

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.1536 OF 2020

Mahesh Salikram Halwai

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Niranjan Mundargi i/b. Ms. Keral Mehta, Advocate for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 19th JANUARY, 2021.

PC :

1. The applicant is arrested on 25th July, 2019 in connection with C.R. No. 591 of 2019 registered with Malvani Malad Police Station for the offences punishable under Sections 370, 370-A r/w. 34 of Indian Penal Code, 1860 ("IPC" for short) and Sections 3, 4, 5 and 7 of Prevention of Immoral Traffic (Prevention) Act, 1956 ("PITA" for short) as well as Sections 4, 6, 8 and 7 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short).

2. The prosecution case is that on 19th July, 2019 raiding party had proceeded towards the mall at Goregaon and information was received that one lady name Jyoti Shinde is involved in carrying on trade of immoral trafficking of girls by charging money at Malvani

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Malad. Bogus customer was sent to the place and on receiving the information, the raiding party reached the said spot. Victim girl and women conducting prostitution was found at the place. The victim gave her age as 18 years. The investigation proceeded. During the course of investigation, the statements of the victim girl were recorded under Sections 161 as well as 164 of Code of Criminal Procedure, 1973 ("Cr. PC" for short). On completing investigation, charge-sheet is filed.

3. Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. The victim was major. Assuming the allegations to be true, the applicant had physical relationship with the victim girl, which was consensual in nature. It is not the case of the victim girl that she had protested against the alleged act. There are contradictory version in the statement under Sections 161 and 164 of Cr.PC. The statement of the victim under Section 164 does not implicate the applicant. The ossification test indicate that age of the victim could be between 18 to 23 years. The applicant is in custody for about one and half year. There are no criminal antecedents against him.

4. Learned APP submitted that the victim was minor at the time of incident. The Aadhar card submitted by the father of victim

girl indicate that she is about 17 years 2 months. Whereas, Aadhar Card given by the victim mentioned the age 20 years. It is submitted that victim was sexually assaulted and the offence under Section 376 is made out against the applicant. The girl was introduced to the co-accused by the applicant. The contradiction or variation in the version of the victim girl cannot be considered at this stage and it is the matter of Trial. The variation about the age in the ossification test and the Aadhar card will be a question to be dealt with during the trial.

5. I have perused the statement of the victim recorded under Sections 161 and 164 of Cr.PC. The victim's statement was recorded on 19th July, 2019. She gave her age as 18 years. The applicant and another person Vaman were her friends. They gave her mobile number of Pooja @ Jyoti Shinde. Victim was induced by said lady to indulge in prostitution. Subsequently, victim's statement was recorded on 16th August, 2019. Victim stated that applicant and Vaman had sexual relationship with her at residence and lodge. It is not alleged that the sexual relationship was under coercion. The statement of victim recorded under Section 164 of Cr.PC. Do not refer to sexual intercourse with her by applicant. It is pertinent to note that the Section 164 of Cr.PC exonerate the applicant. No role as alleged in the previous statement, has been attributed to him. The

document on record suggest that the applicant and the victim girl had visited a lodge and there was alleged physical relationship between them. There is no evidence of any protest by the victim girl. The ossification test indicate that age of the victim girl could be 18 to 23 years. The statement of the victim girl also refers to her age as 18 years that the Aadhar card submitted by the father of the victim girl indicate that she is around 17 years 2 months. Considering the nature of evidence, further detention of the applicant is not warranted in this case.

6. Hence, I pass the following order.

ORDER

- i) Bail Application No. 1536 of 2020, is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 591 of 2019 registered with Malvani Police Station on furnishing PR. bond in the sum of Rs. 25,000/-(Twenty Five Thousand) with one or more sureties in the like amount;
- iii) The applicant shall report concerned police station once in a month on first Saturday of month between 11.00 am. to 1.00 pm. till further

order;

- iv) The applicant is permitted to furnish provisional Cash Bail Security in the sum of Rs.25,000/- for a period of twelve weeks in lieu of surety;
- v) Bail Application stands disposed of accordingly.
- vi) This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)