



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2105 OF 2023**

Tausif Javed Khan	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Shaikh Mohsin Mohammed Umar, for Applicant.
Mrs. Supriya Kak, APP for State.
Mr. Mohd. Tausif Khan, for Intervener.
PSI Narendra Kashinath Kore, Nayanagar Police Station present.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 15 APRIL 2024
PRONOUNCED ON : 9 MAY 2024**

P.C.

1. The applicant, who is arraigned in C.R.No.126 of 2023, registered with Nayanagar Police Station for the offences punishable under Sections 366A, 370A, 370A(2) and 372 of the Indian Penal Code and Sections, 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and Sections 17 and 18 of the Prevention of Children from Sexual Offences Act, 2012, has preferred this application to enlarge him on bail.

2. On 22 February 2023, at about 4.40 p.m., pursuant to an intimation, Anti Human Trafficking Cell Police, Bhayander, conducted a raid at Soft Touch Spa and Saloon, Nayanagar, Mira Road. A decoy customer was sent with the currency notes. The applicant and co-accused Gopal Kumar were found in the said Spa. The applicant allegedly accepted an amount of Rs.3,000/- from the decoy customer to provide services of a girl. Upon intimation, police party entered the said spa. Two

victims, one of whom was a minor, were found and rescued.

3. During the course of investigation, it transpired that, disguised as spa, Hina Qureshi, the owner of the said spa, the absconding accused, the applicant and co-accused Gopal Kumar, were running a brothel and living on the earnings of prostitution. The applicant came to be arrested on 23 February 2023.

4. Learned Counsel for the Applicant submitted that the applicant was not the person who was running the said spa. He was an employee. The allegations are against Hina Qureshi, who was running the said spa. Even otherwise, the offences punishable under Sections 370A and 3, 4 and 5 of PITA and Sections 17 and 18 of POCSO Act, are not prima facie made out. It was submitted that the medico legal examination report of the victim, and the statements of the victims recorded before the learned Magistrate do not substantiate the prosecution case fully. Since the investigation is complete and the applicant has been in custody since one year, the applicant be enlarged on bail.

5. As against this, Mrs. Kak, learned APP for the State, resisted the prayer for bail. It was submitted that out of two victims, the minor victim has categorically stated that the applicant and co-accused exploited her. She was coerced to render services to the customers, which amounted to sexual exploitation. Moreover, as there is material in the form of whatsapp communications and calls which show the complicity of the applicant, he does not deserve to be enlarged on bail.

6. The gravamen of indictment against the applicant and co-accused is that disguised as Spa, where massage services were rendered, the applicant and co-accused were running a brothel by making the victims render services to the customers which constituted sexual exploitation. The applicant was allegedly found in the Spa, and an amount of Rs.3000/- was accepted by the applicant. A decoy customer states that out of the said amount, Rs.1500/- was accepted towards massage charges and the balance of Rs.1,500/- was towards the charges for sex work.

7. In the backdrop of the aforesaid accusation, the statements of the victims recorded under Section 164 of the Code before the learned Magistrate, deserve consideration. The major victim declined to subscribe to the prosecution version. She simply stated that she was working as a masseur in the said establishment and the applicant had asked her to attend to a client and after a while, the police party conducted a raid.

8. The minor victim, who was then 17 years of age, however, stated that she had joined the said establishment to work as a beautician. She was asked to render massage services. The wife of the proprietor of the said establishment had taught her how to render such massage services. The minor victim stated that the wife of the applicant asked her to satisfy the sexual needs of the customers. When she declined, she was forced to do the said work. On the day of the raid, when a decoy customer came to the spa, the applicant asked her to render the services. She declined. Yet the

applicant forced her to render those services. In the meanwhile, the police party conducted the raid.

9. It would be contextually relevant to note that in the history narrated before the medical officer, the minor victim has categorically stated that the applicant and Heena Qureshi were forcing her to give extra services in the nature of sex work. However, she had not rendered such services. There was no mental harassment or physical or sexual assault by anyone.

10. The aforesaid material, prima facie, indicates that the aspect as to whether the minor victim was forced to indulge in sexual acts, would be a matter for adjudication at the trial. At this stage, it appears that the role attributed to the applicant is that of forcing the victim to render services to the customers, which would amount to sexual exploitation. The acts attributed to the applicant, prima facie, appear to be in the nature of attempt to force the victim into those acts. Moreover, in the statement under Section 164 of the Code, it appears the role of forcing the victim into such acts, was primarily attributed to co-accused Heena Qureshi.

11. In any event, the investigation seems to be practically complete. The applicant has been in custody for one year. Further detention of the applicant does not seem warranted. It does not appear that the applicant has antecedents. I am, therefore, persuaded to release the applicant on bail.

12. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Tausif Javed Khan be released on bail in C.R.No.126 of 2023 registered with Nayanagar Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (iii) The applicant shall mark his presence before Nayanagar Police Station on first Monday of every month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. 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.
- (v) The applicant shall not indulge in identical activity for which he has been arraigned in this case.
- (vi) 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.
- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(viii) 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.)