



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

BAIL APPLICATION NO. 402 OF 2023

MANOJ BANDA MALI

..APPLICANT

VS.

STATE OF MAHARASHTRA

..RESPONDENT

Mr. Rajiv Patil, Senior Counsel i/b Mr. Rupesh Zade, for the applicant.
Mr. P. H. Gaikwad, APP for the State.
Ms. Siddhi Bhosale, for Victims.
API- Mr. Patil Yashwant, APMC Police Station along with PN-Mr. D.V.
Kadam, APMC Police Station present.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 04, 2023

P.C. :

- 1.** Heard learned Senior Counsel for the applicant, learned counsel appearing for the victims and learned APP for the State.
- 2.** It is pointed out by learned APP that the investigating officer has sent intimation to 6 minor victims. Service has been effected on 2 of them and others have been intimated. It is therefore I had requested Ms. Siddhi Bhosale to appear and represent the cause of the minor victims.
- 3.** This is an application for bail in respect of the offence

punishable under sections 370(2)(3)(4), 366(A), 372 of the Indian Penal Code, 1860 (hereafter 'IPC' for short), under sections 3, 4, 5 of the Immoral Traffic (Prevention) Act, 1956 ('PITA', for short), under sections 4, 12, 14, 16 and 17 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO', for short) and under sections 75, 78, 79 of the Juvenile Justice (Care and Protection of Children) Act, 2015 registered on 21/11/2019 vide C.R. No.247 of 2019 with APMC Police Station, Navi Mumbai.

4. There are in all 9 accused. 2 of the accused are absconding. Rest of the accused except the present applicant are enlarged on bail. The applicant is the accused no. 7. The date of the incident is 20/11/2019. The applicant was arrested on 03/10/2022.

5. The prosecution in brief is as under :

The original complainant namely Mrs. Rani Tukaram Kale, Assistant Police Inspector attached to Crime Branch, Central Unit, Navi Mumbai lodged FIR with APMC Police Station, Navi Mumbai on 21/11/2019 inter alia stating therein that on 20/11/2019, API Kolhatkar of Special Branch, informed her and other police personnel that senior Manager of NGO namely project Kalki gave him information that in Hotel Blue Star Restaurant and Bar, its Manager /

Waiters were providing lady waiters working in the said bar for prostitution by accepting Rs.4,000/- from the customer and sending them to nearby lodging. Thereafter, the bogus customer was sent and raid was conducted. Prior to that, the bogus customer along with one panch was arranged and went to Hotel Blue Star and asked for a girl for prostitution. One of the waiter informed him that they had girls for Rs. 4,000/-. The bogus customer agreed to pay the money and selected one girl and went to Hotel Prince Lodging and Boarding with her. Later on, the police intercepted co-accused with customers as well 40 victims including six minors. Based on such report, offence came to be registered on 21/11/2019 vide C.R. No.247/2019 under the aforesaid sections and investigation was commenced.

6. So far as the applicant is concerned, the present applicant has taken the premises on lease. Learned Senior Advocate while seeking the enlargement of the applicant on bail has relied upon the order dated 03/04/2023 passed in respect of co-accused Abdul Hameed Ali Byari in Anticipatory Bail Application No. 3334 of 2022 and claimed parity. In my opinion, the applicant cannot claim parity with Abdul Hameed Ali Byari.

7. At the time of raid, it was found that there were 39 waitresses

working. There were 30 customers. It is the case of the prosecution that the waitresses were indulging in prostitution with the active support of the present applicant and the employees of the Bar and Restaurant. Amongst 39 waitresses, 6 are alleged to be minor girls.

8. Learned APP as well as learned counsel Ms. Siddhi Bhosale who was requested and appointed by this Court to represent the victims submitted that offence is serious. My attention is invited to the statements recorded under section 161 of Code of Criminal Procedure ('CrPC', for short) of the witnesses which according to learned counsel clearly indicate that the applicant is conducting the said business and that the victims were forced into prostitution. It is further submitted that the applicant was surviving on the proceeds which the victims were receiving. Learned APP and learned counsel for the victims took me meticulously through the materials which are the part of the charge-sheet. An affidavit has been filed by the Assistant Police Inspector attached to APMC Police Station, Navi Mumbai placing on record the materials and the role of the present applicant. I have gone through the affidavit. It is submitted that the statements of the witnesses have been supported by the members of the raiding party as well as independent witnesses. The victims were

induced to carry on prostitution and hotel premises were used for it. It is further submitted that there may be variances in the statements recorded under sections 161 and 164 of the CrPC of the victims. It is submitted that the variance of such divergent statements needs to be scrutinized at the time of trial. It is further submitted that there is every possibility of tampering. My attention is invited to the antecedents reported against the applicant one such antecedents is under section 302 of IPC.

9. I have gone through the section 161 statements of the victims. The age of the victims who are minors is determined on the medical examination of the victims. However, in section 164 statement, the victims have stated themselves to be of major age. Furthermore, prima facie, there is complete variance in section 161 statements and section 164 statements. In section 164 statements, all the victims have stated that they were not indulging in prostitution activities and that they were never forced to indulge in such activities. Even minor victims in section 164 statement which was recorded before the Judicial Magistrate First Class stated that they were never forced into prostitution. Some of the victims have stated that from the tips that they were receiving, part of the same was taken away by the

Manager.

10. So far as the antecedents reported against the present applicant are concerned, in respect of offences punishable under sections 302, 342, 343, 346, 201, 120-B of the IPC with respect to C.R. No. 556 of 2012 registered at Satara City, learned Senior Advocate submitted that the applicant has been acquitted. The applicant also has been acquitted in respect of C.R. No. 579 of 2012 registered at Satara City for the offence punishable under sections 343, 326, 346, 147, 148, 149 of IPC. There is no offence registered against the present applicant of a similar nature as the present one. There are 2 offences registered vide C.R. Nos. 203/2012 and 483/2018 at Karad Taluka and Karad City pending against the applicant which are under sections 365, 341, 343, 346, 326, 504, 506, 34 of IPC and under sections 342, 452, 143, 147, 148, 149, 427, 120B of IPC respectively.

11. The applicant was arrested on 03/10/2022 and now is in custody for more than 11 months. The trial is likely to take a long time to conclude. The investigating is complete. The charge-sheet has been filed. The accusations against the applicant, though are serious, prima facie, I am of the opinion that having regard to the

facts and circumstances of the present case, the applicant can be enlarged on bail by imposing stringent conditions as further custody will only be by way of a pre-trial punishment. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Manoj Banda Mali in connection with C.R. No. 247 of 2019 registered with APMC Police Station, Navi Mumbai shall be released on bail on his furnishing PR. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the investigating officer of APMC Police Station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (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, in case there is any change.

(f) Except for attending the trial and for the purpose of reporting to the investigating officer, the applicant shall not enter the jurisdiction of Mumbai, Mumbai Suburban District, Thane District after being released on bail, till the trial concludes.

(g) The applicant shall attend the trial regularly.

12. The application is disposed of.

13. I appreciate the valuable assistance rendered by Ms. Siddhi Bhosale, learned Advocate, who appeared on behalf of the victims in this proceeding. The fees/honorarium is quantified at Rs.5,000/- payable by the legal services authority.

(M. S. KARNIK, J.)