

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

CRIMINAL APPLICATION (BA) NO. 139/2023

Afasana alias Shahnaj alias Yangibaeve Gulandom Babajanovna and anr. .vs. State
of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Z. Hasnani with Mr. I. G. Meshram, Advocates for applicants.
Mr. S. S. Doifode, A.P.P. for non applicant – State.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 24, 2023.

Heard.

2. This is an application under Section 439 of the Code of Criminal, 1973. The applicants have been arrested on 29.09.2022 in Crime No.379/2022, registered with Police Station, Sadar, Nagpur, 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.

3. The main allegation is against accused no.1, who is released on bail by this Court vide order dated 08.02.2023 in Criminal Application (BA) No.23/2023. The allegation made is that the accused no.1 has procured two women (present applicants), sheltered them and engaged them in sex trade. The police official of Sadar Police Station, Nagpur received secret information that the accused no.1 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, the accused no.1. 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 accused no.1 used to send them at different places for sex trade and the part of income from the customers was given to the accused no.1 as commission.

4 The accusation against the applicants is mainly of forgery of Aadhar Card, Election Card and Driving License, issued by various authorities of the State. Accused no.1 faces allegations for the offences under Sections 370, 420, 467, 468, 471 of the Indian Penal Code, 1860 and Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956. Thus, these two applicants could be said to be victims of the offences under Section 370 of the IPC and Sections 4 and 5 of the Immoral Traffic (Prevention) Act. The allegation against the applicants will, prima facie, sustain only to the extent of forgery of three documents mentioned above. The allegation is that they have used these documents as photo identity to reserve/book rooms in the hotel and tendered the same to the hotel management.

5. At this stage, learned counsel for applicants submits that these documents have been procured by the accused no.1, in the names of applicants. The applicants have not procured these documents.

6. That apart, the applicants are said to have committed the offences under Section 467 of the IPC, forgery of valuable security, will, etc. and Section 468 of the IPC, forgery for the purpose of cheating. However, considering the nature of allegations, it will be challenging for the prosecution to prove ingredients of these offences as the only allegation appears to be that they have booked rooms by tendering Aadhar and Election cards to the hotel management, which again is something that would require consideration in the light of submissions made by learned counsel for the applicants that those documents were also procured by accused no.1. So far as Section 471 of the IPC is concerned, the same is a bailable offence.

7. Learned A.P.P apprehends abscondance of the applicants, if they are released on bail. Learned counsel for applicant submits that the passports of applicants are with the investigating officer and that therefore the applicants could not abscond.

8. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial. When inquired of antecedents, learned counsel for the applicants submits that there are no criminal antecedents. Learned counsel for applicants submits that sister of applicant no.1 resides at Delhi.

9. Considering the peculiar facts of the case and the nature of evidence against the applicants so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that

no fruitful purpose will be served by keeping the applicants in jail. The interest of the prosecution can be protected by putting the applicants to appropriate terms.

10. The observations made in this order are prima facie in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

11. Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant no.1 – Afsana alias Shahnaj alias Yangibaeva Gulandom Babajanovna and applicant no.2 – Gulmira Khan alias Abdirayimova Gulmira, be released on bail in Crime No.379/2022, registered with Police Station, Sadar, Nagpur, 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, on they executing P.R. Bond in the sum of Rs.50,000/- each with one or two sureties each in the like amount. One of the sureties should be the sister of the applicant no.1.

(iii) The applicants shall not leave India without permission of the Court and shall, at the time of execution of bond, furnish their addresses and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicants 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.

(v) The applicants shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicants shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicants shall maintain law and order.

(vii) 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.

(Anil L. Pansare, J.)

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