

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO.268 OF 2019

Shaikh Sajid ... Applicant

V/s.

State and another Respondents

Shri C.A. Ferreira with Shri Anoop Gaonkar, Advocate for the applicant.

Shri Pravin Faldessai, Additional Public Prosecutor for the respondent-State.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 08th January,2020.

Pronounced on : 10th January,2020.

ORDER:

The applicant seeks his release on bail by his application moved under Section 439 CrPC and in the matter of Article 21 of the Constitution of India. It was the applicant's case that he had come down to Goa to earn his daily bread and had no criminal antecedent of whatsoever nature except the alleged offence. He was placed under arrest by the Crime Branch in Crime No.53/2019 u/s.370(3) r/w.34 IPC and Sections 4 and 5 of The Immoral Traffic (Prevention) Act,1956 (the Act, for short), on 11th May 2019 and presently in judicial custody. A chargesheet was

filed by the Crime Branch before the JMFC, Panaji being Criminal Case No. 196/2019/B. The chargesheet did not spell out the offence under Section 370(3) IPC. He had moved an application for bail before the District Judge III and Additional Sessions Judge at Panaji and thereafter before this Court. The applicant by no stretch of the imagination could be accused of an offence under Section 370 Subsection (3) IPC and which was not at all attracted in the present case. He undertook to remain present before the Trial Court or any other Court or any other authority as directed by this Court and assured not to tamper or interfere with the investigation or with witnesses. He had therefore to be enlarged on bail on such terms and conditions as may be imposed by this Hon'ble Court.

2. Heard Shri C.A. Ferreira with Shri Anoop Gaonkar, learned Advocates for the applicant who invited attention to the chargesheet and referred to the various statements on record including that of one Suraj who was not an accomplice but had not been made an accused in the said Crime. He also referred to the statement of the victim girl and submitted that no case whatsoever was made to show how the applicant was involved in

the Crime. He placed reliance in **K. Radhakrishnan v/s. State of Kerala** [(2008) 2 KLT 68], **State of Bihar v/s. Jagrup Singh and others** [(1963) 2 Cri LJ 387], **Mr. X. Central Kerala v/s. State of Kerala** [2009 SCC OnLine Ker 6407], **Renu Bansal v/s. U.T. Chandigarh** [2009 SCC OnLine P & H 4631], **Bhagwan Singh v/s. The State of Rajasthan**[(1976) 1 SCC 15], **Mohan Lal v/s. State of Punjab** [(2018) 17 SCC 627], **Varinder Kumar v/s. State of Himachal Pradesh** [2019 SCC OnLine SC 170] and **P. Chidambaram v/s. Central Bureau of Investigation** [2019 SCC OnLine SC 1380] while pressing for the grant of bail in his favour.

3. Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the State vehemently opposed the application and submitted that the chargesheet has just been filed in the case and not much time had lapsed since then. The arguments on behalf of the applicant were touching the merits of the case and the Court while deciding the application of bail was to examine only whether a prima facie case existed and not otherwise. He distinguished the judgment in **P. Chidambaram**(supra) and submitted that no parity could be drawn with that case by the applicant. He also

clarified that PI Rajesh Kumar was the Investigating Officer and not PI Rajan Nigalye being the complainant who had initiated the complaint against the applicant amongst others. On his part he invited attention to the statement of one Ambika to show that it met the ingredients of the definition under Section 2(f) of the said Act and therefore there was prima facie case against the applicant particularly under 370(3) IPC. The offence against the applicant was serious in nature and therefore he was not entitled to be released on bail. Moreover, one of the persons who had been released on bail in the said Crime was not available before the Trial Court and there was every possibility that the applicant would flee from the court of justice once released on bail and therefore the application had to be dismissed.

4. i have considered their submissions, examined the records of the chargesheet and besides the judgments relied upon on behalf of the applicant which need a reference.

5. In **K. Radhakrishnan**(supra), the learned Single Judge of the Kerala High Court considered the definition of the expression "Prostitution" under Section 2(f) of the Act meaning the sexual exploitation or abuse of persons for commercial purposes and

observed at paragraph 11 that in order to become prostitution, there should be offering of her body by a female for promiscuous sexual intercourse for hire, whether in money or in kind.

6. In **Jagrup Singh**(supra), too a learned Single Judge of the Patna High Court was concerned with the provisions of Section 2(f) of the said Act and the question whether the two male respondents, who were arrested by the police while they were on the point of ascending the steps of the Kotha in question, were out to procure or attempting to procure the female respondents, or any of them, for the purpose of prostitution, or whether they were persons with whom such prostitution was being carried on in the premises in question and in that context proceeded to finally hold while deciding the appeal that there was no ground made out for interfering with the order of acquittal passed by the learned Sub-divisional Magistrate and dismissed the appeal.

