

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

CRIMINAL BAIL APPLICATION NO. 1481 OF 2019

Istiyaq Ahmed Mojibar Rehman Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. L.M Shukla a/w. Ms. Heena Lombate, Advocate for the Applicant.

Mr. S.R. Agarkar, A.P.P. for the Respondent-State.

A.P.I. Mr. Ganesh Mali, Mira Road Police Station present.

CORAM : SANDEEP K. SHINDE, J.

DATE : 05th NOVEMBER 2019.

P.C.

1 Heard learned counsel for the applicant and Mr. S.R. Agarkar learned A.P.P. for the Respondent – State.

2 Applicant, his parents and four other persons are the accused in Crime No. I - 269 of 2018 registered with the Mira Road Police Station for the alleged offences punishable under Sections 370 and 374 of the Indian Penal Code, 1860 (**‘IPC’** for short), Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (**‘PITA’** for short) and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (**‘POCSO’** for short). Later the offences punishable under Sections 376, 313, 354, 109 and 504 of IPC came to be added.

3 Applicant was arrested on 2nd August 2018.

4 Applicant is husband of the victim. Victim's statement under Section 164 of Criminal Procedure Code ('**Cr.P.C**' for short) has been recorded on 16th August 2018. She alleged applicant pushed her in prostitution business and lives on earnings, therefrom. She alleged that, her-in-laws, to facilitate her sexual exploitation, forced termination of pregnancy. She alleged in January 2017 and during the festival of Eid in 2018, applicant and his parents forced her to keep intimate relationship with third persons; for consideration in the house. Brothel, includes house, if used for sexual exploitation.

5 Learned counsel for the applicant submits that applicant is husband of complainant. Their marriage was solemnized in 2013 and the child was born in January 2014. Since 2015 they are living apart. He submits that the parents of the complainant are facing trial for the offences under punishable Immoral Traffic (Prevention) Act, 1956 at Bihar. He has placed on record a copy of the first information report. The submission is this; on account of the marital differences complainant – wife falsely implicated him. He submits investigation is over and charge-sheet has been filed. Applicant is in custody for a year and three months. No criminal antecedents are against the applicant. Even otherwise maximum

punishment prescribed for offence under Section 3 of PITA is three years; for offence under Section 4 punishment is two years and for offence under Section 5 is maximum punishment is seven years. He submits allegations imputed even if taken at its face to be correct would not attract provisions of Section 5 of the PITA.

6 Learned A.P.P. has relied on the Section 29 and 30 of the POCSO Act, besides statement of victim recorded under Section 164 of the Cr.P.C. and submits evidence on record, does not warrant release of applicant.

7 Victim and the applicant were living together till May 2018 in the rental premises at Mira Road, as is evident from a copy of leave and license agreement. Evidence, *prima facie*, shows complaint is neither 'minor' nor 'child', but a married women bearing a child. The marriage between the victim and applicant is not in dispute. Though statement of the victim has been recorded under Section 164 of the Cr.P.C. *prima facie*, no such other independent evidence has been placed on record by the prosecution.

8 The relationship between the applicant and complainant has to be kept in mind, while assessing the material on record. Except a statement

of complainant recorded under Section 164 of the Cr.P.C., no other material has been pointed out. Even otherwise allegation of procuring or taking a complaint for the purpose of prostitution or causing or inducing, complaint to carry on prostitution, finds no support / corroboration from material collected in the course of investigation. The offences under Sections 3 and 4 are punishable with imprisonment for three years. Applicant being husband of complainants allegations in the nature of inducing her to carry on prostitution requires convincing evidence on the backdrop of fact that couple has a child born out of their wedlock.

9 It appears the trial is not likely commence in the near future. Except parents of the applicants who are not yet arrested, other co-accused are released on the bail.

10 Taking into consideration all facts of the case, the applicant is directed to release on bail on the following terms and conditions :

ORDER

- (i) The applicant shall be released on the bail on executing P.R. Bond in the sum of Rs.50,000/- with one or more local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station twice a

month. He shall report to Investigating Officer on 15th November 2019 and 30th November 2019 between 11:00 a.m. to 01:00 p.m. and thereafter on Monday of first week and a Friday of last week of each month. He shall continue to report for a period of one year;

(iii) The applicant shall inform particulars of his residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(iv) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) If there are two consecutive defaults either in attending the Police Station, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail;

(vii) The applicant shall not leave the jurisdiction of the Mira Road

Police Station;

11 The application is allowed in the aforesaid terms and is accordingly disposed of.

12 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

(SANDEEP K. SHINDE, J.)