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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM M-36358-2023 (O&M)

Date of Decision: 09.08.2023

Nagaraj T @ Charles

.....Petitioner

Versus

State of U.T. Chandigarh

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Shakti Mehta, Advocate,
for the petitioner.

Mr. A.M. Punchhi, P.P. U.T.Chandigarh.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 (for short “the Cr.P.C”) for grant of pre-arrest bail in FIR No. 184 dated 12.07.2023 (**P-1**), registered under Sections 3, 4, 5, 6 & 7 of the Immoral Traffic (Prevention) Act, 1956 (for short, ‘*the Act*’); and Sections 370 & 120-B of the Indian Penal Code, 1860 (for short, ‘*the IPC*’), at Police Station Sector 36, Chandigarh.

(2) Aforesaid FIR was registered on the basis of secret information received by DSP Charanjit Singh Virk, S.D.P.O. (South West), U.T. Chandigarh and translated version of the same reads as under:-

“Sir, it is requested that today I, DSP with my personnel staff was present in area of Police Station Sector-35/C, CHD for checking. When we reached near KFC Market, Sector-35, CHD, suddenly & coincidentally, Inspector Om Parkash SHO PS-36, SI Naveen Kumar I/C 43, L/SI Asha along with Sr. L/C Manpreet Kaur 3411/CP, L/C Shalinee 4503 /CP, C Sunil 4901/CP, C Hansraj 3994/CP, C Sandeep 4974/CP, C Narender 6641/CP met us. When I, DSP was just inquiring from the said employees, suddenly & coincidentally at around 07:30 PM, one secret informer met us and informed that Ganga Spa SCO No. 437/438 owned by Charles, Mobile No. 9779508810 & 9815463629, is running a Brothel in the name of Ganga Spa along with his managers Shally and Gaurav and they provide girls for wrong work / sex in the name of massage to their customers. The girls live in the Spa Centre and charge Rs. 2,000/- per customer and earn their livelihood with this money. If search is conducted, they can be apprehended. Believing the information to be true, I, DSP requested the passerby to join as independent witnesses, but they left the spot without disclosing their names or addresses. Thereafter, I, DSP instructed to call the Women help line team to Ganga Spa. Then I, DSP nominated C Sandeep 4974/CP as and C Hansraj 3994/CP who were already in civil dress as shadow witness. Then I DSP conducted a search of the bogus customer C Sandeep, from whom nothing objectionable was recovered. After conducting search, memos were prepared and signatures of witnesses were obtained. Then I, DSP took out four notes of the denomination of 500 rupees (Indian currency note) numbers (1) 4ME201572 (2) 4EE143788 (3) 2UD701880 (4) 1DM015265 from my pocket and handed them over to C Sandeep, bogus

customer. Signature of witnesses were taken while preparing memo and instructions were also given to C Hansraj who is Shadow Witness to go to the Spa Centre with the bogus customer C Sandeep and after making payment, when their deal will be final, to make a gesture from suitable distance for the raiding party i.e. turn his right hand over his head. Accordingly, the bogus customer and shadow witness left for Ganga Spa Centre and raiding party along with myself started waiting for the signal of Shadow Witness from a suitable distance. Around 08.00 P.M. when Shadow witness C. Hansraj made the gesture, on which I, DSP along with raiding party left for Ganga Spa Centre, SCO No. 437/438, Sector- 35, Chandigarh and when we reached there a woman including bogus customer and a person who introduced herself as Kimlia @ Shally D/o Lalal R/o H.No. 764, Sector-77 Mohali, PB Age-27 Years and Gaurav S/o Satish Kumar R/o H.No. 2370, Sector-25/D, CHD Age-21 years. Then bogus customer told me that this boy Gaurav had struck the deal in Rs.2000 and showed 5 girls inside a room for having sex and Gaurav kept Rs.1000 out of Rs.2000 with him and gave rest of the amount to manager Shally, on which I, DSP searched Gaurav's clothes, through C. Sunil 4901/CP. On search, two Rs.500 notes numbered (1) 2UD701880 (2) 4EE143788 were recovered from right pocket of pants worn by Gaurav, which are the same numbered notes that I, DSP had given to the bogus customer. Police took possession of both the notes as evidence and recovery memo was prepared. Keeping in mind that manager Shally @Kimlia is a female, I DSP instructed L/C Manpreet Kaur and L/SI Asha Devi to take her aside and conduct search. Two Rs.500 notes numbered (1) DM015265 and (2) 4ME201572 were also recovered

