

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

ANTICIPATORY BAIL APPLICATION NO. 594 OF 2024

Manojkumar Sohar Yadav

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr. Prabhanjay R. Dave for Applicant.

Ms. Rajeshree V. Newton, APP for State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 4 MARCH 2024

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 387 of 2023, registered at Arnala Police Station, under Sections 366-A, 370(1) and 370(3) r/w. 34 of the Indian Penal Code, under sections 3, 4 and 5 of the The Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as 'said Act'), under sections 3, 6 and 12 of the Indian Passports Act and under section 14 of the Foreigners Act.

2. Heard Mr. Prabhanjay Dave, learned counsel for the applicant and Ms. Rajeshree Newton, learned APP for the State.

3. The F.I.R. is lodged by the Woman Police constable Patil on 08.12.2023. She was working in the Immoral Human Traffic Prevention Unit, Nalasopara. On 08.12.2023, at around 9:00a.m. the Police Inspector Chaudhary received a secret information that one Ashok Das was taking money and was supplying girls for prostitution. The police party arranged to conduct raid. One Mohammad Rafiq Asgar Hotti was brought as a bogus customer. He was given two currency notes of Rs.500/- and other fake currency notes. They were kept in a bundle purporting to be amount of Rs.11000/-. The bogus customer called Ashok Das's mobile number and asked for a girl for prostitution. The raiding party started from Nalasopara and went to the building mentioned in the information at Virar (West). It was alleged that the bogus customer would give a missed call after the money was paid by him and after Das brought that girl to him. After receiving the missed call, the raiding party went to the building and then to that particular room where the bogus customer was present with one of the victims. The police conducted search. They made enquiries with the victim. She told the police party as to how

Ashok Das was responsible for her coming to Mumbai. She was originally from Bangladesh. Ashok Das had arranged for her illegal travel from Bangladesh to India. She came to Howrah and met Ashok Das. Both of them came together in Mumbai. He brought her to a room in Virar. He used to bring customers willing to pay money. The raiding party found genuine currency notes and fake currency notes accepted by Ashok Das. On this basis the F.I.R. is lodged.

4. Learned counsel for the applicant submitted that the applicant's name is not mentioned in the F.I.R. The entire offence is committed by Ashok Das. The victims are not Indian citizens and they have illegally entered India. They are liable to be prosecuted under the various provisions for entering India without valid documents. They cannot be permitted to stay in India without valid passport and other documents. He submitted that, in fact, those victims are the offenders under the Passports Act and Foreigner's Act. He submitted that, just to divert the allegations against them, the alleged victims have named the present applicant. He submitted that, except Section 5, other sections of

the said Act are bailable. At the highest, Section 4 of the said Act is attracted against the present applicant; which is a bailable offence. Section 5 of the said Act is not applicable at all. He further submitted that, Section 370 of the I.P.C. is also not applicable. The victim was a major and she had willingly submitted herself in this business and was earning money. She was not forced or coerced. Therefore, Section 370 of the IPC is not made out. The other accused are already granted regular bail and, therefore, the applicant deserves protection U/s.438 of the Cr.p.c.

5. Learned APP opposed these submissions. She relied on the statements of the victims recorded U/s.164 of the Cr.p.c., as well as, recorded U/s.161 of the Cr.p.c. She submitted that all these serious offences are made out against the applicant. His custodial interrogation is necessary to find out the other victims and to bust the racket conducted by him. She submitted that the offences are serious and, therefore, no protection can be granted to the applicant.

6. I have considered these submissions. There are

statements of three victims namely 'M', 'S' and 'B'. The victim 'M' has stated that, she was 17 years of age. Though, the investigating agency has now filed a medical report which shows that she was between 18 to 20 years. However, such report gives estimated approximate age. Therefore, this angle of applicability or otherwise of the provisions of the Protection of Children from Sexual Offences Act (for short 'POCSO Act'), needs serious consideration by the investigating agency in serious cases. As of today, since the provisions of POCSO Act are not applicable in the present case, I am restricting my observations to the offences which are now applied.

