

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

CRIMINAL BAIL APPLICATION NO.2379 OF 2019

Shishupal @ Pritam Gaurang Behara	..Applicant
V/s.	
The State of Maharashtra	.. Respondent

Mr.V.V. Purwant for the Applicant.

Mr.S.R. Agarkar, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE, J.

DATE : 22nd NOVEMBER 2019

P.C.

1. The applicant is seeking his release on bail in Special Case No.129 of 2018 pending before the Special Sessions Judge, Kalyan arising out of the C.R. No. I-269 of 2018 for the offences punishable under Sections 370(2)(3)(4), 366(A), 372 and 34 of the Indian Penal Code and Sections 3,4 and 5 of the PITA Act and Sections 4,8 and 12 of POCSO Act registered with Manpada Police Station, Dombivali (East), District-Thane.

2. On 17th May 2018, establishment of M/s. Pallavi Lodging and Boarding was raided by the Police and rescued three victims, who were allegedly forced into the prostitution. The

applicant was Manager of the said establishment and hence the aforesaid crime is registered.

3. In all, there are four accused in the crime. The two accused persons, who were working as waiter and agent were released on bail by the learned Sessions Court. Jairam Alva, who was running the said establishment is in the custody. The present applicant was allegedly managing the establishment and apprehended on 17th May 2018.

4. The learned counsel for the applicant submits, the investigation is over and the chargesheet has been filed. He submits age of all the three victims was more than 18 years as on the date of the offence. He relied on the statement of one victim, which shows that on 18th May 2018 she was 23 years old. The counsel submits, the Investigating Officer referred this victim to the radiological test, where upon the doctor opined her age was between 17 to 18 years. The learned counsel for the applicant has taken me through the statement of the victim. It shows that victim is a married women and was convicted having found Bangladesh, national. The submission is, as on the 18th May 2018 the victim was major and therefore the facts of the case do not admit the application of

provisions of Section 366A, 372 of the Indian Penal Code and the Provisions of the POCSO Act. The learned counsel for the applicant further submits that the offence under Section 3 of the Immoral Traffic (Prevention) Act, 1956 is punishable for a term not less than one year and not more than 3 years.

5. The learned APP submits that radiological test revealed as on the date of the offence, the one rescued victim was minor.

6. In view of the evidence on record and the nature of the accusation *prima-facie*, it appears that the prosecution could not ascertain the definite age of one of the victims. In fact victims' statement recorded, contradicts opinion of doctor. Admittedly the other two victims who were rescued were above 18 years. The applicant is in custody since 17th May 2018. Even though the investigation is over and the chargesheet is filed, the Trial is likely to be commence and conclude within reasonable period. In view of the facts of the case, the applicant is directed to be released on bail. Hence following order:-

ORDER

- (i) The applicant be enlarged on bail in CR No.I-269 of 2018 registered with Manpada Police Station, Dombivali

(East), on executing PR Bond in the sum of Rs.25,000/- with one or two sureties in like amount;

(ii) The applicant shall report to the concerned police Station as and when called.

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

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

(SANDEEP K. SHINDE, J.)