

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 169 OF 2022

Sandeepkumar Rajendraprasad Gaud .. Applicant.
v/s.
The State of Maharashtra .. Respondent.

Mr. Amit R. Pandey, for the Applicant.
Mr. S. H. Yadav, APP for Respondent-State.
P.S.I. Shri Ashutosh Chavan, Nayanagar Police Station, Thane,
present.

CORAM: BHARATI DANGRE,J.
DATED : 12th SEPTEMBER,2022.

Digitally
signed by
SMITA
RAJNIKANT
JOSHI
Date:
2022.09.15
14:22:17
+0530

SMITA
RAJNIKANT
JOSHI

P. C.:

Applicant is facing accusation under Section 370 read with Section 34 of Indian Penal Code read with Sections 4 & 5 of the Immoral Trafficking (Prevention) Act, 1956.

2 Applicant came to be arrested on 31/05/2021. In the backdrop of the CR being registered by the Complainant, a police Havildar appointed with Nayanagar Police Station. The Complainant specifically state that while the patrolling team was present in Thane Police Station, an information was revealed that women are being provided for prostitution at the rate of Rs.10,000/- for each woman. At the request of the said agent, the reporter sent Rs.1,000/- to the account of Accused No.1 – Mushtaq and this is how a trap was laid. On the instructions, a complaint was lodged at mid-night. As per the information, two women being driven in Rickshaw and that the Applicant, the Rickshaw

driver, came to be arrested. It is informed that Accused No. 1- Mushtaq who is alleged to be agent dealing in trafficking, is released on bail on the ground that the investigation is complete and it is not the case of the prosecution that he will flee the Court of justice and no purpose will be served by keeping him behind the bar.

The order of Additional Sessions Judge, Thane dated 6th October, 2021 is placed on record.

3 As far as present Applicant is concerned, he cannot be, *prima facie*, held liable for an offence punishable under Section 370 of the Indian Penal Code as what would amount to trafficking is culled out under the said Section and if necessarily involve, recruitment, transportation, harbouring, transfer or receiving of a person by the act which are indicated in the said Section for the purposes of exploitation.

4 The material compiled in the charge-sheet falls short of proving the ingredients of the section and even the victim had stated that at the instance of Mushtaq, they were made to sit in the Rickshaw which was being plied by the present Applicant to reach to the particular spot where they were to indulge in the prostitution. It is not that the applicant is involved in supplying/ recruitment of the women for prostitution.

Apart from this, as far as section 4 of the Immoral Trafficking Prevention Act, 1956 is concerned, which prescribes punishment for women on the earning of the prostitution, the prosecution has failed to compile any material in the charge-sheet to establish the said charge and even if assuming it to be so, it is punishable for the

imprisonment with a term which may extend into two years.

Section 5 of the Immoral Trafficking Prevention Act, 1956 provides penalty for procuring, inducing or taking person for the sake of prostitution. The charge-sheet falls short of accusations even under the said Section qua the present Applicant.

5 Since the main Accused is now released on bail, further investigation of the present Applicant is not necessary and he deserves his liberty.

6 I is made clear that With the observations made above, as *prima facie* in nature and limited for the purposes of adjudication of the present application, and the learned Trial Judge will not be influenced by the above observations. Hence, the following order:-

- (a) Application is allowed;
- (b) Applicant - Sandeepkumar Rajendraprasad Gaud shall be released on bail in connection with C.R.No. 334 of 2021 registered with Nayanagar Police Station, Meera Road, Thane on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount;

The Applicant shall be released on cash bail of Rs.25,000 each in lieu of surieties for a period of four weeks. During the said period, the Applicant shall arrange for the surieties.

- (c) The applicant shall make himself available as and when required by the Investigating Officer;
- (d) The Applicant shall attend the concerned Police Station once in a three months preferably on first Monday between 2 to 5 p.m. and thereafter as and when called;
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

(BHARATI DANGRE,J.)