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

ANTICIPATORY BAIL APPLICATION NO.2047 OF 2023

Gajanan Datta Ade ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr.Sujit Alhat, for the Applicant.

Mrs. Rutuja Ambekar, APP for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 21, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.45 of 2023 registered with Koregaon Park police station for offences punishable under Sections 370 r/w 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short 'PITA'), the applicant is seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

2. According to the prosecution, the concerned police station received information about illegal prostitution at 'Signature Thai Spa', South Main Road Koregaon Park. Accordingly, the trap was arranged. The said place was raided. During the raid, 6 victims were found. They were rescued. Statements of victims indicate that the applicant forced them. The leave and license agreement is on record. According to him, the applicant is the licensee having *de facto* possession of the premises.

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3. According to the learned Advocate for the applicant, the applicant is falsely implicated. Statements of victims are recorded. Custodial interrogation is not required. According to him, Section 370 is not attractive, assuming the averments in the report are correct.

4. On perusal of the material on record, including statements of the victim, it *prima facie* appears that the applicant induced victims by giving payments to achieve their consent for being recruited for exploitation. Statements of victims indicate *prima facie* fulfilment of ingredients under Clause 6(3) of Section 370 of IPC. In so far as custodial interrogation is concerned. Therefore, a *prima facie* case against the applicant exists.

5. Apart from the custodial interrogation, the *prima facie* case is the first and foremost to consider while entertaining an application under Section 438 of Cr. P.C, the Apex Court, in the case of **Sumitha Pradeep v. Arun Kumar C.K. & Another** reported in 2022 SCC OnLine SC 1529 was considering grant of bail to an accused charged with an offence under the Protection of Children from Sexual Offences Act, 2012. The Apex Court, in paragraph 16, observed as under:

“16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting

anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the *prima facie* case against the accused should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

6. The Apex Court has held that there is a misconception amongst litigants that the custodial interrogation is the only factor of the Court while exercising power under Section 438 Cr.P.C. It is required to consider While exercising power under Section 438 of Cr.P.C., the Court primarily required to consider *prima facie* case and, thereafter, the necessity of custodial interrogation. In the facts of the case, in view of *prima facie* satisfaction of fulfilment of ingredients of Section 370, hence, the application is not entertained.

7. I am satisfied that a *prima facie* case was made against the

applicant. The applicant is not entitled to relief under Section 438 Cr.P.C.

8. The anticipatory bail application is, therefore, rejected. No costs.

(AMIT BORKAR, J.)