

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.470 OF 2021

Kavita w/o. Ganesh Jadhav
Age: 44 years, Occu.: Household,
R/o. Plot No.12, Gut No.128,
Devlai Parisar, Beed-By-Pass Area,
Aurangabad.

..Applicant
(Orig. Accused No.2)

VERSUS

The State of Maharashtra

..Respondent

...
Advocate for Applicant : Shri Uday S.Malte
APP for Respondent : Shri S.D.Ghayal
...

CORAM : M.G.SEWLIKAR, J.

**RESERVED ON : 26-10-2021
PRONOUNCED ON : 22-11-2021**

ORDER :-

1. This is an application for bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.469 of 2019, registered with Pundliknagar Police Station, Dist.Aurangabad, under Section 370-A(2) of the Indian Penal Code, under Sections 3, 4, 5 and 6 of Immoral Traffic (Prevention) Act and under Section 65(e) of the Maharashtra Prohibition Act.

2. It is the prosecution's case that on the basis of a tip-off,

Police on 7th December, 2019 raided the premises of the applicant situated in Rajesh Nagar and thereafter raided other premises situated in Yashwant Nagar. It is the prosecution's case that applicant was running a Brothel where three women and four men were found. A Punter by the name of Amol Chandrakant Nikam was sent to the premises of the applicant to verify whether the applicant was running a Brothel. It is further alleged that after completion of first raid, they got another tip-off pursuant to which they raided the premises in Yashwant Nagar where one woman and one man were found and they were arrested. Panchanama was drawn. FIR came to be lodged at 01:57 hours on 8th December, 2019 on the basis of which Crime No.469 of 2019 under the aforesaid Sections came to be registered.

3. Heard Shri Uday S.Malte, learned counsel for the applicant and Shri S.D.Ghayal, learned APP for the respondent-State.

4. Shri Malte, learned counsel for the applicant submitted that there are several deficiencies in the prosecution case owing to which conviction of the applicant is next to impossible. He submits that key witness of the prosecution is the Punter by the name of Amol Chandrakant Nikam. His statement under Section 161 of the Code of Criminal Procedure has neither been recorded

nor he is cited as a witness by the prosecution. He submits that while drawing Panchanama, provisions of Section 165 of the Code of Criminal Procedure are not followed. Statements of witnesses under Section 164 of the Code of Criminal Procedure are not recorded. He submitted that there is delay in lodging of the FIR. Second raid at Yashwant Nagar was over at 17:20 hours whereas FIR came to be lodged on 8th December, 2019 at 01:57 hours. There is no explanation for delay which raises suspicion that the documents are manipulated. He submits that in the statement recorded by the Magistrate witness Shahira Mulla has stated that she had gone to the place allegedly brothel voluntarily and she was not compelled to do so. He further submits that the girls were staying there as paying guest. He submits that because of these deficiencies, there is no possibility of conviction of the accused. He further submits that after rejection of the application for bail by this Court, the applicant had approached the Hon'ble Apex Court and while rejecting the application, the Hon'ble Apex Court directed the trial to be completed within six months and if the trial does not get completed within six months for any reason, the liberty is reserved to the applicant to move the bail application before the trial Court. He submits that trial is not completed. Prosecution has given list of 26 witnesses. Out of them, only 4 witnesses

have been examined. Other witnesses are yet to be examined. Time fixed by the Hon'ble Supreme Court is over long back. He submits that it is the fundamental right of the applicant to have speedy trial. He submitted that trial is proceeding at a slow pace.

5. Shri Ghayal, learned APP for the respondent-State opposed the application. He submits that prosecution is trying its level best to complete the trial within the time frame. He submits that the time has been extended by the Hon'ble Supreme Court by one year. Within that period, prosecution will make all endeavour to finish the trial. He submits that despite Punter's statement not being recorded under Section 161 of the Code of Criminal Procedure, there is other ample evidence, which is sufficient to record conviction.

6. Say of the prosecution shows that evidence of 4 victims have been recorded. Report of the learned trial Court was called as regard status of the trial. Letter of the learned Additional Sessions Judge, Aurangabad shows that 4 witnesses have already been examined. The witnesses like Panch witnesses, Medical Officer, Nodal Officer and Police officials including informant and Investigating Officer will be recorded as early as possible by giving top priority.

7. Shri Malte, learned counsel for the applicant has produced on record copies of depositions of the victims. They show that the witnesses have supported the prosecution. What will be their probative value is a matter of appreciation of evidence and at this stage no comment can be made on it. In this view of the matter, I am not inclined to release the applicant on bail. Hence, the order :

ORDER

- (i) Bail Application is rejected.
- (ii) Learned trial Court is directed to conclude the trial within the time frame fixed by the Hon'ble Supreme Court.

(M.G.SEWLIKAR)
JUDGE