

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

ANTICIPATORY BAIL APPLICATION NO.3389 OF 2022

Prasad Gopal Poojari
versus
State of Maharashtra

.... Applicant
.... Respondent

.....

- Mr. Prabhanjay R. Dave, Advocate for Applicant.
- Mr. S. R. Agarkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 14th DECEMBER, 2022

P.C. :

1. This is the second application for anticipatory bail by the Applicant. Earlier he had approached this Court vide Criminal Anticipatory Bail Application (ST) No.2104 of 2020. This time the change in circumstances which is claimed by the learned counsel is that since passing of that order, now the charge-sheet is filed. The charge-sheet contains the statement of alleged victim and she has not named the present Applicant.

2. Heard Mr. Prabhanjay R. Dave, learned counsel for the Applicant and Mr. S. R. Agarkar, learned APP for the State.

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3. Previous order was passed on 16/09/2020. Since then the Applicant was not arrested. Learned APP on instructions states that the Applicant was not available.
4. The Applicant is seeking anticipatory bail in connection with C.R.No.735/2020 registered with Andheri Police Station on 11/08/2020, under sections 370 (3), 188, 269 r/w 34 of the Indian Penal Code and sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act.
5. The FIR is lodged by Police Constable Mr.Sachin Pawar attached to Andheri Police Station. He has stated in his FIR that he was present at his police station on 10/08/2020. He was informed by his superiors that one Babu and one Prasad were facilitating prostitution in a guest house, at J.B. Nagar, Andheri. The manager of that guest house was one Sarvanand. One Babu was contacting customers and victims by using his phone. Based on this information arrangements were made to conduct raid. One bogus customer was also included in the raiding party. He was asked to contact Babu on the mobile phone number

available with the police. The said Babu answered the call and asked for payment of Rs.2,000/-. The bogus customer was asked to go near J.B. Nagar Metro Station at around 04.30 p.m. near ICICI Bank and he was told that the girls would meet him there. He was asked to make payment of guest house separately.

6. The bogus customer was given Rs.3,000/- in currency notes by the raiding party. He went to the spot. The raiding party waited for his missed call, which was arranged as a signal. At about 05.40 p.m. such missed calls were received by police constable Mujawar. The raiding party went to the guest house. The raiding party found one person behind the counter. The name of the person behind the counter was Sarvanand. He was the manager of the guest house. Two victims were found. Enquiries were made with Sarvanand and the victims. The amount was accepted by one victim and it was handed over to Sarvanand. Further enquiries were made with the victims. Both of them informed that Babu and the present Applicant were

supplying girls including the victims for prostitution to various lodges. Based on these allegations, the FIR is lodged.

7. As mentioned earlier, the main contention of learned counsel for Applicant is that the charge-sheet contains statement of one of the victims which is recorded u/s 161 of Cr.P.C. There is one more statement of the victim which is recorded u/s 164 of Cr.P.C. In both these statements there is no reference to name of the present Applicant. He submitted that whatever is mentioned in the FIR as well as in the Panchanama would be hearsay and would not be admissible. He submitted that statement of the other victim mentioned in the FIR is not recorded and therefore there is absolutely no evidence against the Appellant.

8. Learned APP on the other hand relied on the FIR and also on the Panchanama in which role of the present Applicant who is named, is clearly mentioned. In the Panchanama itself it is mentioned that the officer incharge of raiding had made enquiries with the two victims and they have given specific role

to the present Applicant. Both these victims had clearly told the officer that the present Applicant was procuring girls and was supplying them at various hotels. Those girls were exploited. Both the victims consistently told him about the present Applicant. The phone numbers of the Applicant were found in the telephone handsets of both these victims. These are very serious incriminating circumstances against the Applicant. The Panchanama, which was immediately recorded, mentions the same facts. The Panchanama is signed by both the Panchas. The Panchanama and the FIR are part of the charge-sheet. Therefore there is definite material against the Applicant warranting his custodial interrogation.

9. The Applicant's Anticipatory Bail Application was rejected on 16/09/2020. Since then he was not available. He was neither available nor he could be found. The Applicant cannot take advantage of the fact that the other victim's statement is not recorded. The Applicant's non-availability itself is quite serious in the facts of the circumstances. All these

contentions were already considered in the previous order. However, in the interest of justice I have again heard learned counsel for the Applicant and I do not see any reason to change the view expressed in the order dated 16/09/2020. The offence is quite serious. The name of the Applicant has transpired immediately at the time of raid itself. His phone number was also available. He could not be interrogated at any time because of his non-availability and therefore any other material which could have been found during his interrogation and further investigation could not be part of this charge-sheet. However, whatever material is available in the charge-sheet today, it is sufficient to show that the Applicant is involved in this serious offence. In this view of the matter, the Applicant's custodial interrogation is absolutely necessary. No case for grant of anticipatory bail is made out. The application is rejected.

(SARANG V. KOTWAL, J.)