from right pocket of trouser worn by her, which were same numbered notes given by me to bogus customer and taken into possession as part of evidence. At this time, WCHL Team's counsellor Vaishali Sharma along with her team member Simranjit Kaur reached the spot and after explaining the situation, she was associated in the investigation. When I, DSP started checking the Spa along with raiding party, 'busy' board was found hanging outside room no. 4 & 5 and there were total 8 rooms in the Spa. On opening Room No. 4, I DSP found that a person and a girl were in objectionable naked condition and having sex. On asking, the person disclosed his name Deepak S/o Rajkrishan R/o H.No. 1147, Sector-125, Mohali, PB Age-45 years and the girl revealed her name as 'A'. When we opened and checked Room No. 5 as well, another person was found in objectionable condition having sex with another girl. On asking, he revealed his name and address as Vijay S/o Lekhraj R/o H.No. 106, Lakkar Colony, Una, HP, Age-41 years and the girl told her name as 'B'. On further checking, 05 girls were found inside a room, outside which "Staff room" was written. On asking, they revealed their names and addresses separately, and were assigned C, D, E, F & G of English alphabets, respectively. All the five girls stated that the managers of this Spa are Gaurav & Shally, whereas, owner is Charles (Mobile Nos. 9779508819 & 9815463629), who on the pretext of getting work and job, brought them here and tricked into prostitution. The owner of this Ganga Spa, Charles, along with his managers Gaurav & Shally @ Kimlia, earns huge amount of money by promising jobs etc. to the innocent girls. They have committed an offence under Section 3, 4, 5, 6, 7 of Immoral Prevention Trafficking Act 1956 and Section 370,

120B IPC. So, case be registered against 1) Gaurav 2) Shally @ Kimlia 3) Deepak 4) Vijay 5) Charles (Owner). After that, a permanent number of the FIR be informed. I, DSP is busy in further investigation. From Ganga SPA Centre SCO No. 437, 438, 1st Floor, Sector-35, CHD Sd/- Chanranjit Singh SDPO/SW, Dt. 12.07.23 at:- 09:15 PM.”

(3) It is contended by learned counsel for the petitioner that he has been falsely implicated in the present case; petitioner was neither present at the time of alleged search; nor any incriminating material relating to him was found at the spot. Further contended that search was conducted in contravention of the provisions of Section 15(2) of the Act, as no respectable inhabitant of the locality was joined during the search. Again contended that after conducting the search, victims were never produced before the *Illaq*a Magistrate for recording their statement(s) under Section 164 Cr.P.C.; nor they were subjected to any medical examination. Further contended that petitioner is running Ganga Spa Centre since March, 2021 and there has never been any complaint by the authorities concerned in this regard. Still further contended that alleged victims have submitted their respective affidavits (P-5 to P-8) to the effect that police pressurized them for making false statements against the petitioner. Also contended that the CCTV footage and other electronic devices were taken away by the raiding party and nothing is to be recovered from the petitioner. Lastly contended that four co-accused of the petitioner have already been granted regular bail by learned Judicial Magistrate and there is no other

criminal case pending against the petitioner; hence, sending him to custody will not serve any purpose.

