limited. On 1st April, 2016, the police of the Borivali Police Station on information conducted a raid in the said Spa and some girls came to be rescued.

Admittedly, the Applicant was not present at the Spa, at the relevant time, i.e. when the raid was conducted. It is not in dispute, that the Applicant is not the owner of the Spa. A perusal of the Leave and License Agreement dated 12th June, 2013 entered into between M/s.Arham Associates, through its partner Mr.Manish Mansukhlal Shah and M/s.Aura Wellness and Healing Services Private Limited, through its Director Mr.Malik Kashiff Khan *prima facie* shows that the said Spa was being run by Mr.Malik Kashiff Khan. The Applicant was granted interim protection in the Anticipatory Bail Application filed by him, which was subsequently vacated and thereafter the application was withdrawn. The Applicant is in custody since 20th April, 2019. Charge-sheet has already been filed in the said case.

7. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more local sureties in the like amount;

- ii) The Applicant shall attend the concerned Police Station, on the first Monday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;
- iv) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;
- v) The Applicant shall co-operate in the conduct of the trial;
- vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of his release;

vii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

8. The Application is allowed and disposed of in above terms.

9. It is made clear, that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.