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

ANTICIPATORY BAIL APPLICATION NO.768 OF 2023

Abhishek Babu Chandan

...Applicant

vs.

State of Maharashtra

...Respondent

Mr. Prabhanjay R. Dave with Ashwin Pande and Pradeep Kumawath
for the Applicant.

Mr. H. J. Dedhia APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 29TH MARCH 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The charge-sheet is filed against arrested accused persons Vishal Hire and one Dilip Gharat. The said Dilip Gharat is granted Anticipatory Bail by this Court. The offence is registered being C.R.No.I-385 of 2022, at Arnala police station, Palghar under sections 370(1) read with 34 of IPC read with sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 (for short "PITA Act").

3. The present Applicant has taken the premises, on leave and license from the owner Shri/Smt. Gharat, where the raid was conducted on 7th December 2022. The Applicant is seeking anticipatory bail in the FIR bearing C.R. No.I-385 of 2022, registered at Arnala police station, Palgar for the offence punishable under sections 370(1) read with 34 of IPC and sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956.

4. According to learned Advocate for the Applicant, section 370(1) of IPC and sections 5 and 6 of PITA Act are not applicable. Whereas section 3 and 4 of PITA Act are bailable sections. According to learned Advocate even though the Applicant has taken premises on leave and license basis, the prosecution must ensure that ingredients of sections which are invoked are satisfied.

5. Learned Advocate for the Applicant wants to place reliance on the statements of two ladies, who are major and as per their statements, they were called by arrested accused Vishal Hire and accordingly, on their own they visited the place. According to learned Advocate, none of the victim is minor. According to him, none of ingredients of sub-sections (1) to (6) of section 370 (1) of IPC are satisfied. In support of this contention what should be the

approach of the Court in similar situation, he placed reliance upon the orders passed by this Court:

- (a) In case of Hiranman Lal Mohan Mandal dated 6th August 2014.
- (b) In case of Harbindra Kour Sukinder Singh @ Rekha dated 29th September 2017.
- (c) In case of Dilip Laxman Gharat dated 27th February 2023.

6. Whereas learned APP submitted that in fact, in Anticipatory Bail Application of the owner Mr. Dilip Gharat, present Applicant is shown as conductor of the premises. Whereas in the order passed by this Court for said Mr. Dilip Gharat, Vishal Hire is shown as lessee.

7. Learned APP pointed out that there are text messages sent by arrested accused No.1-Vishal Hire to various customers and his mobile handset is seized. These messages indicate that he has invited customers and has also given details of services of those ladies, payment to be charged. According to learned APP there are call details report showing communication in between present Applicant and arrested accused No.1.

7. By that it may, both the ladies are major. It is true that consent of lady is immaterial as per Explanation (1) and (2) of section 370 of

IPC. There is no grievance made by these two ladies about force, any form of coercion, inducement or like as mentioned under section 370(1) of IPC. Category number 6 says about two types, one is inducement and it includes giving or receiving of payments made in order to achieve the consent. At the most case may fall under this category.

8. It is true that the messages are viewed from mobile handset of arrested accused No.1, describing about certain payments. However, in the statements of victims, there is no reference about receipt of payment. So prima facie it can be said that the provisions of section 370(1) of IPC and sections 5 and 6 of PITA Act will not be attracted. The case for grant of Anticipatory Bail Application is made out. Hence, the following order is passed :

ORDER

- (a) In the event of arrest the Applicant-Abhishek Babu Chandan be released on bail on furnishing personal bond and surety bond of Rs.25,000/- in C.R. No.I-385 of 2022 registered at Arnala police station for the offences punishable under sections 370(1) read with 34 of Indian Penal Code and sections 3, 4, 5

and 6 of the Immoral Traffic (Prevention) Act, 1956.

- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
 - (c) The Applicant shall give attendance to the Arnala police station, Palghar on every Friday from 10 am to 12 noon until filing of the charge-sheet.
 - (d) Needless to say, violating of the conditions mentioned above will make the Applicants liable for cancellation of anticipatory bail, after notice.
9. Application is disposed of accordingly.
10. These are my prima facie observations and the trial Court may not be influenced by that.
11. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]