

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1226 OF 2021

Mohammed Junaid Habibullah Shah .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.P.R.Dave for the Applicant.

Mr.Swapnil S. Pednekar, APP for the State.

PSI Mr.Sachin V. Sarade attached to Kasarwadvli Police Station, present.

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CORAM: BHARATI DANGRE, J.
DATED : 20th SEPTEMBER, 2021

P.C:-

1. The Applicant came to be arrested in C.R.No.I-264 of 2020 on 21/10/2020 for the offences punishable under Sections 370(2) and (3) read with Section 34 of the IPC and Sections 3, 4 and 5 of the PITA Act. On completion of investigation, the charge-sheet came to be filed against the two accused persons; owner of a Spa at Ghodbunder Road, Thane and its Manager, who is the present Applicant.

2. The charge-sheet allege that the raid was conducted in the Spa on the given date, the decoy witnesses were found in the Spa alongwith some girls, who were rescued and their statements came to be recorded, during the course of

investigation. When the panchnama is carefully perused, it narrates the details of the trap, which was planned with the aid of the decoy witnesses. The panchnama record that when one room, next to the cash counter, was directed to be opened, a lady opened the door and the decoy witness was found sitting on the bed in a partial naked condition. As far as the other room is concerned; being Room No.2, nothing objectionable is recorded except the presence of one woman, whose statement has been recorded under Section 164. As far as Room No.6 is concerned, panchnama refer to the presence of two women in the room, without any objectionable material being noted.

3. In order to attract the provisions of Section 370 of the IPC, it is necessary that for the purpose of exploitation, there is recruitment of a woman by the means prescribed in the said Section i.e. by means of use of threat or any other form of coercion, by practising fraud or deception or by abuse of power or by inducement, including the giving or receiving monetary benefits. The term 'exploitation' to be understood is any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery or servitude, or the forced removal of organs.

When the charge-sheet is perused, the necessary ingredients of Section 370 being 'exploitation' are conspicuously absent as panchnama does not reveal that the women were indulged in the act of sexual intercourse and mere presence of the women in the said Spa, in light of the 164 statement recorded of one of the women to the effect that she was giving massage to one of the clients and, since the

panchnama does not record any sexual exploitation or that the women found in the Spa were in the act of sexual intercourse alongwith the decoy witnesses, *prima facie*, the ingredients of Section 370 cannot be said to be attracted. The Applicant is incarcerated since 21/10/2020. The investigation is complete and the entire material is compiled in the charge-sheet. The prosecution has not expressed that the Applicant has any antecedent to his credit or there is any likelihood that he will not face the trial. In the aforesaid circumstances, the Applicant is entitled to be released on bail, subject to the following conditions.

4. It is made clear that the observations made above are *prima facie* and limited to the extent of adjudication of the present Bail Application.

: **ORDER** :

- (a) Applicant - Mohammed Junaid Habibullah Shah shall be released on bail in C.R.No.I-264 of 2020 registered with Kasarvadavali Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

(c) The Applicant shall mark his presence in the concerned Police Station on first Monday of every month between 2.00 p.m. to 5.00 p.m. till framing of the charge.

5. The application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)