

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 87 OF 2022
IN
CRIMINAL APPEAL NO. 21 OF 2022

Saramodh @ Suraj Sharma Thr. His Next ... Applicant
Friend and Wife Rinky Sharma
V e r s u s
The State of Goa, Thr. Officer in Charge of ...Respondent
Crime Branch Police Station

Mr. Sudin Usgaonkar, Senior Advocate *with Mr. Shukr S. Usgaonkar, Advocate for the Petitioner.*

Mr. Pravin Faldessai, Additional Public Prosecutor *for the Respondents.*

CORAM: M. S. KARNIK, J
DATED: 6th MARCH 2023

ORAL ORDER

1. This is an application for suspension of sentence imposed by the learned Additional Sessions Judge, FTC-I, South Goa, Margao. The Appellant is convicted for various offences under Section 370(1), Sections 3, 4, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956. The Applicant was arrested on 6th February, 2021. So far as the sentences under Sections 3, 4, 5 and 7 is concerned, the Applicant has already undergone the same since the Applicant is in custody for more than two years. The Applicant is convicted to undergo Simple Imprisonment of eight years for the offence punishable under Section 370(1) of the Indian Penal Code (IPC).

2. The Applicant was not on bail during the trial. Learned Additional Public Prosecutor vehemently opposed the application. It is submitted that the substantive sentence imposed is eight years Simple Imprisonment of which the Applicant has undergone only two years. It is further submitted that the Trial Court was not justified in merely concluding that the present is an offence which falls under Section 370(1) of the IPC when in fact, on the basis of the evidence on record, the Applicant should have been held guilty for the offence under Section 370(3) of the IPC. So far as Section 370(1) of IPC is concerned, while recording a finding that the charge under Section 370 of IPC stands proved against the Applicant, the Trial Court has held thus :

“52. In the instant case there is evidence is against the accused no.1 that he had recruited the victim (PW3) for the purpose of exploitation by inducement. This is because PW3 has stated that she contacted accused No.1 who is the owner of the parlour and he agreed to pay her a salary of Rs.10000/- for commercial sexual activities which she calls personal service. Also that the evidence of trap and raid suggests that the accused No.1 who is the owner of the parlour used his parlour for such kind of prostitution business. Hence the charge under

Section 370 of IPC stands proved against the accused
No.1.”

3. The learned Additional Public Prosecutor invited my attention to the evidence of Pw.3 to support his contention that the Trial Court is justified in recording the finding. This is without prejudice to his plea that present is a case where Section 370(3) is impacted.

4. With the assistance of learned Counsel, I have gone through the provisions of Section 370(1) of IPC. *Prima facie*, in my opinion, from the evidence of Pw.3, it does not appear that there has been any inducement on the part of the Applicant in order to achieve the consent of Pw.3. The statement of Pw.3 would only reveal that she was offered a salary and that the activities were carried out by her under the directions of the Applicant. Moreover, it is pertinent to note that in the Section 164 Cr.P.C. statement, she had voluntarily stated that it was not the Applicant who forced her to do the job in the parlour. *Prima facie*, it is doubtful whether Section 370(1) IPC is attracted in the present case. It is also pertinent to note that the Applicant is in custody for more than two years. A case for suspension of sentence is made out.

5. During the pendency of this Appeal, the sentence imposed by the Additional Sessions Judge, FTC-1, South Goa, at Margao, in

Sessions Case (ORS) No. 14/2021 dated 12th/19th September 2022, shall remain suspended and the Appellant-Applicant shall be released on bail upon furnishing a PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the Trial Court.

6. The Applicant-Appellant shall make himself available at the time of final hearing. He shall furnish the residential address and other contact details and inform the Trial Court in the event of any change.

7. Application is disposed of.

M. S. KARNIK, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
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