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

BAIL APPLICATION NO.2629 OF 2023

MOHAMMAD WASIM NIJAMUDDIN SHAIKH ..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Arun Rajput a/w Adv. Tohid Shaikh i/b. Adv. Anjali Patil
for the applicant.

Mr. B. B. Kulkarni, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : MARCH 11, 2024

P.C. :

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

2. This is an application for bail in respect of the offence
punishable under Sections 366-A, 370(3), 372 and 34 of
the Indian Penal Code (hereafter 'IPC' for short), under
Sections 3, 4, 5, 7 of Immoral Traffic (Prevention) Act
(hereafter 'PITA Act' for short) and under Sections 17, 18 of
the Protection of Children from Sexual Offences Act, 2012
(hereafter "POCSO Act", for short) registered on 05.10.2022
vide C.R. No.441 of 2022 with Nalasopara Police Station.

3. By an order dated 01.09.2023 passed in Bail Application No.243 of 2023 the owner of the spa where the offence is alleged to have taken place has been enlarged on bail. The relevant portion of the order dated 01.09.2023 reads thus :-

"2. This is an application for bail in respect of the offence punishable under Sections 366-A, 370 (3) read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 17 and 18 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) read with Section 3, 4, 5, 7 of the Immoral Traffic (Prevention) Act, 1956 (hereafter 'PITA Act' for short) registered on 5/10/2022 vide C.R. No.441/2022 with Nalasopara Police Station.

3. The decoy customer of the raiding party contacted the accused no.1 who was the Manager of the 'Spa'. It is alleged that the accused are indulging in the act which is an offence punishable under the aforesaid sections. The three victims were found in the Spa when the raid was conducted. One of the victim is a minor.

4. The application is opposed by learned APP. Learned APP invited my attention to the materials on record which include the whats-app chats between the decoy customer and the accused no.1.

5. The applicant is accused no.2, who is the owner of the premises. The applicant was not present when the raid took place. It is the case of the prosecution that the applicant is actively involved in the racket.

6. The statement of the victim under Section 164 of the Code of Criminal Procedure, prima facie, does not reveal the complicity of the applicant. The victims say that they had gone there to avail the services at saloon. One of the victim stated that she is the employee working in the saloon.

7. The applicant was arrested on 4/10/2022 and is in custody for more than 10 months with no possibility of the

trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. In my opinion, the applicant does not appear to be a flight risk. In the facts and circumstances of the present case, the applicant can be enlarged on bail."

4. Learned APP opposed the application for bail. Learned APP invited my attention to the whatsapp chats from page No.63 onwards between the present applicant and the decoy customer. The applicant was present at the time when the raid was conducted. It is submitted that the applicant was indulging in activities which constitute an offence under the aforesaid sections.

5. Learned APP raised an objection that one of the victim who is a minor will have to be heard. Reading of the statement of the victim recorded under Section 164 of the Code of Criminal Procedure indicates that she was present as a customer for availing the facility of the spa at the time of raid. I therefore proceeded to decide the application.

6. The applicant was arrested on 4.10.2022. He is in custody for more than sixteen months. There are no criminal antecedents reported against the applicant. The

statements of the victims recorded under Section 164 of the Code of Criminal Procedure prima facie do not reveal the complicity of the applicant. The victims say that they had gone there to avail the services at the spa. One of the victim stated that she is an employee working in the spa. The applicant was working as a manager of the spa. The owner of the spa is enlarged on bail. The investigation is complete and the charge-sheet has been filed. The applicant is in custody for more than a year and five months. The applicant does not appear to be a flight risk. In the facts and circumstances of the present case I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Mohammad Wasim Nijamuddin Shaikh in connection with C.R. No.441 of 2022 registered with Nalasopara Police Station shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Nalasopara Police Station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

7. The application is disposed of.

(M. S. KARNIK, J.)