

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.1059/2019

Tarabai Lakshman Bajad .vs. State of Maharashtra, through PSO P.S.
Washim City, Washim.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Sukrut Sohoni, Advocate for applicant.
Mr. P. S. Tembhare, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : DECEMBER 12, 2019

Heard Mr. Sohoni, learned counsel for applicant
and Mr. Tembhare, learned A.P.P. for non applicant-State.
Also perused the reply and the entire charge-sheet.

2. Present application is filed for regular bail. Applicant was arrested in connection with Crime No.284/2019, registered with Police Station, Washim City, Washim for an offence punishable under Sections 3, 4 and 5 of the Immoral Trafficking (Prevention) Act, 1956 (PITA), Section 12 of the Protection of Children From Sexual Offences Act (POCSO) and Section 366-A of the Indian Penal Code (IPC).

3. According to learned counsel for applicant, applicant cannot be held guilty for the offence punishable under Section 12 of the POCSO Act and Section 366-A of the IPC inasmuch as according to the submissions, the girls,

who were found in the house of applicant, were all major. Whereas the girl found in the house of Shantabai, the co-accused, are minors. It is also his submission that applicant is a 70 years old lady and the maximum punishment for the offence punishable under the PITA Act is seven years. He, therefore, submits that the applicant be released on bail.

4. The submissions made by learned counsel for applicant, at the first blush, appear to be very attractive and one may tempt to accept the same. However, on a closer scrutiny of the material collected by the investigating agency during the course of investigation and after considering the provisions of Section 370 of the IPC, I am of the view that the applicant's case requires rejection.

5. This is the second bail application filed by the applicant. The first bail application, which was filed by the applicant along with co-accused, was registered as Criminal Application (BA) No. 613/2019 and the said was filed after filing of charge-sheet and the charge-sheet was considered by this Court (Coram: Manish Pitale, J.) and after considering the material in the charge-sheet, on 31.07.2019, application of present applicant was dismissed as withdrawn, though after considering the fact that there is no material against co-accused he was released on bail.

6. Applicant is having right to file successive bail applications. However, once case of the applicant is

considered on its own merit and it is rejected by this Court, for filing successive applications for bail, the applicant must place before the Court change in circumstance for considering the case afresh. According to learned counsel for the applicant, the change in circumstance is that one accused is discharged by the trial Court and that is the only change in the circumstance.

7. I am afraid, this can be considered as change in the circumstance. Learned Judge of the Court below must have discharged the said accused after considering the material contained in the charge-sheet. There must not have been even a prima facie case to frame charge and therefore the said accused must have been discharged. However, in the case of present applicant, this Court has already considered her case on merit and found that there is sufficient material against the applicant and therefore her application was rejected.

8. Merely because a co-accused, against whom there is no material to frame the charge, is discharged, that cannot be treated as a change in the circumstance.

9. It appears that three girls, who were found in the house of the applicant, are major if their statements are considered. Their statements would show that on their own they never entered into the profession of prostitution. Their statements would reveal that they were in dire need of

money and therefore they approached the applicant for help. Their statements further reveal that the applicant asked them to do job of prostitution then only they will be provided the amount as required by them. It appears that in order to get money to meet their day to day needs, on the allurements and enticement by the applicant, they started prostitution by selling their bodies to greedy persons who are always there to exploit ladies by throwing money. Their statements would reveal that the applicant used to keep all the money with her and used to give a share to those ladies. Thus, in my view, the act and conduct on the part of the applicant is nothing but “exploitation” of needy women.

10. Section 370 of the IPC, which was introduced in the IPC by Parliament in 2013 is very clear. Section 370 reads thus:

*“370. Trafficking of person: (1) Whoever for the purpose of exploitation; (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons by -
Firstly to fifthly ...
Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.*

11. In the present case, even before this Court, it is not denied by the applicant that the house, which was searched by the investigating officer by sending decoy customers, belongs to the applicant and those three major girls, were found to be in custody of the present applicant. Therefore, may be at this stage, the investigating officer has not invoked provisions of Section 370 of the IPC. The facts, as disclosed in the charge-sheet, in my view, attract the said provision and it will be always open for the Court to frame charge against the applicant in that behalf. Punishment for such an offence is severe one.

12. The charge-sheet would show that the applicant was found in possession of the tainted amount. Further, applicant was found present in her own house when raid was made. Not only that, at that time three girls were found to be in her custody.

13. In totality of aforesaid discussion, in my view, merely because the applicant is a 70 years old lady, she need not be shown any leniency. The application is, therefore, rejected.

JUDGE