7. In **Mr. X. Central Kerala**(supra), a learned Single Judge of the Kerala High Court was again concerned with the offence under Section 2(f) of the Act in the context of challenge before it in a revision filed under Section 397 CrPC challenging the order passed by the Chief Judicial Magistrate, Thiruvananthapuram taking

cognizance of the offences punishable under Sections 3 and 4 of the Act and issuing process against the accused nos.1 and 2. The learned Single Judge observed at paragraph 11 that in order to become prostitution there should be offering of her body by the female for promiscuous sexual intercourse for hire.

8. In **Renu Bansal**(supra), a learned Single Judge of the Punjab and Haryana High Court held that in order to constitute an offence under Section 4 of the Act, the constituents which must be completed are that the person must be over the age of eighteen years, he is knowingly living on the earnings of the prostitute and thirdly whether such earning relate to the prostitution of the child and of a minor. It considered the ingredients of the offence under Section 5, the definition of the expression "prostitution" as contained in clause 2(f) of the Act reiterating at paragraph 12 that the word "prostitute" means a female who offers her body for promiscuous sexual intercourse for hire, whether in money or kind and in the ultimate held that the facts and circumstances prevailing in the case did not constitute the offences under Sections 4 and 5 of the Act.

9. In **Bhagwan Sing**(supra), a three Judge Bench of the Hon'ble Apex Court held at para 5 that this Court does not interfere with concurrent findings of fact reached by the Trial Court and the High Court on an appreciation of the evidence. However, in the facts and circumstances of the case they found that several important circumstances had not been taken into account by the Trial Court and the High Court and that had resulted in a serious miscarriage of justice calling for an interference from this Court.

10. **Mohan Lal**(supra), held that as a matter of law, informant and the investigator must not be the same person and there was no question of the accused having to show prejudice from such an investigation or to establish bias or a real likelihood of bias on the part of such an investigator, while overruling the judgment of the two Judge Benches of the Supreme Court, which stood overruled to that extent. Any possibility of bias or a predetermined conclusion had to be excluded as a matter of law, and could be left to the adjudication of the individual facts of a case. This requirement was all the more imperative in laws carrying a reverse burden of proof, such as the NDPS Act.

11. In **Varinder Kumar**(supra), a three Judge Bench of the Hon'ble Apex Court considered the judgment in **Mohan Lal**(supra) and held at paragraph 18 that the criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it unidirectional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in **Mohan Lal**(supra) is not allowed to become a springboard for acquittal in prosecutions prior to the same, irrespective of all the other considerations.

12. In **P. Chidambaram**(supra), a three Judge Bench of the Hon'ble Apex Court held at paragraph 22 that the jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors have to be taken into consideration while considering an application for bail:- (i) the nature of the accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the

witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused and (v) larger interest of the public or the State and similar other considerations. It considered a host of judgments and held in the factual matrix that the appellant was not a flight risk i.e. there were no possibilities of his abscondence.

13. A perusal of the statement of Ambika indicates that she had come in contact with the applicant who was providing customers for the purpose of prostitution, that she used to contact him to give her the address of the customers. Accordingly, she used to visit the customers, engage in sexual intercourse with them and Bunty used to collect the payments directly from the customers. This statement clearly points out to the involvement of one Bunty as being instrumental in introducing her to the Crime of prostitution and that she was habituated to the same with various customers. However, there is no contemporaneous material to show that Bunty referred to by Ambika in her statement is the same as the applicant as was the contention of Shri P. Faldessai,

learned Additional Public Prosecutor on behalf of the State. Even otherwise the investigation in the case is complete which is manifested from the filing of the chargesheet and therefore to all intents and purposes, the present applicant was not required in custody except of course to substantiate the contention on behalf of the learned Additional Public Prosecutor that the offence alleged against the applicant is serious in nature. The abscondence of another person involved in the said Crime upon being released on bail cannot be a bar to the release the applicant on bail if he otherwise fulfills all the terms and conditions of his release and abides by the same. Having considered all the judgments relied upon by Shri C. Ferreira, learned Advocate for the applicant and in the absence of any material to show that the applicant is a flight risk candidate, i have no hesitation to order his release on bail.

14. In the result, i allow the application on the following terms and conditions:

1. The applicant shall be enlarged on bail on executing bail bonds in the amount of ₹50,000/- (Rupees Fifty Thousand only) and furnishing one local surety in co-extensive amount to the satisfaction of the learned J.M.F.C., Panaji.

2. He shall cooperate with the course of investigation and shall not intimidate the witnesses or otherwise impede the proceedings.
 3. He shall not leave the State of Goa without the prior written permission of the Trial Court.
 4. Any breach of the conditions shall entitle the State to seek for the cancellation of his bail forthwith.
15. In view thereof, the application stands disposed off.

NUTAN D. SARDESSAI, J.

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