

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2850 OF 2023**

Anwaralam Ishaq Shaikh ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

Mr. P.R.Dave with Mr. Ashray Dave, Mr. Pradeep Kumavat, for Applicant
Mr. Prashant Jadhav, APP for State.
Ms. Farheen Chaudhary, appointed Advocate for Respondent No.2.
PSI Mr. Govind Dattatraya Kendre, CBD Belapur Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 15 APRIL 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.57 of 2023 registered with CBD Police Station for the offences punishable under Sections 366A, 370(4), 372 read with Section 34 of the Indian Penal Code, Sections 4, 8, 12, 17 and 18 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956, has preferred this application to enlarge him on bail.
3. On 14 March 2023, an intimation was received at Anti-Human Traffic Cell, Crime Branch, Navi Mumbai that the applicant was indulging in human trafficking and living on the earnings of the prostitution and subjecting minor girls to sexual exploitation by sending them to the customers. A decoy customer was made to establish contact with the applicant. Decoy customer had a chat with the applicant.

The applicant allegedly forwarded the photos of the girls and demanded the money. At 2.25 p.m., the applicant and the minor girl came in a rikshaw bearing Registration No.MH-43/BF 9436. The said girl boarded the car of decoy customer bearing Registration No.MH-43/BU-9123. The decoy customer gave the signal. The police party accosted them. The girl was rescued. The girl disclosed that the applicant was sending her to various customers and living on the earnings of prostitution. The applicant came to be arrested. The victim was sent for medico legal examination. The statements of the victim were recorded under Sections 161 as well as 164 of the Code of Criminal Procedure.

4. Mr. Dave, learned Counsel for the Applicant, submitted that the allegations in the FIR are not borne out by the medico legal examination report of the victim. The Medical Officer recorded that the victim did not give any history. Nor the victim understood the language. There was no evidence of any perineal or other injury.

5. Learned Counsel for the Applicant further submitted that in the statement recorded under Section 161 of the Code, the victim is shown to have made allegations against the applicant. However, in the statement recorded under Section 164 of the Code before the learned Magistrate, the victim has not at all named the applicant. Therefore, further detention of the applicant is wholly unwarranted.

6. Mr. Jadhav, learned APP resisted the prayer for bail. Attention of the

Court was invited to the transcript of the alleged Whatsapp chats between the applicant and the decoy customer furnished by the representative of the non-government organization, which gave information to the police. It was submitted that the fact that the victim was a child cannot be put in contest. Therefore, at this stage, the fact that the victim did not fully support the prosecution while her statement under Section 164 of the Code was recorded before the learned Magistrate, does not detract materially from the prosecution.

7. Ms. Chaudhary, the learned Counsel who was appointed to espouse the cause of the victim – Respondent No.2, supplemented the submissions of the learned APP.

8. It is imperative to note that when the victim was immediately taken for medical examination, the victim did not narrate the alleged sexual exploitation, either at the hands of the applicant or any other person. At that stage, the victim was prima facie disabused of the influence as she was rescued by the police. The reluctance of the victim to narrate the alleged acts of sexual exploitation and pushing her into the flesh trade, therefore, deserves due consideration.

9. In the statement recorded under Section 164 of the Code before the learned Magistrate, the victim has simply declined to subscribe to the prosecution version. Instead she claimed that she worked as a dancer in a bar. The applicant has not at all been named as the person who had sent her to another person. On the

contrary, that role was attributed to her relative. Reliance of the prosecution on the Whatsapp chats is also required to be appreciated in the light of the fact that the name of the person who allegedly contacted decoy customer is saved as 'Agent Anwar POSCO'. The admissibility and reliability of the said evidence appears to be a matter for trial.

10. To sum up, the victim does not incriminate the applicant as the person who pushed her into flesh trade and was living on the earnings of the prostitution. At this stage, the statement under Section 164 of the Code commands primacy. The medical evidence also does not support the prosecution version. Thus, a prima facie case for exercise of discretion is made out.

11. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Anwaralam Ishaq Shaikh be released on bail in C.R.No.57 of 2023 registered with CBD-Belapur 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 CBD Belapur Police Station on first Monday of every alternate 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) 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.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) 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.)