

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1082 OF 2020

Dattu s/o Laxman Mane,
Age 35 years, Occupation Business,
R/o Arti Apartment, Flat No.02,
Vaibhav Colony, Rajiv Nagar,
Dist. Nasik.

...Applicant

VERSUS

State of Maharashtra,
Through Police Inspector,
Pundliknagar Police Station,
Aurangabad.

...Respondent

.....
Advocate for Applicant : Mr. S. C. Arora.
APP for Respondent-State : Mr. S. R. Yadav.
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 18-12-2020.

ORDER :

1. Present application has been filed for getting bail under Section 438 of Code of Criminal Procedure by original accused No.1 as he is apprehending his arrest in connection with Crime No.294 of 2020, dated 26-09-2020, registered with Pundlik Nagar, Police Station Dist. Aurangabad, for the offences punishable under Section 420 read with 34 of Indian Penal Code and Section 3, 4 and 5 of the Prevention of

Immoral Trafficking Act, 1956 (PITA Act).

2. Heard learned Advocate Mr. S. C. Arora for applicant and learned APP Mr. S. R. Yadav for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant is in fact resident of Nasik District, however he is running a spa centre at Aurangabad under the name and style "Ellora-Spa". It is conducted in a rented premises. Regular verification has been done by the local police. Necessary certificates have been periodically taken. The FIR which is lodged by Assistant Police Inspector State that he received secret information on 26-09-2020 that illegal business of prostitution is going on in "Ellora Spa" and some girls have been engaged in the said illegal business. It is stated that the premises was raided. The police have found incriminating material such as condoms packs, bed, mobile handsets etc.. Two male workers were arrested and three girls were taken in to custody. The learned Advocate for the applicant submits that Closed-circuit television (CCTV) footage of the CCTV which has been installed in the Spa was not available at the time of hearing the first anticipatory bail application filed by him i.e. Bail Application No.1411 of 2020, however now the said CCTV footage is available along with

Certificate under Section 65-B of the Indian Evidence Act. In fact, the said CCTV footage would show that nothing was seized as contemplated in the FIR and only one lady officer can be seen which is also not the case of the informant. When the second bail application was filed before the learned Additional Sessions Judge it was not along with CCTV footage, it was not considered by stating that certificate under Section 65-B of the Indian Evidence Act has not been attached and it is a successive bail application. The FIR in fact does not disclose any act of cheating which can be said to be attributable to the applicant. The mandatory provisions of PITA Act have not been followed. Now every incriminating material is said to be seized. The physical custody of the applicant is not required. Further, it is instructed to him that in the statement under Section 164 of CrPC of those girls, they have clearly stated that they were working in the Spa and not as prostitute. Under such circumstance, when it appears that the present applicant has been falsely involved, his liberty needs to be protected.

4. Learned APP has strongly opposed the application by contending that the present accused is a partner in the Spa which was opened in a high society. Under the pretext of giving service of

body massage, the victims have been forced to do prostitution. The booking used to be done on the basis of mobile phones. The two girls who were taken in custody from the Spa are from Nagaland State. How they were procured is definitely known to the present applicant, and therefore, the custody is required.

5. At the outset, it is to be noted that though along with this application a pen drive has been supplied and it is stated that it contains CCTV footage, yet on the similar way as a learned Additional Sessions Judge has observed that it is not accompanied the certificate under Section 65-B of the Indian Evidence Act, even at the stage of bail it cannot be accepted. Even the learned Advocate for the applicant had prayed that the contents of the pen drive be watched either in the Court or by appointing some responsible officer. It cannot be done since it is not complying with the mandatory provisions. Secondly, in the application itself the applicant has stated that the CCTV footage was not available when he moved the application before the learned Sessions Judge bearing No.1411 of 2020, which is now made available with Certificate under Section 65-B of the Indian Evidence Act. Even if for the sake of arguments we could have a look at the certificate under Section 65-

B of the Indian Evidence Act, it is to be noted that it is issued by the present applicant himself and he says that he has downloaded the said footage in USB. When in his application he says that he is resident of Nasik district and the Spa Centre is at Aurangabad, that means he is not the usual operator of the CCTV instruments, and therefore, it is questionable as to whether he can be said to be the competent authority to issue certificate under Section 65-B of the Indian Evidence Act. Further details are also lacking which are not proposed to be written in detail as this is not the stage to appreciate the said evidence.

6. The offence that has been alleged against the present applicant is very much serious. He cannot question the contents of the FIR when he was not present at that spot, but being the partner of the said business, he was supposed to have knowledge of the all the activities going on in the spa. The raid was not so simple as tried to be painted by the applicant. When the secret information was received by the police officer a fake customer was arranged and confirmation in respect of the information that was received was made before raid. Now the girls might have been disclosing something else which might be for their own benefit, that cannot be

taken into consideration at this stage. The panchas were arranged and the above said incriminating articles have been seized which appears to be not connected to the material that is required to run a spa. Definitely taking into consideration the allegations about human trafficking, investigation is definitely required, and therefore, this is not a fit case where the applicant should be granted any relief. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-