

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO.14 OF 2021

ANIL KUMAR, PRESENTLY
IN JUDICIAL CUSTODY AT
CENTRAL JAIL, COLVALE

... Applicant

VS

STATE OF GOA, THR.
PUBLIC PROSECUTOR AND
ANR.

... Respondents

Mr. Vibhav Amonkar, Advocate for the Applicant.

Mr. P. Faldessai, Additional Public Prosecutor for the Respondents.

Coram : M. S. SONAK, J

Date : 15th February, 2021

P.C.

Heard Mr. V. Amonkar, learned counsel for the Applicant and Mr. P. Faldessai, learned Additional Public Prosecutor for the Respondents.

2. The Applicant seeks bail since he has been incarcerated in Verna Police Station crime No.156/2020 under Sections 370 and 370-A(2) of the Indian Penal Code and Sections 3 to 7 of the Immoral Traffic (Prevention) Act, 1956 (the said Act).

3. The record indicates that the Applicant has earlier applied for bail but then after the matter was heard at length, withdrawn the bail

application with liberty to file a fresh bail application in one month. Such liberty was granted and Mr. Amonkar submits that this bail application has been filed after expiry of one month from 1st December, 2020.

4. The Applicant is admittedly a resident of Sarfuddinpur, Madhoganj, Hardoi, Selapur, Hardol, Uttar Pradesh. The accused was implicated by the victim girl (name withheld) along with two other persons. The victim girl gave a statement that she was trafficked from Calcutta to Goa during COVID-19 pandemic for the purposes of prostitution. The record indicates that the victim was found in compromising position with police decoy.

5. Mr. Amonkar, learned counsel for the Applicant is quite right in his submission that based only on the aforesaid material, the bail ought not to be denied to the Applicant. However, in the present case, the aforesaid is not only material taken into account by the learned Sessions Judge to deny the bail to the Applicant. The record reveals that Calangute Police Station Crime No. 132/2014 has been instituted against the Applicant for offence under Sections 4, 5 and 7 of the said Act. No doubt, the trial in relation to this case is pending and the Applicant has not yet convicted. Mr. Amonkar relying on the order made by this Court in *Vijay Singh Vs State of Goa*¹ submits that the pendency of one such case is not sufficient to style the Applicant as a

1 Stamp Number (Main) No.1477 of 2020 dated 14th October, 2020

habitual offender because Section 2(f) of Goa Habitual Offenders Act, 1976 defines habitual offender as a person who has, *inter alia* been convicted on no less than three occasions.

6. Though, the Applicant, cannot be regarded as habitual offender in terms of the provisions of the Goa Habitual Offenders Act, 1976, the fact remains that the Applicant was released on bail after he was charged with commission of similar offences under the said Act. One of the conditions implicate for such release is that the Applicant does not repeat such offences, particularly since, such offences relate to trafficking of women and living on their earnings.

7. The investigations, *prima facie* reveals that the Applicant regardless of COVID-19 pandemic situation, along with two others who are still incarcerated, trafficked the victim girl from West Bengal to the State of Goa for the purposes of prostitution. This means that the Applicant, regardless of the conditions on which he was released on bail for a similar case, has alleged to have been involved in yet another offence of the similar nature.

8. In *Freedom Firm Vs Commissioner of Police, Pune & Ors*,² the Division Bench of this Court has held that “*an accused, who is a trafficker in humans, who has criminal antecedents, has been violent, who has no permanent local address, who is an illegal migrant*

2 Cr. Public Interest Litigation No.4 of 2015 decided on 30th October, 2015

or non-local resident or a foreign national on a lapsed tourist visa, who has trafficked a minor, or who has absconded and is arrested upon warrant issued, or a brothel owner whose brothel has not been sealed, cannot be granted the privilege of being released on bail.”

9. Though, this is not a case where the Applicant is allowed for trafficking the minors the fact remains that despite being released on bail in a similar case, the Applicant has not been deterred from involving himself in offences which relates trafficking.

10. The tendency of the Applicant to repeat such offences is certainly not a relevant factor while deciding the application for bail. In this case, the learned Sessions Judge has considered in details the reasons as to why the Applicant is not entitled to be enlarged on bail. There is no point in repeating those reasons in this order particularly since the reasons co-relate the material on record in the present case along with precedent which the learned Sessions Judge has referred to in her order.

11. The learned Additional Public Prosecutor referred to the decision of the Hon'ble Apex Court in ***Prasanta Kumar Sarkar Vs Ashis Chatterjee and another***³ in which one of the considerations referred to by the Hon'ble Apex Court for denial of bail is likely of offence being repeated. Besides, the Hon'ble Apex Court has held that the character, behaviour, means, position and standing of the accused are

3 (2010) 14 SCC 496

also relevant factors in such matters.

12. Thus, on consideration of all the aforesaid factors, there is no case made out to enlarge the Applicant on bail. Now that the charge-sheet has already been filed, it is only appropriate that the trial Court is directed to dispose of the matter as expeditiously as possible. This application is accordingly rejected.

M. S. SONAK, J.

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