

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1873 OF 2024

Dnyaneshwar Rajabhau Bhosale. ...Applicant

Versus

State of Maharashtra. ...Respondent

Mr. Abhijit Kulkarni a/w. Mr. Chinmay Patil, for Applicant.

Mr. Kiran C. Shinde, APP for Respondent-State.

Mr. Bajrang Salunkhe, PI, AHTU Cell, Solapur Gramin.

CORAM: MANISH PITALE, J

DATED: 22nd OCTOBER 2024

PC:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. In this application, by an order dated 1.8.2024, this Court had granted interim relief in favour of the applicant, primarily on the submission made on behalf of the applicant in the context of the Section

3(2-A) of the Immoral Traffic (Prevention) Act, 1956 (PITA).

3. The present application has been filed in the context of FIR No. 0043 of 2024 dated 17.02.2024 registered at Barshi Taluka Police Station, District-Solapur for offence under section 370(2) of the Indian Penal Code(IPC) and Sections 3, 4, 5 and 6 of the PITA.

4. When the application was listed on 14.10.2024, learned APP had brought to the notice of this Court that a subsequent FIR dated 11.09.2024 has been registered in respect of the very same premises on identical allegations pertaining to activities of prostitution being undertaken. In that light, this Court had directed the investigation papers pertaining to the subject FIR and also the subsequent FIR to be kept ready for perusal of this Court. Hearing of the application was adjourned to today.

5. Accordingly, the investigation papers pertaining to both the FIRs were produced by the learned APP. Reliance was placed on the statements of witnesses(victims) recorded during the course of investigation of the subsequent FIR to contend that the role of the applicant is evident and that being licensee of the premises in question, he has continued with the activity of prostitution along with the co-accused person i.e. manager of the lodge being run in the said premises, thereby indicating that no indulgence should be shown to the applicant.

6. Learned Counsel for the applicant reiterated the contentions raised before this Court in the context of Section 3(2-A) of PITA when the interim order dated 1.8.2024 was passed in favour of the applicant. It is submitted that the specific requirements of the said provision are admittedly not satisfied in the present case and hence there cannot be any presumption of knowledge on the part of the applicant as the licensee of the premises, that the co-accused person i.e. the manager taking care of the lodge being run in the premises was facilitating prostitution.

7. It was further submitted that the registration of the subsequent FIR dated 11.9.2024 is of no consequence for the simple reason that the FIR shows only the said manager as an accused person. It was further submitted that despite the initial FIR, with which the present application is concerned being registered on 17.02.2024, the Magistrate took no steps under section 18 for closure of the premises. In such proceedings, the applicant as a licensee would have had opportunity respond to the allegations. Even the police did not take any steps to close down the said premises and registration of the subsequent FIR is nothing but an indication of the *malafide* manner of the police proceedings against the applicant in the facts and circumstances of the present case. It is highlighted that during the course of investigation concerning the FIR dated 17.02.2024, victim girls/women in their statements did not even name the applicant at all. On this basis, it is submitted that this Court may consider confirming the interim order

and allowing present application.

8. On the other hand, the learned APP submitted that during the course of investigation, it has come to light that as far as back as on 28.11.2022, the Sarpanch of the grampanchayat within whose jurisdiction the premises are located had specifically sent a communication to the In-charge of the concerned police station about the activities of prostitution being openly undertaken in the said premises. It is submitted that a resolution of the gram panchayat was also referred to in the said communication. Thereafter, on raid being conducted the subject FIR dated 17.02.2024 was registered. The manager appointed by the applicant for the lodge being run in the said premises was arrested. It is submitted that the said activity being continued with impunity subsequently is a factor that cannot be ignored by this Court.

9. In that context, reference was made to the subsequent FIR dated 11.9.2024 bearing FIR No. 0296 of 2024. It was submitted that when the co-accused person, i.e. manager of the lodge being run in the premises, was granted regular bail, he went back to the premises and the aforesaid activity of prostitution was continued with impunity. It cannot be said that the applicant never had any knowledge of such activity. In the statements recorded during the course of investigation, pertaining to the subsequent FIR dated 11.9.2024 all victim girls/women have specifically named the applicant and his role as regards the premises and

the manner in which the activity of prostitution was being undertaken. It is submitted that in these circumstances, the applicant cannot take shelter of section 3(2-A) read with section 18 of PITA to pray for relief in the present application. On this basis, it is submitted that the application deserves to be dismissed.