(4) On the other hand, learned counsel appearing for Union Territory, Chandigarh, submitted that petitioner is running the so-called Ganga Spa Centre from leased property (Mark 'X'), where illegal activities of prostitution were going on. Further submitted that petitioner is having the knowledge of everything, which is going on under the garb of Spa centre from its inception and the police has collected certain incriminating material from the spot. Also submitted that 04 (four) co-accused have already been arrested, but petitioner is the kingpin, who has lured innocent girls and using them for flesh trade while taking the benefit of their poor financial condition. Opposing the claim of petitioner regarding affidavits filed by the victims, learned counsel for the U.T. submitted that all three stamp papers were purchased by one Rohi and drafted on dotted lines, while putting pressure upon the helpless victims. He also submitted that at the time of conducting the search, an application was moved by member of the raiding party for seeking arrest of the Supervisor, Kimlia @ Shally, which was allowed by learned Judicial Magistrate First Class, Chandigarh, vide order dated 12.07.2023 and copy of the same is taken on record as Mark 'Y'. During investigation, she has stated that it is the petitioner who is running the illegal activities, whereas, she is just a Supervisor employed by him. Lastly submitted that persons like petitioner are indulging in illegal activities of flesh trade just to exploit the vulnerable poor girls from far-away places and as a result thereof,

16 similar FIRs have been registered during the last five years in Chandigarh; hence prayer of the petitioner for pre-arrest bail deserved to be rejected.

(5) Heard learned counsel for the parties and perused the paper-book.

(6) There is no quarrel that present FIR has been registered on the basis of secret information, which was found to be credible by the police. Thereafter, Women Helpline Team was called on the spot and a raid was conducted by the police party in the Spa Centre being run by the petitioner. There were total 08 rooms in the Spa Centre. On checking 'busy' board was found hanging outside room Nos.4 & 5. On opening Room No.4, one Deepak and a girl were found in objectionable naked condition and having sex. Same was the situation in Room No.5, where one Vijay was found in objectionable condition having sex with another girl. On checking "Staff room", 05 more girls were found inside. In total 04 persons were arrested from the spot, namely, Gaurav and Kimlia @ Shally, Manager & Supervisor, respectively, along with aforesaid 02 customers i.e. Deepak and Vijay. All the victims were sent to the Nari Niketan, Sector-26, Chandigarh, with the help of Women Helpline Team. During investigation, the rescued girls stated that they were brought from Jalandhar by the petitioner for doing body massage, but later on enticed into prostitution.

(7) Concededly, the premises in question was taken on lease by the petitioner on 30.04.2022, for a monthly rental of Rs.2,15,070/- and since then, he is running the aforesaid centre. Therefore, by no

stretch of imagination, it could be said that petitioner was not aware of the alleged activities going on inside the premises.

(8) Although, learned counsel for the petitioner raised the plea that search was illegal, as no one from the locality was associated; but, it is liable to be rejected in view of the fact that Women Helpline team was associated at the time of search. Therefore, there is sufficient compliance of the provisions of Section 15 of the Act by the Special Police Officer. Moreover, it would a matter of trial after leading evidence by both sides. Also noteworthy that permission to arrest co-accused Kimlia @ Shally was sought from the learned Magistrate and which was duly granted vide order dated 12.07.2023, and for reference, the same reads as under:-

*“FIR No.184 dated 12.07.2023
Under Section 3, 4, 5, 6, 7 of Prevention of Immoral
Trafficking and Section 370, 120-B IPC
Police Station Sector-36. Chandigarh*

*Present: Sub Inspector Asha Devi, Investigating Officer
An application moved by SI Asha Devi Police
Station, Sector 36, Chandigarh before me being Area
Magistrate at 11:30 PM. seeking permission to arrest lady
namely Kimlia @ Shally daughter of Lalal resident of
Ward No. 12. Kangpokli, Senapati, Manipur, 795129 who
was found working as a Supervisor in Ganga Spa, Sector-
35-C, Chandigarh being used as Brothel and found
dealing with customers and supply of girls to the
customers.*

*Following grounds for taking permission is
mentioned in the application that:-*

- 1. To get the whereabouts of the rescued girls, residents of different states. She has recruited them.*
- 2. To know the money involvement in hiring the rescued girls.*
- 3. To know about previous antecedents and records.*
- 4. To know the detail of order.*
- 5. She belongs to Manipur State.*

In view of the averments mentioned in the application, same stands allowed and police authority is directed to arrest the aforesaid accused woman. Papers be tagged with main FIR”

During investigation, aforesaid Kimlia @ Shally, Supervisor, has revealed that it is the petitioner who is running the illegal activities while alluring the innocent girls.

