

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2586 OF 2023

Radha Chandu Patel ...Applicant
vs.
The State of Maharashtra and Another ...Respondents

Mr. Arjun Lingalod, for the Applicant.
Ms. Supriya Kak, APP, for the Respondent/State.
Ms. B. Sharada, for Respondent No. 2.
Mr. Sawant, PSI, Goregaon police station.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 24, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant who is arraigned in C.R. No. 87 of 2023 registered with Goregaon police station for the offences punishable under sections 370A, 370(3), 372 read with 34 of Indian Penal Code, 1860; sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956; sections 13, 16, 17 and 18 of the Protection of Children from Sexual Offences Act, 2012 and sections 81 and 87 of the Juvenile Justice (Care and Protection of Children) Act, 2015 seeks to be enlarged on bail.
3. On 5th February, 2023 the Anti Human Trafficking Cell received an information that the applicant was running a brothel at R.No. 724, 7th Floor, B.No. P/2, MMRDA Colony, Goregaon (w) and was living on the earnings of prostitution. A decoy customer was

arranged. The decoy customer called the applicant on her cell phone No. xxxxxxxx917, from the decoy customer's number, xxxxxxxx611. The applicant allegedly forwarded the photographs of two girls, including a child, and the amount which the customer was required to pay. As agreed, the decoy customer reached R.No. 724 along with currency notes of Rs. 3,000/- of which descriptions were noted. Two victims including a child, who was then 17 years and 11 months of age, were in the said room along with the applicant. After the applicant accepted a sum of Rs. 3,000/-, the police party conducted a raid. Two victims, including the child, were found along with the decoy customer and the applicant. The latter was allegedly found in possession of the very same currency notes of Rs. 3,000/-. The applicant came to be arrested.

4. Mr. Lingalod, the learned counsel for the applicant, invited attention of the Court to the statements of the victims to bolster up the submission that there is no material to show that the victims were forced into sex work. On the contrary, the victims have stated that they had visited the house of the applicant as the latter had offered them a job of catering. It was further submitted that there is no material to connect the applicant with mobile phone number xxxxxxxx917 from which the decoy customer allegedly received messages. It was further submitted that no case for the offences

punishable under sections of the POCSO Act, 2012 is made out.

5. Ms. Kak, learned APP countered the submissions on behalf of the applicant. Attention of the Court was invited to the statement of the child-victim recorded under section 164 of the Code of Criminal Procedure, 1973 wherein she has stated that the applicant told her that she would get money if she had relations with men.

6. Ms. Sharada, the learned counsel who was appointed to espouse the cause of respondent No. 2, also resisted the prayer for bail.

7. I have carefully perused the material on record. The major victim has declined to subscribe to the prosecution version in her statement before police as well as before the learned Magistrate. The major victim has stated that the child-victim who was her neighbour had taken her to the house of the applicant by representing that the applicant had offered catering job.

8. The child-victim has stated that couple of months prior to the alleged occurrence, the applicant had invited her at her house by stating that she would provide her with catering work. On the day of occurrence, according to the child victim, there were two persons when she visited the house of the applicant along with the major victim. At that time, the applicant had allegedly offered to pay her Rs. 500/- to 700/- if she had physical relations with unknown men.

9. It is pertinent to note that though the prosecution claims that the decoy customer has received the messages, from the applicant's mobile No. xxxxxxxx917, yet no material to connect the applicant with the said number appears to have been collected during the course of investigation. Whether there is material to establish the nexus between the applicant and the said mobile number, would be a matter for trial. In the aforesaid view of the matter, at best, based on the statement of the victim a case of an attempt can be said to have been prima facie made out. Having regard to the circumstances of the case, the veracity of the said statement, would also be a matter for trial.

10. The applicant has been in custody, since 6th February, 2023. The applicant is a woman. The Court is not informed that there are antecedents.

11. I am, therefore, inclined to exercise discretion.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant be released on bail in C.R. No. 87 of 2023 registered with Goregaon 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 her presence at Goregaon police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.

4] 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.

5] The applicant shall furnish her contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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.)