IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1276 OF 2021

SANJAY BABURAO GADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
…..

Advocate for Applicant : Mr. A. M. Gaikwad
APP for Respondents-State : Mr. N. T. Bhat
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 09-02-2022.

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.843 of 2021, reistered with Tophkhana Police Station, Taluka and District Ahmednagar, for the offence punishable under Section 3, 4, 5, 7 and 8 of Immoral Traffic (Prevention) Act.

2. Heard learned Advocate Mr. A. M. Gaikwad and A. A. Nimbalkar for applicant and learned APP Mr. N. T. Bhagat for respondents-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant is innocent. He is a businessman running various industrial undertakings in MIDC, Ahmednagar and village Chas. He is

also engaged in hotel business since last more than 20 to 25 years. He runs Yash lodging and boarding near Nagar-Aurangabad road adjacent to Hotel Yashanjali. He is also involved actively in the local politics. He was the elected corporator in Ahmednagar Municipal Corporation in the year 2008. So also he was the president of the standing committee of the Municipal Corporation since 2008 to 2013. Co-accused is looking after the lodging and boarding business as Manager and he is interested to carry out the day to day affairs of the lodging. The applicant is not directly involving himself in the day to day affairs. His name has been taken in the FIR only on the basis of ownership of the hotel. It can also be seen that the victims had named accused Raju Saude who had contacted them and assured of monitory help to them. The applicant is not at all involved in running of brothel. Custody of the applicant is not required for the purpose of investigation. At the time when the matter was before Additional Sessions Judge, for anticipatory bail of the present applicant, he was granted interim protection by order dated 28-09-2021, and he has abided by the terms of the bail. Even now also the applicant has been granted interim protection by order dated 28-10-2021 and he is abiding by the terms of the bail. The applicant is ready to co-operate with the investigation, and therefore, the said

interim protection needs to be confirmed.

4. Per contra, the learned APP strongly opposed the application and submitted that from the FIR it is very much clear that after the secret information was received to the PSI Samadhan Solanke, attached to Tophkhana Police Station, a raid was arranged and one decoy witness was sent to confirm the information that was received. After the indication was given by the said decoy customer, the raid was conducted. The raiding team could find one Raju Saude and he was asked with the ownership of the lodging. He gave name of the present applicant. Rooms were searched and objectionable articles which are used for operating brothel were found. The victims were taken in custody whose statements have also been recorded. Though they have taken the name of the Raju Saude, the present applicant being the owner of the place, where such illegal activity was going on, needs to be arrested. He cannot just get rid of saying that he was not conducting the day to day affairs of the business. It is the plea/defence that is required to be proved by him at the time of trial and it cannot be considered at this stage. The exact role of the present applicant can be revealed only by taking him in custody. His standing or social status will not be of help.

Another fact that is required to be considered is that the first bail application of the present applicant was rejected by the learned Additional Sessions Judge, Ahmednagar on 06-10-2021 and immediately he has filed second bail application, and it has been rejected on 13-10-2021. The possibility of applicant getting absconding or out of reach, cannot be ruled out.

5. At the outset, it is to be noted that grant of interim relief should not be taken by the applicants as an indication that his final application would also be allowed. It is by way of stop arrangement so that even the side of the prosecution would be heard and till then the liberty of the applicant would be protected.

6. The contents of the FIR lodged by PSI Samadhan Solanke of Tophkhana Police Station are already narrated, and therefore, they are not reproduced now. The decoy customer was sent with amount of Rs.2000/- and specific instructions were given to him as to what he should do. It is stated that after he had given SMS stating room number in which he is, the police along with the panchas went inside. They found one person at the counter who disclosed his name as Raju Saude. He gave name of the present applicant as the

owner of the lodge i.e. Yashwant lodge/hotel. Raid was thereafter conducted. The decoy customer was found in room of which number he had send the SMS. He was along with a lady. Thereafter, search of two rooms was taken, in which police could find condoms and another lady as well as amount. It is specifically stated that there are eight rooms in the lodge and out of them in six rooms nothing was found. That means, whatever was found was in these two rooms only. It has been therefore stated that the brothel was run or the immoral trafficking was going in those rooms.

7. Now the applicant is admitting his ownership over the lodge, but then he is saying that he was not looking after the day to day affairs of the lodge. It is the defence which he is required to prove at the time of trial. If the defences raised at the time of bail application by the accused/applicants, are considered thoroughly by the Courts, then not a single person would go inside the jail, or in other words, it can be said that all anticipatory bail applications would then be required to allow. The yardstick that is required to be used while considering the application for anticipatory bail is as to what is the prima facie allegations and evidence that is collected together with involvement of the applicant when the offence that is

alleged to have been committed is antisocial and such activity was going on in the said lodge owned by the applicant. This cannot be the case where the extraordinary powers of this Court under Section 438 of Cr.P.C. should be used. Hence, application stands rejected. Interim protection granted earlier stands vacated.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-