10. This Court has considered rival submissions in the light of the material made available to this Court. The specific contention raised in the context of section 3(2-A) of PITA was referred to and relied upon while granting interim relief in favour of the applicant by order dated 1.8.2024. Perusal of the said provision shows that for the offence under subsection 2 of Section 3, concerning a licensee or tenant of particular premises allegedly being used as brothel, a presumption can arise in the context of said licensee of the premises about knowledge of such use if two specific contingencies specified in section 3(2-A) of PITA are satisfied.

11. There is no material to indicate that the two contingencies specified in the aforesaid provision have been satisfied. On this basis, it is vehemently submitted on behalf of the applicant that as there cannot be a presumption of knowledge on the part of the applicant, the question of offence being committed under section 3 of the PITA does not arise. In this context, as also with reference to the subsequent FIR dated 11.9.2024, specific contention is that since action for closure of the premises was not undertaken by the Magistrate under section 18 of

the PITA, the subsequent FIR can be said to be wholly irrelevant.

12. This Court has given thoughtful consideration to the aforesaid submissions in the light of the material brought to the notice of this court in the form of investigation papers pertaining to both the FIRs.

13. While considering the said material, this Court cannot be oblivious of the object of the PITA as stated in the Statement of Objects and Reasons pertaining to the said Statute. The purpose of the PITA is to ensure that such reprehensible activity of prostitution is curbed and controlled. The provisions of the said Act are intended to ensure that such immoral activity is not permitted in any manner from any premises.

14. It is to be noted that the grampanchayat, in whose jurisdiction the premises in question are located, through its sarpanch after referring to the resolution of the grampanchayat had specifically written to the concerned police station on 28.11.2023, that activity of prostitution was being carried out in the said premises openly and without any impediment. It was also indicated that girls attending the local college were also induced into the said activity in the said premises. This obviously is a very serious allegation and it appears that in this backdrop, a raid was conducted which led to the registration of the subject FIR on 17.2.2024. In the light of the applicant being arraigned as an accused, he moved an application for anticipatory bail which was rejected by the Sessions Court. There can be no doubt about the fact that

mere allegation regarding the premises being used for such activity cannot *ipso fact* lead to coercive action being taken against accused persons, particularly when the accused persons fit into the definition of a licensee of the premises who have limited protection under section 3(2-A) of the PITA. Perusal of the aforesaid provision does show that if the two contingencies contemplated in the said provision are satisfied, presumption arise against such licensee of the premises. This Court is of the opinion that in the absence of aforesaid contingencies, even if the presumption may not arises in the facts of the present case, would it mean that the Court is completely deprived of power to look at the investigation papers to see as to whether the premises in question were indeed being used for such activity and whether any criminality could be attributed to an accused person in the position of the applicant before the Court.

15. The fact that the co-accused, upon being released on regular bail, was again found working as manager of the said lodge and the activity of prostitution allegedly continuing in the said premises leading to the registration of second FIR dated 11.9.2024, cannot be ignored. It clearly has an impact on the contentions being raised in the application and the relief sought by the applicant. A perusal of the subsequent FIR shows that although only the co-accused person i.e. manager has been shown as an accused in the said FIR, the statement leading to registration of the said FIR specifically names the applicant and describes his role. Besides, the statements recorded during the course of

investigation of the victim/girls/women, bring out the extent of involvement of the applicant as regards the said premises.

16. In this situation, the applicant cannot be heard to say that since the Magistrate failed to take necessary steps under section 18 of the PITA for closure of the brothel in the said premises, the failure of the Magistrate ought to enure to the benefit of the applicant. It cannot be forgotten that in this application the Court is considering a prayer for grant of anticipatory bail, which is a discretionary relief to be granted by the Court.

17. The nature of submissions being made on behalf of the applicant on the basis of the provisions of PITA appear to be technical in nature, although it is asserted that the protection available to the applicant under the provisions of PITA itself demonstrates that this Court cannot proceed on a presumption of involvement of applicant in the said activities.

18. But, on perusal of the investigation papers pertaining to both the FIRs, in the backdrop of which the premises was raided gives an impression to this Court about the involvement of the applicant in the present case. A *prima facie* case appears to have been made out against the applicant and in such circumstances, considering the serious nature of offences registered in the present FIR, it would not be appropriate to grant protection of discretionary relief pertaining to anticipatory bail to

the applicant.

19. In view of the above, the application is dismissed. The interim order stands vacated.

20. Needless to say, all observations made in this order are limited to deciding the application for anticipatory bail. The observations made in this order with respect to the subsequent FIR are in the context of considering the question as to whether the present application can be granted or not.

21. At this stage, learned Counsel for the applicant prayed for continuing the interim order. Considering the reasons given herein above and in facts and circumstances of the present case, no case is made out for continuing the interim relief.

22. The prayer is rejected.

(MANISH PITALE,J.)

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