

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION (BAIL) NO. 70 OF 2021

Rihana Khan, Presently in Judicial Custody at
Central Jail, Colvale ... Applicant
Versus
State of Goa, Thr. Public Prosecutor & anr. ... Respondents

Mr. Arun Kautuk Raikar, Advocate for the Applicant.
Mr. S. G. Bhole, Public Prosecutor for the Respondents.

CORAM: MANISH PITALE, J
DATED: 2nd December, 2021

ORAL ORDER

1. By this application, the Applicant is seeking bail in connection with Crime no. 1/2021, whereby offences under Section 370 of the Indian Penal Code (IPC) and Sections 4, 5 and 7 of the Immoral Traffic (Prevention) Act, (*hereinafter referred to as ITP Act*) were registered. The husband of the Applicant is co-accused in the said case. The Applicant was arrested on 06.01.2021 and she has continued in custody since then.

2. Mr. Raikar, learned Counsel appearing for the Applicant, submitted that investigation in the present case was completed and chargesheet was filed. The material on record along with the chargesheet does not even make out a *prima facie* case against the Applicant and, that therefore, the Applicant deserves to be released on bail. It is submitted that a perusal of the complaint leading to registration of the First Information Report (FIR) and statement of the victim in the present case would support the aforesaid contention

raised on behalf of the Applicant that no *prima facie* case is made out against her.

3. Since the Respondents-State in its say pointed out that the Applicant has criminal antecedents and that similar earlier cases of the years 2017 and 2018 are pending against the Applicant, the learned Counsel for the Applicant relied upon Order dated 14.10.2020 passed by this Court in the case of ***Mr. Vijay Singh vs. State of Goa***¹, to contend that despite the earlier cases registered against the Applicant, she cannot be classified as a *habitual offender*. It is further submitted that the Hon'ble Supreme Court in the case of ***Maulana Mohd. Amir Rashadi vs. State of U.P. & anr.***² has laid down as to the manner in which application for bail is to be dealt with when it is the case of the State that the Applicant has criminal antecedents. It is further submitted that the Applicant has two minor children and that she has remained behind bars for more than eleven months and that, therefore, she may be enlarged on bail.

4. On the other hand, Mr. Bhole, the learned Public Prosecutor, submitted that the Applicant failed to state the aforesaid cases already registered against her for similar offences in the year 2017 and 2018. The Respondent-State had to bring the aforesaid fact to the notice of this Court, along with the fact that her husband who is a co-accused person, has six cases registered against him for various offences. It is submitted that the husband of the Applicant was released on bail solely on the ground that he was not identified. It was further submitted that a perusal of the statement of the victim in the present case itself would show that a *prima facie* case is clearly made out against the Applicant.

¹ STM(MAIN) No. 1477 of 2020

² 2012(2) SCC 382

It was submitted that the tenor of submissions made on behalf of the Applicant would be relevant for considering in an appropriate application as to whether the ingredients of the offences are made out or not. For the present, according to the learned Public Prosecutor, there is sufficient material to indicate direct involvement of the Applicant in the present case. It is submitted that the offence in the present case was committed when the Applicant was released on bail in the earlier two cases. By inviting attention to the Order dated 15.02.2021 passed by this Court in the case of *Anil Kumar vs. State of Goa*³, it was submitted that similar contentions raised on behalf of the Applicant therein were rejected. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Prasanta Kumar Sarkar vs Ashis Chatterjee & anr*⁴. It was submitted that the bail application deserves to be dismissed.

5. This Court has heard the learned Counsel appearing for the rival parties. The material on record is perused. There is no dispute about the fact that this is the third case for identical offences for which the Applicant has been arrested. The offence pertains to trafficking of person under Section 370 of the IPC and offences under Sections 4 and 5 of the ITP Act. A perusal of the statement of the victim in the present case shows that it is specifically stated that the Applicant along with her husband used to send the victim for prostitution and it is further specifically stated that the Applicant was doing the said work against her will due to her financial condition. The role attributed to the Applicant in the statement of the victim is definite and clearly indicates *prima facie* involvement of the Applicant in the said offence.

³ CRMAB No. 14 of 2021

⁴ (2010) 14 SCC 496

6. Even if in terms of the Goa Habitual Offenders Act 1976, the Applicant may not be covered under the definition of *habitual offender*, that in itself cannot be a ground to claim relief in the present application. Despite the observations made in the order in the case of **Vijay Singh** (supra), this Court in its subsequent order in the case of **Anil Kumar** (supra), has emphasised that merely because an accused applying for bail may not fall within the definition of *habitual offender*, as long as there are criminal antecedents, it is a relevant factor for the Court to decide as to whether the Applicant can be enlarged on bail. In the present case, the Applicant has been involved in the aforesaid offences on the third occasion and that too when she was released on bail in the earlier two offences pertaining to the years of 2017 and 2018. The ground on which the co-accused i.e. the husband of the Applicant was released on bail is wholly irrelevant for considering the present application.

7. On the basis of the material on record, there is no substance in the contention raised on behalf of the Applicant that absolutely no *prima facie* case is made out and that, therefore, the Applicant deserves to be enlarged on bail. This Court has considered the material on record and it is found that as per the victim, the Applicant was indeed actively involved in pushing the victim into prostitution. The learned Public Prosecutor is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of **Prashant Kumar Sarkar** (supra) wherein, it is laid down that one of the considerations for denying bail is the likelihood of the offences being repeated.

8. In the present case, the past record of the Applicant and her involvement in the instant case clearly shows that there is clear

possibility of the Applicant indulging in similar offences if enlarged on bail.

9. As regards the contention raised on behalf of the Applicant that since she has two minor children, she needs to be enlarged on bail, it is an admitted position that her husband is already released on bail and therefore, the said factor would not enure to the benefit of the Applicant.

10. In view of the above, the application is dismissed.

MANISH PITALE, J

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