

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1373 OF 2023

Manoj Ritu Yadav	...Applicant
vs.	
The State of Maharashtra and Another	...Respondents

Mr. P. R. Dave, for the Applicant.
Mr. Y.M. Nakhwa, APP, for the Respondent/State.
Ms. Priyanka Chavan, for Respondent No. 2.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 25 2024

P.C.:

1. The applicant who is arraigned in C.R. No. 388 of 2021 registered with APMC police station for the offences punishable under sections 370 read with 34 of Indian Penal Code, 1860 and sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (PITA Act, 1956) seeks to be enlarged on bail.

2. Pursuant to an intimation the police party laid a trap. A decoy customer was sent at Sagar Krupa Lodging and Boarding. Two victims, the respondent No. 2, then 17 years of age, and another 33 year old woman, were allegedly found having been forced into prostitution. Ratnakar Shetty, the owner of the lodge, Vinay Yadav, the manager, and the applicant who were then working as a waiter and Serful Mirza, the tout, have been thus prosecuted for the

offences punishable under sections 370 read with 34 of the Penal Code and sections 3, 4 and 5 of PITA Act, 1956.

3. I have heard Mr. P. R. Dave, learned counsel for the applicant, Mr. Y.M. Nakhwa, learned APP, for the State and Ms. Priyanka Chavan, learned counsel who was appointed to espouse the cause of respondent No. 2.

4. Mr. Dave, the learned counsel for the applicant, submitted that Ratnakar Shetty, the owner of the lodge has been released on bail by this Court by an order dated 17th February, 2023. The manager of lodge Vinay Yadav was given a notice under section 41A (1) of the Code of Criminal Procedure, 1973. He was not arrested. The investigating officer has reported that he is not traceable. However, the applicant who was working a waiter has been incarcerated since 31st October, 2021. Even otherwise, the respondent No. 2 victim has not implicated the applicant in her statement recorded under section 164 of the Code before the learned Magistrate. Therefore, the applicant deserves to be released on bail.

5. The learned APP, on the other hand, submitted that the victim

had stated that the applicant used to call her to the lodge and indulge in prostitution. On the day of the raid also, the applicant had shown the photographs of the victim and thereafter called the victim at the hotel. Therefore, the applicant can not claim that he was working as a waiter only.

6. Ms. Chavan, learned counsel for respondent No. 2, submitted that since the victim was minor, the question as to whether the victim was voluntarily indulging in the alleged acts is of no significance. In any event, under section 370 of the Code the consent of the victim is immaterial in determination of the question of trafficking. Therefore, the applicant does not deserve to be enlarged on bail.

7. I have perused the report under section 173 of the Code and the documents annexed with it. The situation which obtains is that the owner of the lodge is released by this Court by an order dated 17th February, 2023. It is the case of the prosecution that the co-accused Vinay Yadav, the manager of the lodge, though apprehended at the time of the alleged raid yet, was not arrested and a notice under section 41A(1) of the Code was given to Vinay Yadav. It is pertinent to note that the prosecution alleges that the

manager of the lodge has accepted the money from the decoy customer and had sent the decoy customer to the room. The victim had also stated that the owner, manager and the waiter of the lodge were making her to indulge in the acts and living on the earnings of the prostitution. Prima facie, I do not find any significant qualitative difference between the roles attributed to the applicant and the co-accused Ratnakar Shetty, the owner of the lodge, and Vinay Yadav, the manager, especially the latter who was very much present at the scene of occurrence and accepted the cash from decoy customer and directed him to the room.

8. In the context of the nature of the accusation, I do not deem it appropriate to delve into the question as to whether the victim was allegedly indulging in the act on her own. Nonetheless, the victim had disowned a substantial part of the prosecution version in her statement recorded under section 164 of the Code. The Court is informed that the victim is not traceable.

9. In the aforesaid view of the matter, as the applicant is in custody since 30th October, 2021 and it is unlikely that the trial can be concluded within a reasonable period, further detention of the applicant does not seem warranted. I am, thus, inclined to exercise

the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No. 388 of 2021 registered with APMC police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at APMC police station on the first Monday of every alternate month in between 11 am to 1 pm till conclusion of the trial.
- 4] The applicant shall not indulge in the identical activities for which he has been arraigned in this case.
- 5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 6] 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 applicant shall regularly attend the proceedings before the jurisdictional Court.
- 8] By way of abundant caution, it is clarified that the

observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)