7. The victim 'M' has stated that, she was a resident of Bangladesh. She was in need of money. At that time, her friend gave the mobile number of Ashok Das. She called Ashok Das. He told her that, she could come to Mumbai and she could earn Rs.60000/-p.m. through prostitution. 'M' consented to that proposal. She was brought to India illegally. Her forged Aadhar card was prepared. After that, Ashok Das brought her from Kolkata to Virar and kept her in his room. From that point onwards, he used

to bring different men to that room. She has stated that, Ashok Das had kept other victims also at Nalasopara.

8. The statement of victim 'S' mentions that, she was around 23 years of age. She was also brought to India illegally from Bangladesh. A forged Aadhar card was prepared. Ashok Das brought her from Kolkata to Nalasopara. Then he took the victim 'S' to Grant Road where she met the present applicant. It is further stated by her, that the applicant kept her at Grant Road. The applicant and one Basu used to take money. After a few days, Ashok Das brought her to Nalasopara. The statement of victim 'B' is similar. She has also specifically named the present applicant.

9. There are statements recorded U/s.164 of the Cr.p.c. of all these three victims. The victim 'S' has stated that, she was forced to undergo that ordeal and Ashok Das and others were not listening to her. The victim 'M' has stated that Ashok had promised to give a good job whereby she could earn Rs.60000/- p.m. These two statements show that both these victims were reluctantly brought in this racket of prostitution. From these

statements, the involvement of the present applicant is clearly made out.

10. Section 5 of the said Act reads thus:

“5. Procuring, inducing or taking a person for the sake of prostitution

(1) Any person who-

(a) procures or attempts to procure a person, whether with or without her consent, for the purpose of prostitution; or

(b) induces a person to go from any place, with the intent that she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to her carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-Section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-Section,-

(i) is a child, the punishment provided under this sub-Section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-Section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

(3) An offence under this Section shall be triable-

(a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

11. It is important to note that, Ashok Das, the present applicant and the others were acting together, therefore, their roles cannot be separated at this stage. Apart from that, the applicant himself was earning money by exploiting these victims. His individual role clearly falls within the section 5(1)(d) of the said Act. It is a non bailable offence. Thus, the applicant has committed a non bailable offence.

12. Apart from that, there are more serious allegations

U/s.370 of the I.P.C. The said section reads thus:

“Section 370 - Trafficking of a Person

(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by--

First.-- using threats, or

Secondly.-- using force, or any other form of coercion, or

Thirdly.-- by abduction, or

Fourthly.-- by practising fraud, or deception, or

Fifthly-- by abuse of power, or

Sixthly.-- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1. – The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.--The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

13. The main ingredient of Section 370 of the I.P.C. are the words 'exploitation', 'recruits' and 'harbours'. The category Sixthly is also important which includes inducement, including the giving or receiving of payments or benefits, in order to achieve the

consent of any person. Explanation 1 mentions expression 'exploitation' which includes any act of physical exploitation or any form of sexual exploitation. Explanation 2 is more important. It says consent of the victim is immaterial in determination of the offence of trafficking.

14. The acts of the present applicant falls in all these categories. Therefore, from the material available, even Section 370 of the I.P.C. is attracted against the present applicant.

15. Learned counsel for the applicant relied on the observations of a single Judge bench of this Court in A.B.A.No.1905 of 2023, decided on 18.07.2023. In that case, the victims had not supported the prosecution case and had denied that they were forced into prostitution. On that ground alone the accused were protected. However, there was no discussion on the ingredients of Section 370 of the I.P.C. and Section 5 of the said Act. The facts of the present case are different.

16. In this view of the matter, the applicant's custodial interrogation is necessary to find out and rescue the other victims

and also to find out his involvement in other similar offence. In any case, considering the gravity of the offence, the applicant cannot be protected U/s.438 of the Cr.p.c.

17. The application is rejected.

(SARANG V. KOTWAL, J.)