

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

ANTICIPATORY BAIL APPLICATION NO.2787 OF 2019

Kumar Shambhu Kunder	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Rushabh Vidyarthi, Advocate i/b. Sharian Mukherji, for the Applicant.

Smt. Geeta P. Mulekar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 18th SEPTEMBER, 2021

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R.No.468/2019 dated 7.12.2019 registered at Santacruz Police Station, Mumbai under sections 294, 114 read with 34 of the Indian Penal Code and under Sections 3, 8(1), 8(2) & 8(4) of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of

Dignity of Women (Working Therein) Act, 2016 (hereinafter referred to as 'the said Act').

2. Heard Shri Rushabh Vidyarthi, learned counsel for the applicant and Smt. Geeta P. Mulekar, learned APP for the State.

3. The FIR was lodged on 7.12.2019 by police constable Mahesh Naik. He has stated that he was on duty in crime detention branch, Desk 09, Crime Branch, Bandra (W), Mumbai. On 6.12.2019 the police received information that obscene dances were going in 'Golden Been Bar & Restaurant' at Santacruz (West), Mumbai. The police called panchas and a bogus customer. They arranged to conduct raid. The raiding party went to that bar at about 12:45 in the midnight on 7.12.2019. The FIR mentions that there were 13 girls present. The music was going on. The customers of that bar were throwing currency notes on the girls dancing there. The bogus customer recorded this. It is specifically mentioned that one of the girls was dancing and the dance was obscene. The police conducted raid and made enquiries. The Manager and others

were apprehended. The Manager produced a photo-copy of the premises licence bearing No.734/2016 and 700/2016. It stood in the name of the present applicant. The Manager, Cashier, Supervisor, Barman, Waiters and six customers were arrested. The articles were seized and the amount was also seized and the FIR was lodged, as mentioned earlier.

4. From the record, it can be seen that the applicant was protected by an interim order dated 19.12.2019 passed by this Court (Coram: Sandeep K. Shinde, J.). At that time it was argued before the Court by learned counsel for the applicant that the Hon'ble Apex Court had struck down clause (iii) of Rule 3 of the the Act. Based on these submissions, interim protection was granted to the applicant by issuing direction that in the meantime, in the event of arrest of the applicant in C.R. No.468/2019 registered with Santacruz police station, he should be released on his executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

5. Learned counsel for the applicant submitted that the applicant was not present on the spot. Therefore, he is not

concerned with the offence. He submitted that as the aforementioned rule is struck down, no offence is made out against the present applicant. He submitted that the charge-sheet in this case is already filed and the Magistrate had granted bail to the present applicant. He, therefore, submitted that anticipatory bail application does not survive.

6. Learned APP opposed this application based on the averments in the FIR.

7. I have considered these submissions. First of all, it is not clear whether the Magistrate was made aware of pendency of this application. Only interim order was passed in favour of the present applicant. It appears that wrong advantage of this interim order was taken in obtaining regular bail from the Magistrate. I am deciding this application finally on merits of the matter and I am deciding whether final relief can be granted in this application. The State is at liberty to take appropriate steps regarding the bail granted by the Magistrate.

8. The second submission that since the particular rule from that act is struck down by the Hon'ble Supreme Court, it entitles the applicant for anticipatory bail; does not appeal to me. If no license was issued under the Rules, the applicant could not have used his premises for such purpose at all.

9. Learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in the case of **Indian Hotel and Restaurant Association (AHAR) and another Vs. State of Maharashtra and others**, reported in (2019) 3 SCC 429. He submitted that because of this judgment, said rule is struck down. However, learned counsel for the applicant has missed the important aspect in this judgment mentioned in paragraph-94 of the same judgment. In paragraph-94, it is clearly held that the challenge to the validity of Section 8(2) of the said Act has failed.

10. In this view of the matter, since Section 8(2) of the said Act, which non bailable and cognizable in nature, is upheld by the Hon'ble Supreme Court, the Court has to look into the allegations to see whether the act alleged against the present applicant falls within the meaning of Section 8(2) of

the said Act. Bare reading of the FIR shows that obscene dance was going on in that establishment and, therefore, said offence is clearly attracted. The documents produced at the spot by the Manager of the establishment clearly shows that the applicant was owner of the establishment and license stood in his name. Therefore, he was the responsible person against whom action can be taken for commission of offence punishable under Section 8(2) of the said Act.

11. In this view of the matter, no case for grant of final relief in the nature anticipatory bail is made out. Interim order was passed on the basis of consideration of clause (iii) of Rule 3. However, as per the judgment, mentioned hereinabove, Section 8(2) of the said Act is applicable and, therefore, no protection can be granted to the applicant. The application is rejected.

12. At this stage, learned counsel for the applicant prays that interim order granted in his favour be continued for few more days. I have considered this request. However, at the time of arguing for interim relief, application of Section

8(2) of the said Act was not brought to the attention of the Court and, therefore, I am not inclined to extend the relief of interim protection. The request is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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PRAKASHRAO
DESHMANE
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