

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1459 OF 2023

SOMNATH S/O PARASRAM BARSE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. G. M. Sharma, Advocate for the Applicant.

Mr. S. P. Deshmukh, APP for Respondents-State.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 15th SEPTEMBER, 2023.

PRONOUNCED ON : 09th OCTOBER, 2023.

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.322/2023, dated 06.05.2023, registered with Shirdi Police Station, Dist. Ahmednagar for the offenses punishable under Sections 366 (A), 370, 366 (B), 372, 373, 376, 328 of the Indian Penal Code and Sections 3, 4, 5, 7 and 8 of the Prevention of Immoral Trafficking Act, 1956 (for short 'PITA, 1956') as well as Sections 4, 8 and 12 of the POCSO Act.

2. The investigation was set in motion on the basis of the information given by Smt. Sushma Vasant Jadhav, serving as Police Constable at Newasa. She reports that the Police Inspector, Shri. Rajendra Ingale, in pursuance of directions of the S.D.P.O., Shri. Sandeep Mitke informed that prostitution is going on at SP Lodge within the jurisdiction of the Shirdi Police Station and instructed to take immediate action. In view of the aforesaid instruction, raid was arranged. The team of police officers, panch and decoy customer was formed. They raided at SP Lodge after signal from decoy customer. Accused Sachin Aher and Suraj

Latke were found at the counter. They had received the amount offered by the decoy customer. On further search of the premises, three ladies including minor victim were found engaged in the prostitution. Accordingly, FIR was registered for the offences punishable under Sections 366(A), 370 of the Indian Penal Code and Sections 3, 4, 5, 7 and 8 of the PITA. The accused were arrested on the spot.

3. The investigation progressed. The statement of the minor victim was recorded. She disclosed that she is brought from Bangladesh and forced to engage in prostitution. During further investigation, she narrated details of various places, where she was subjected to prostitution. The statement of the victim dated 29.05.2023 recorded under Section 164 of the Criminal Procedure Code before the learned Judicial Magistrate First Class, Rahata shows that from 09.11.2022 victim was made to travel at various places. Initially, she was brought to Bombay. Thereafter, on 08.01.2023 she was taken to Nashik, where she was victimized to the prostitution. Thereafter, accused Akash took her to the Jalgaon, Dhule, Aurangabad, Pune and Shirdi. However, statement sans the details of the persons, victimized her to the prostitution or the places.

4. By way of supplementary charge-sheet the applicant has been added as accused. He has been arrested on 23.06.2023 and since then, he is behind the bar. The investigation is completed and charge-sheet is filed. The applicant had moved application seeking regular bail before the Sessions Judge in Special Case No.32/2023. However, learned sessions judge rejected his prayer vide order dated 02.08.2023.

5. Mr. Sharma, learned Advocate appearing for the applicant would submit that the applicant has been falsely implicated in the offence. The role attributed against the applicant is that victim was brought to Aurangabad by accused Akash and he forced her for the prostitution. To show the complicity of the applicant in commission of the offence, the result of test identification parade dated 03.07.2023 is relied, which is conducted after 10 days of the arrest of the applicant. He would submit that the test identification parade is not the substantive evidence, it can be used only as corroborative tool in support of substantive evidence on record. He would submit that the delay in conducting the test identification parade after arrest of the applicant further hampers the sanctity of such evidence. He would submit that in absence of convincing evidence on record, no case can be made out against the applicant. Hence, urges to release the applicant on bail.

6. Mr. Deshmukh, the learned APP strongly opposes the prayer of the applicant for grant of bail. He would submit that the victim is a minor. She was brought to Aurangabad by the accused Akash, where she was put to the prosecution through the applicant. The applicant earned his livelihood through prostitution of the victim. He would further submit that in the statement of the victim dated 29.05.2023 recorded under Section 164 of the Criminal Procedure Code, victim specifically mentioned that the accused Akash brought her to Aurangabad and she stayed in the house where she was victimised for prostitution. He would submit that record indicate that the applicant was in the contact with the main accused during the relevant period, which depicts complicity of the applicant in commission of the offense. Therefore, he urges to reject the application.

7. Having considered the submissions advanced, apparently, the FIR is based on the information given by the police officer, when the minor victim was found at Shirdi during police raid at SP lodge. Initially, the offence was registered only against two accused persons, who were found on the counter of the SP Lodge. During the course of the investigation, the statement of the minor victim has been recorded. In her statements recorded by police as well as Magistrate, she narrated as to how she has been brought to India from Bangladesh and then put to the prostitution. The statement of the victim dated 29.05.2023 recorded under Section 164 of the Criminal Procedure Code is recorded, wherein she disclosed that she was driven to various places within the State of Maharashtra including Aurangabad city, where she stayed for a month and engaged in prostitution. However, such statement is bereft of the details of the persons with whom she was stayed at Aurangabad or the persons who made her to engage in prostitution.

8. The applicant has been arrested suspecting his involvement in crime probably for the reason that he was in contact with accused Suraj Latke. The supplementary charge-sheet is filed against the applicant, wherein details of test identification parade dated 03.07.2023 alongwith memorandum is filed, which demonstrate that minor victim identified the applicant to be one of the offender. Except this there is no other evidence by which applicant can be connected with the offence.

9. As rightly contended by the learned Advocate appearing for the applicant, the test identification parade is admissible under Section 9 of the Indian Evidence Act, but it can be used only to corroborate evidence given by the witness during the trial. However, it cannot be used as substantive piece of

evidence. The Supreme Court of India in the case of ***Gireesan Nair and Ors. etc. Vs. State of Kerala***¹ considered the evidential value of the test identification parade. Pertinently, it is observed that the delayed test identification parade after arrest of the accused loses significance.

10. If the aforesaid legal position applied in the facts of the present case, *prima facie* in absence of the substantive evidence against the applicant, further detention cannot be permitted. Even otherwise, at the most the offence under the provisions of PITA can be charged against the applicant. No role in respect of major offences is attributed against applicant in the charge-sheet. The applicant is behind the bar for more than three months. The investigation in the matter is completed. No purpose would be served by continuing the detention of the applicant. Hence, case is made out for grant of bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Somnath Parasram Barse be released on bail in Crime No.322/2023 dated 06.05.2023 registered with Shirdi Police Station, Dist. Ahmednagar for the offences punishable under Sections 366 (A), 370, 366 (B), 372, 373, 376, 328 of the Indian Penal Code and Sections 3, 4, 5, 7 and 8 of the Prevention of Immoral Trafficking Act, 1956 as well as Sections 4, 8 and 12 of the POCSO Act on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) on following condition:

- a. The applicant shall not tamper with the prosecution evidence in any manner.

¹ (2023) 1 SCC 180.

b. The applicant shall attend each effective dates of the trial, before the Court.

c. The applicant shall furnish his detail address and contact numbers with the concerned Court, and shall keep it updated.

(iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE