

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

Bail Application No. 2638 of 2023

Mr. Amir Niyaz Khan ... Applicant
v/s.
The State of Maharashtra & anr. ... Respondents

Mr. Prabhanjay R. Dave a/w. Sainyukta Kamat Kashilkar, advocate &
Anish S. Jadhav, advocate for the applicant.

Ms. Madhavi Mhatre, APP for the State.
PSI, B.D. Babar, Nehru Nagar Police Station present.

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CORAM : BHARATI DANGRE, J.

DATE : 4th April 2024

P.C. :

This is an application filed for second time, the first being withdrawn on 11th November 2022.

2. The applicant is arrested in connection with C.R. No.99/2021 registered with Nehru Nagar Police Station which has invoked Section 370(A), 372, 373, 376 (2)(1) read with Section 34 of Indian Penal Code (IPC) and Sections 4,8,12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') alongwith Sections 3,4(2)(a)(b), 5(1)(a)(b)(c)(d) and 9 of the Immoral Traffic (Prevention) Act.

The applicant is arraigned as an accused and came to be

arrested as he was found to be customer who was present when the raid was conducted and it is the allegation that the minor victim girl was driven to prostitution by other accused persons who is operating a brothel and asking her to entertain the customer for an amount. The four other accused persons are actually charged for forcing her into flesh trade and it is on the insistence of a social worker, a complaint was lodged informing that a minor girl is being forced into prostitution and, therefore, on a search being carried out, the racket was busted and applicant came to be arrested as a customer who was found in the company of the victim girl.

3. The contention advanced on behalf of the applicant is very specific. Firstly, that he was unaware that girl is minor and/or that he had visited the place on the assurance that he shall enjoy the company of the woman for sexual pleasure for a price being paid by him to the other accused persons. The learned counsel has placed reliance upon the decision of Calcutta High Court in the case of *Suresh Babu @ Arakkal Arjunan Suresh Babu v/s. The State of West Bengal and anr.*¹ where it is categorically held that the person who is found in alleged brothel as a customer, who visited the place to have sex with a sex worker in lieu of money and in the absence of any evidence that he is living on the earning of sex worker and/or that he is habitual visitor to such place cannot face charge under Section 370 of IPC.

1 C.R.R. 2363 of 2019

Learned counsel has placed reliance on another decision in the case of *Shaikh Jaffar & Ors. vs. State of Maharashtra*² which is on similar lines as regards the role of the customer is concerned.

Further the Karnataka High Court in the case *Babu S. v/s. State*³ of has specifically dealt with role of the customer in the backdrop of case which invokes Sections 3,4,5 & 6 of the Immoral Traffic (Prevention) Act and Section 370 of the IPC holding that the term trafficking of a person as contemplated under Section 370 would specifically contemplate exploitation by recruits, transports, harbours, transfers or receives, a person by using the mechanism set out therein and that engaging into such activity would amount to trafficking. Definitely, the explanation appended to the said section also offer an insight and it is categorically held that customer would not fall within a purview of the said section.

4. The learned counsel has also placed on record the orders passed by the Sessions Court releasing other accused persons on bail who in fact faced the charge of pushing the minor victim girl in prostitution.

The Sessions Court had recorded that the charge-sheet has been filed and no useful purpose would be served by keeping the accused behind the bar till conclusion of trial.

5. There is no reason why this analogy shall not be applied to the

² 2008 Cri. L.J. 2413

³ Criminal Petition No.2119 of 2022

applicant and particularly when he is accused of being a customer and at the end of the trial, it will have to be determined whether he shall be charged of Section 370 of IPC and the relevant provisions of the POCSO Act.

6. In the wake of the above, since the applicant is incarcerated since last more than 3 years, I deem it appropriate to release him on bail.

: ORDER :

- (a) Bail Application is allowed.
- (b) Applicant – Amir Niyaz Khan, shall be released on bail in connection with C.R.No.99 of 2021 registered with Nehru Nagar Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark his attendance on first Monday of the Trimester between 5:00 p.m to 7:00 p.m till framing of the charge to the concerned Police Station and make himself available as and when required by the Investigating Officer.
- (d) The applicant shall attend the trial on regular basis.
- (e) 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.

(SMT BHARATI DANGRE, J.)

Lata Panjwani, P.S.