

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4073 OF 2024

Munish @ Rahul Akhilesh Kumar Yadav ...Applicant

vs.

The State of Maharashtra ...Respondent

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SUBHASH
PAREKAR

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Ms. Tripti Shetty a/w. Ms. Preshita Parab, Mr. Balagopal
Unnikrishnan, for the Applicant.

Ms. Vilasini Balasubramanian, for Respondent No. 2.

Mr. H.J. Dedhia, APP for the State.

Mr. Paresh Gargade, PSI, Versove police station.

CORAM : N. J. JAMADAR, J.

DATE : NOVEMBER 28, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned
APP for the State.

2. The applicant, who is arraigned in CR No. 18 of 2021,
registered with Versova Police Station, for the offences punishable
under Sections 366-A, 370 (1) (4) and 372 read with Section 34 of
the Indian Penal Code, 1860 (the Penal Code), Section 4 and 5 of the
Immoral Traffic (Prevention) Act, 1956 and Sections 4, 16, 17 and
18 of the Protection of Children from Sexual Offences Act, 2012, has
preferred this application to enlarge him on bail.

3. The indictment against the applicant is that it transpired that
co-accused Nitesh Kumar Thakur, who is absconding, was providing
the girls for prostitution and living on the earnings of the
prostitution. On 20th January, 2021, co-accused Nitesh Thakur

called two victims, one of whom was 17 years of age, at Powai Lake. The co-accused Rajesh Verma, Vinod Gupta and Nanda Nanaware, also came thereat. Nitesh Thakur informed the victims that they were to accompany the co-accused to Govinda's Veg Treat Hotel, 4 Bungalow, Jankidevi Road, S. V. P. Nagar MHADA, Andheri (E), Mumbai and indulge in sex work. Nitesh Thakur apprised them that another tout namely Munish @ Rahul Akhilesh Kumar Yadav, the applicant, would call them and they were to indulge in sex work with the customers brought by the applicant. They all reached at Govinda's Veg Street Hotel at the instance of the applicant.

4. Pursuant to an intimation that the applicant- Munish @ Rahul was procuring the girls for prostitution, the police conducted a raid. A decoy customer was sent. The applicant was apprehended while accepting cash amount of Rs.5,000/-, by way of advance, from the decoy customer. The co-accused were apprehended. Victims were rescued.

5. This is a second application for bail. By a common order dated 31st January, 2024, this Court had rejected the first Bail Application No. 3450 of 2023, preferred by the applicant, while allowing Bail Application No. 918 of 2023 preferred by the co-accused Rajesh Verma. Qua the applicant, this Court had observed, inter alia, as under:-

12] So far as the complicity of the applicant – Munish there is material to indicate that the applicant – Munish had instructed the victim to reach the Hotel. He was apprehended at the spot after accepting the money from the decoy customer. In addition there is a transcript of the conversation, which prima facie incriminates the applicant and indicates that the applicant had been procuring the victims / girls for prostitution and living on the earnings of the prostitution.

13] In the aforesaid view of the matter, I find substance in the submission on behalf of the prosecution that there is a strong prima facie case against the applicant – Munish.

6. This Court had also requested the learned Special Judge seized with the Special Case No. 131 of 2020 (C.R. No. 18 of 2021) to conclude the trial expeditiously as the applicant had been in custody sine February, 2021.

7. The learned counsel for the applicant submitted that by a subsequent order dated 3rd October, 2024 in Bail Application No. 1020 of 2022 another co-accused Vinod Gupta has also been enlarged on bail. Thus, two co-accused Rajesh Verma and Vinod Gupta, who accompanied the victim and were also named by the victims have been enlarged on bail. In contrast, the applicant has not been specifically named by the victims in their statements recorded under section 164 of the Code of Criminal Procedure, 1973. Therefore, as there has not been any progress in the trial despite a direction by this Court to conclude the trial expeditiously, the applicant who has been in custody since two years and nine months, deserves to be enlarged on bail.

8. Mr. Dedhia, learned APP and Ms. Vilasini Balasubramanian, learned counsel appointed to espouse the cause of respondent No. 2, resisted the prayer for bail. It was submitted that this Court had already considered the import of the statement of the witnesses recorded under sections 161 and 164 of the Code and, thus, there is no change in the circumstances, which would warrant a fresh consideration of the prayer for bail.

9. Indeed in paragraph 6 of the order dated 31st January, 2024, this Court had noted a submission on behalf of the applicant that the applicant was not named by the victims in their statements recorded under section 161 and 164 of the Code. However, the Court can not take a very constricted view of the matter. Evidently, it is the prosecution case that the co-accused Rajesh Verma and Vinod Gupta accompanied the victims to the place where the police conducted a raid. Rajesh Verma and Vinod Gupta were specifically named by the victims. Conversely, the applicant was not named or identified in any other manner.

10. Undoubtedly, in the order dated 31st January, 2024 this Court had adverted to certain material which, prima facie, incriminated the applicant. However, at this stage, the long period of incarceration without a real prospect of conclusion of the trial can not be lost sight of. The principle of parity coupled with long period

of incarceration and nature of statements of the victims qua the applicant, especially the statements recorded under section 164 of the Code, persuade the Court to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Munish @ Rahul Akhilesh Kumar Yadav be released on bail in C.R. No. 18 of 2021 registered with Versova police station, on furnishing a P.R. Bond of Rs. 50,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Versova police station on the first Monday of every alternate month between 10 am to 12 noon for a period of three years or till the conclusion of 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 so as to dissuade him from disclosing the facts to police officer or Court.
- 5] 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.

6] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)