

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5459/2019

MADHU RICCARDO SMITH PETITIONER.

VERSUS

THE STATE OF MAHARASHTRA RESPONDENT.

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Mr.Prashant Pandey i/b Siddharth Jaiswal for the Petitioner.

Mr. SV Gavand, APP for State.

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CORAM : A. M. BADAR, J.

DATE: 4TH FEBRUARY 2020.

P.C.:

1. By this petition, the petitioner/accused is challenging order below Exhibit 12 passed by the learned Additional Sessions Judge on 12.4.2019 thereby rejecting her claim for discharge from offences punishable under Section 370, 370(a) (2) of Indian Penal Code and Section 4 and 5 of the Immoral Traffic (Prevention) Act 1956 (the 'ITP Act' for short).

2. Heard learned counsel appearing for the petitioner. He vehemently argued that statements of decoy customers is not recorded by the prosecution during the course of investigation. None of the alleged interim females have deposed in favour of the prosecution. Their statements u/s 164 of the Criminal Procedure Code are also not favouring prosecution. Witnesses are 21 police officers and 3 panch witnesses and as such there is no iota of evidence against the petitioner. My attention is also drawn to Section 2(f) of I.T.P. Act, which defines the term 'prostitution' so also, to section 4 of the said Act.

3. Learned APP opposed the petition by drawing my attention to the panchnama as well as statements of witnesses examined by police.

4. I have considered the submissions so advanced and perused the material placed on record.

5. What is sought to be claimed by the petitioner is discharge from the case for offences punishable u/s 370 and 370(a)(2) of the Indian Penal Code as well as Section 4 and 5 of the I.T.P. Act. Strong suspicion coupled with same prima facie material is enough to frame the charge. In case in hand, strong suspicion arises against the petitioner regarding commission of offence. Previous statement made by victim girls in presence of several police officers reflected from the statements of Police officers recorded under Section 161 of the Indian Penal Code, provides material for framing charge. Apart from that, the panchnama reveals recovery of money. Therefore, no case for discharge is made out. As such the petition is rejected.

6. Petitioner may apply to the trial court for expediting the trial.

(A. M. BADAR, J.)

