

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.490 OF 2020

Jairam Ramkrishna Alwa

Applicant

versus

The State of Maharashtra

Respondent

Mr.Satish B. Patil for applicant.

Ms.Anamika Malhotra, APP, for State.

PSI Chavanke, AHTC Crime Branch, Thane.

CORAM : PRAKASH D. NAIK, J.

DATE : 19<sup>th</sup> March 2021

PC :

1. This is an application for bail in CR No.I-269 of 2018 registered with Manpada Police Station, Dombivali for the offences under Sections 370(2)(3), 366(A) r/w 34 of Indian Penal Code, under Sections 4,8,12 of POCSO Act and under Sections 4,5,6 of PITA Act.

2. On 17<sup>th</sup> May 2018 establishment of M/s.Pallavi Lodging and Boarding was raided by the Police and rescued three victims, who were allegedly forced into the prostitution. The applicant was Manager of the said establishment and hence the aforesaid crime is registered.

3. In all there are four accused in the crime. Two accused persons, who were working as waiter and agent, were released on bail by learned Sessions Judge. Applicant is in custody. The present

Manish  
S. Thatte

Digitally signed by  
Manish S. Thatte  
Date: 2021.03.22  
11:14:08 +0530

applicant was allegedly managing the establishment and apprehended on 17<sup>th</sup> May 2018.

4. The learned counsel for applicant submits that the investigation is over and the charge sheet has been filed. He submits that age of all the three victims was more than 18 years as on the date of offence. He relied on the statement of one victim, which shows that on 18<sup>th</sup> May 2018 she was 23 years old. The counsel submits that Investigating Officer referred this victim to the radiological test whereupon the doctor opined her age was between 17 to 18 years. The learned counsel for applicant has taken me through the statement of victim. It shows that victim is a married woman and was convicted having found Bangladesh national. The submission is that as on 18<sup>th</sup> May 2018 the victim was major and therefore the facts of the case do not admit the application of provisions of Sections 366A, 372 of Indian Penal Code and the provisions of POCSO Act. The learned counsel for applicant further submits that the offence u/s 3 of Immoral Traffic (Prevention) Act, 1956 is punishable for a term not less than one year and not more than 3 years.

5. In view of the evidence on record and the nature of accusation, prima facie, it appears that the prosecution could not ascertain the definite age of one of the victim. In fact victim's statement recorded, contradicts opinion of doctor. Admittedly the other two victims who were rescued were above 18 years. The applicant is in custody since 17<sup>th</sup> May 2018. Even though the investigation is over and the charge sheet is filed, the trial is not likely to commence and concluded within reasonable period.

6. The co-accused Shishupal @ Pritam Behara has been granted bail by this Court vide order dated 22<sup>nd</sup> November 2019. Learned APP, however, submits that the said accused has no antecedents. Present applicant is involved in similar case in past. Learned APP also relied upon statement of victim who is allegedly minor and wherein she has stated that she was forced by accused to indulge in prostitution. However, similar allegation was also attributed to the co-accused Pritam. It is also pertinent to note that it is debatable whether victim is minor. In statement she has given her age as 23 years. In the statement u/s 164 of Cr.PC she has stated her age as 20 years and in the radiological test conducted, it is opined that her approximate age is between 17 to 18 years. The applicant is in custody for about two and half years. Considering the circumstances, bail can be granted to the applicant. Hence, I pass following order :

### **ORDER**

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-269 of 2018 registered with Manpada Police Station, on his executing PR bond in the sum of Rs.25,000/- with one or more local sureties in the like amount;
- (iii) The applicant shall report Manpada Police Station once in a month on every first Saturday between 11 am and 1 pm for first six months, and thereafter once in three months on every first Saturday between 11 am and 1 pm till further orders;
- (iv) The applicant shall not tamper with evidence.

7. This order will be digitally signed by the Private Secretary of

this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

MST