(9) In view of the above, this Court is of the opinion that allegations against the petitioner are serious in nature and his custodial interrogation would be necessary, to find out the true facts and *modus operandi* for all these activities. Apart that his mobile phone and bank details are also required to be verified by the police.

(10) The contention raised by learned counsel for the petitioner that all the victims have filed their affidavits, would be a matter of scrutiny before learned trial Court.

(11) In view of the above, there is no option except to dismiss the present petition.

(12) The above observations may not be construed as an expression of opinion on merits of the case; rather confined only to decide the present bail matter.

(13) Before parting with this order, it is necessary to observe that as per the information supplied by learned counsel for the Union Territory, there are total 71 Spa Centres being run in the U.T. Chandigarh. As already noticed, from 2018 uptill now, 16 cases have been registered under the Act, including 05 cases during 2023. Despite that, there are no rules/regulations/guidelines for operating such Spa centres in the U.T. Chandigarh. It is pertinent to mention here that Government of National Capital Territory of Delhi, Home Department, has framed guidelines for operation of Spa/Massage Centres in Delhi, circulated vide memo dated 18.08.2021 for operating Spa centres and relevant part of the same reads as under:-

“GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
HOME DEPARTMENT. LEVEL-5, 'C' WING
DELHI SECRETARIAT: I.P.ESTATE:NEW DELHI-110 002

GUIDELINES FOR OPERATION OF SPA/MASSAGE CENTRES
IN DELHI

The following Guidelines are, hereby, prescribed for issue of Health Trade Licence and operation of Spa/Massage centres in Delhi:

1. DEFINITIONS

- (a) 'Licence' means the licence issued by the Competent Authority on behalf of the local body after conducting necessary inspections;

- (b) *'Manager' means the owner or any person having control of administration and management of a Spa/ Massage centres and/or of the persons working or employed therein;*
- (c) *'Massage' means any method of treatment of the body for remedial or hygienic purpose including rubbing, stroking, pressing or kneading with the hands, feet or by any mechanical or electrical apparatus or appliances or supplementary aids such as antiseptic oils, powder, cream, lotion or other similar preparation used in this practice;*
- (d) *'Massage centre' means an establishment or premises by whatever name be known providing massage or any other like service. However, these guidelines for operation of SPA/Massage centre in Delhi shall not be applicable for the Massage or Physio-centres operated by all the Government/private hospitals and the hospitals of autonomous bodies or any other state-run therapeutic centres;*
- (e) *'Masseur/therapist' means a person employed by manager for providing massage or other services in a Spa/ Massage centres and having recognized qualifications,*
- (f) *'Spa' means a resort/establishment providing therapeutic bath, a resort area having mineral springs, a fashionable hotel, or resort or health Spa, a tub for relaxation or invigoration; including a device for raising whirlpools in the water.*

2. MANDATORY CONDITIONS FOR OBTAINING LICENCE

- (a) *Engaging in any form of sexual activity in the premises of the Spa/ Massage centre is totally prohibited.*
- (b) *Cross-gender massage shall not be allowed in Spa/Massage centres. Provision for male masseur for*

massage of males and female masseur for massage of females shall be made.

- (c) Male and female Spa centers shall be in different sections of the premises and clearly demarcated with separate entry and no inter-connection.*
- (d) The Spa/ Massage centre services shall not be provided behind locked doors. There shall be no latchet and bolt inside the doors of SPA/Massage Centre chambers. There shall be provision of self-closing doors.*
- (e) The external doors of the massage/spa establishment shall be kept open during working hours.*
- (f) Mandatory provision for production of ID cards of all customers shall be ensured and proper register containing their contact details including phone numbers and ID proof shall be maintained.*
- (g) The Spa/ Massage centres can remain open only between 9 am to 9 pm.*
- (h) Proper lighting facilities shall be provided in each room or enclosure.*
- (i) The Spa/ Massage centre shall have separate toilet & bathroom for males and females with proper drainage system.*
- (j) The Spa/ Massage centre shall have separate changing rooms for males and females.*
- (k) The premises shall not be used for residential purposes nor it shall communicate with any residential portion of the premises, if any.*
- (l) The Spa/Massage Centre shall ensure cleaning of the premises by employment of employees necessary for cleaning /Housekeeping work etc.*
- (m) Each masseur / masseuse employed at the centre shall possess a degree / diploma / certificate in physiotherapy / acupressure or occupational therapy.*

