

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (BA) NO. 23 OF 2023

MANOJ S/O ARJUN GHANSHANI

VS

STATE OF MAH. THR. STATION INCHARGE PS SADAR NAGPUR

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A. A. Naik, Advocate with Mr. A. D. Bhate, Advocate
for applicant.

Mr. A. M. Kadukar, APP for respondent.

CORAM : ANIL L. PANSARE J.

DATE : 08/02/2023

This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973. The applicant is arrested on 21/09/2022 in Crime No.0379/2022, registered with Police Station, Sadar, District Nagpur City for the offences punishable under Sections 370, 420, 467, 468, 471 of the Indian Penal Code, 1860, Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and Section 12 of the Passports Act, 1967.

2. The accusation against the applicant is that he has procured two women, sheltered them and engaged them in sex trade. The police official of

Sadar Police Station, Nagpur received secret information that the applicant had brought two women and sheltered them at Hotel Tuli International, Nagpur and was about to engage them in immoral sexual act. The Police raiding party visited the said hotel. On being inquired, it was revealed that two rooms were booked in the hotel for two women namely, Afsana and Gulmira as c/o. Manoj Ghanshani (i.e. applicant). It was revealed in the investigation that the women are from Uzbekistan and were called to Nagpur for sex trade. These two women also allegedly disclosed to the Investigating Officer that the applicant used to send them at different places for sex trade and the part of income from the customers was given to the applicant as commission.

3. Learned counsel for the applicant has drawn my attention to the FIR. So far as the applicant is concerned, the offences alleged against him are under Section 370 of the IPC read with Section 4 and 5 of the Immoral Traffic (Prevention) Act, 1956. He has referred to Section 370 of IPC, to contend that the offence under Section 370 is made out when a person recruits, transports, harbours, transfers or receives, a person or persons, by using threats, or by using force, or by abduction, or by

practicing fraud, or by abuse of power, or by inducement etc.

4. He has rightly argued that the person who is exploited would be a victim of the crime. In the present case, the two women who are said to be exploited are made co-accused. The FIR indicate that the offences alleged against these two women are under Sections 420, 467, 468, 471 of the Indian Penal Code, 1860, read with Section 12 of the Passports Act, 1967. It appears that these two women have forged passports and therefore, have been booked under the aforesaid provisions.

5. Nonetheless for the offence punishable under Section 370 of IPC, the Investigation Officer ought to have examined and investigated whether any person was procured for the purpose of exploitation that too by coercion. In the present case, the victim is not before the Court. The victim, if any has been made co-accused. The allegations against the applicant are based on the disclosure made by the co-accused during interrogation. It is stated that applicant used to send them at different places for sex trade and the part of income from the customers was given to the applicant as commission. The Investigation Officer has, however, not collected

any admissible evidence to show that applicant indeed is involved in the said act that is to say that he has send the co-accused to the customers for sex trade and he receives commission from them and therefore, it will be challenging for the prosecution to prove the offence under Section 370 of the IPC.

6. Once it is found that the ingredients of Section 370 of the IPC may not be attracted, then what remains is Section 4 and 5 of the Immoral Traffic (Prevention) Act, 1956. Section 4 provides that if any person who knowingly lives on the earnings of the prostitution shall be punished upto two years. Section 5 provides punishment for procuring, inducing or taking any person for the purpose of prostitution and the punishment provided is upto seven years. The prosecution face challenge to prove even these offences.

7. What is transpired during the course of hearing is that the applicant has booked tickets for two women from Delhi to Nagpur and that two women have booked rooms in the hotel as c/o. the applicant. This evidence by itself is not sufficient to infer that the applicant has procured these women for prostitution or that he is living on the earnings of the prostitution.

8. Learned APP has opposed the application on the grounds that applicant has criminal antecedents. However, learned counsel for the applicant submits that he has been acquitted for the said offence on 14/09/2016 in S.T. No. 40/2016. Thus the objection is without substance.

9. Upon enquiry, learned counsel for the applicant submits that the applicant is resident of Nagpur and owns immovable property. Thus, there are strong roots in the locality. The charge-sheet has been filed, but charges have not yet been framed. It will take time to commence and conclude the trial.

10. Considering the role of the applicant as discussed above, and the nature of evidence, no purpose will be served in keeping applicant behind the bars.

11. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned Judge, who is seisin of the trial, shall not get influenced with the above observations.

12. Resultantly, following order is passed :-

ORDER

(i) The application is allowed.

(ii) The applicant – **Manoj s/o Arjun Ghanshani** be released on bail, in Crime No.379/2022, registered with Police Station, Sadar, District – Nagpur for an offence punishable under Sections 370, 420, 467, 468, 471 of the Indian Penal Code, 1860, Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and Section 12 of the Passports Act, 1967 on he furnishing PR. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the residence till the final disposal of the case.

(iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall surrender his Passports, if any, before the investigating officer within a period of one week from today, and if he does not possess any passport, he shall file affidavit to that effect.

(vii) The applicant shall maintain law and order.

(viii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

JUDGE