- (n) *The details of all employees including housekeeping staff shall be maintained in a register.*
- (o) *All employees shall wear ID card issued by the employer and displayed while they working.*
- (p) *All employees for this trade shall be at least 18 years of age.*
- (q) *Local Body shall obtain the Police verification of the Owner/Manager of Spa/Massage Centre before issuing Health Trade License to the Spa/Massage Centre along with premises verification.*
- (r) *There should be no criminal cases pending and no involvement in the Criminal action related to The Immoral Traffic (Prevention) Act, The Protection of Children from Sexual Offences Act or any case of nature of sexual crime registered against any employee of the Spa/Massage Centre. The Owner/Manager of the Spa/Massage centre shall obtain Police Clearance Certificate(PCC) before engagement of any person in employment at the Centre.*
- (s) *The Spa/massage centre shall not violate any laws in force especially the Immoral Traffic (Prevention) Act and shall abide by all the applicable laws, rules and guidelines.*
- (t) *The name, licence number, details of licence, working hours of each centre shall be displayed in the premises or building in a manner clearly visible from outside.*
- (u) *Details of licensee, manager, employees, working hours of services, types of massages or services available including fees fixed for each items thereof shall be also displayed prominently.*
- (v) *Display Boards in both English and Hindi shall be displayed at appropriate place at the reception containing the following information-*
 - i. *Site plan of the premises.*

- ii. *Number of beds category-wise for male and female.*
 - iii. *Details of the employees containing their designation and qualification.*
 - iv. *Helpline numbers for customers i.e. 112 & 181.*
 - v. *Declaration stating that "The spa/massage centre is for spa/massage purpose only. If any customer/ employee/ employer is found involved in any activity related to prostitution, then legal action as per the Immoral Traffic (Prevention) Act and/or any other law will be taken against them. The same can be reported by calling at 112 & 181.*
- (w) *CCTV cameras with recording facility shall be installed at Entrance, reception and common areas of the centre. Recording must be retained for at least three months.*
- (x) *Internal complaint committee under the Prevention of Sexual Harassment of Women at Work Place Act shall be established in the centre where more than 10 employees are working. The existence of such Committee should be displayed at a prominent location. Reports as per law should be sent to the concerned authorities.*
- (y) *COVID appropriate behaviour shall be adhered by the Spa/Massage Centres as prescribed by the Ministry of Health & Family Welfare, Government of India from time to time. The Spa/Massage Centres must also abide by the directions of Hon'ble High Court of Delhi in the matter W.P.(C) 6555/2020 and W.P.(C).7366/2020.*
- (z) *An undertaking/declaration shall be submitted in the form of an Affidavit (as per Annexure) along with the application for obtaining health trade licence for complying with all the above conditions.*

3. INSPECTION AND ENFORCEMENT

- a) *The health trade licence shall be issued by the local body only after inspection of the premises.*
- b) *The health officials, police officers and other concerned authorities shall have the authority to inspect the premises, licence, registers/all records of the Spa/Massage centres to verify the compliance with the above conditions or on suspicion of commission of any offence by the licensee/ employees related to any law in force.*
- c) *In case of any violation of the guidelines, penal action shall be taken as per the applicable laws of concerned Local Body.*
- d) *In case of any criminal activity by the Spa/Massage Centre, action as per law shall be taken by the Police.”*

(14) Keeping in view the fact that cases under the Act are growing in U.T. Chandigarh; therefore, in order to curb this menace, there would be no harm if the authorities may think about the similar guidelines for the City Beautiful.

(15) Ordered accordingly.

09.08.2023
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(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/ reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether reportable</i>	:	<i>Yes</i>	/	<i>No</i>