

Ajay

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

CRIMINAL BAIL APPLICATION NO. 1572 OF 2024

Serful Pottham Mirza

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Shubham Gharbudave, Advocate for Applicant.
 - Ms. Mahalaxmi Ganapathy, APP for Respondent No.1 – State.
 - Mr. Aakash R. Pandey i/b Amit Icham for Respondent No. 2.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 12, 2025.

P.C.:

1. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No. 388 of 2021 registered with APMC Police Station for offences punishable under Sections 370 and 34 of Indian Penal Code, 1860 (for short '**IPC**') readwith Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956 readwith Section 12 of Protection of Children from Sexual Offences Act, 2012. Applicant was arrested on 31.10.2021 and he is incarcerated for the past 3 years 4 months and 12 days.

2. Gist of prosecution case is that on 30.10.2021 based on intelligence received by APMC Police Station, a trap was laid and a decoy customer was sent to Sagar Krupa Lodging and Boarding, where information received was that women/young girls were allegedly

forced into prosecution. Upon receiving intimation from the decoy customer the police conducted raid at the lodge. During the raid Applicant and other two co-accused were arrested except Accused No.3 – Vinay Yadav while two victims were rescued - one Respondent No.2, then minor aged 17 years old and another woman 33 years old. It is alleged that Applicant was present at the counter when the decoy customer reached the lodge and used to work under directions of Accused No.3 – Manager. The prosecution has alleged that Applicant was acting as an agent for trafficking women / girls from Kolkata under the pretext of marriage or employment and induced them into prostitution.

3. Mr. Gharbudave, learned Advocate for the Applicant would submit that Applicant has been falsely indicted in the present crime. He would submit that Applicant is alleged to be an agent however no evidence has been placed on record to *prima facie* corroborate the said charge. He would submit that there is a clear dichotomy in prosecutrix's three statements, viz one recorded in the FIR dated 01.11.2021 appended at page No. 50 and her further two statements recorded during her Medico - Legal Examination dated 01.11.2021 appended at page Nos. 79 and another statement dated 05.11.2021 appended at page No.92 which make the prosecution case highly questionable as also the charges levelled in the chargesheet *prima facie* do not constitute offence under POCSO. He would submit that

prosecutrix has not provided any specific date and time of any alleged incidents / inducements by Applicant over a substantial period of time which further raises serious doubt on the prosecution case.

3.1. He would submit that Accused No. 4 has been granted bail in Bail Application No. 1396 of 2022 by this Court by order dated 17.02.2023 (Coram: M. S. Karnik J.) and further Accused No. 2 has also been granted bail in Bail Application No. 1373 of 2023 by this Court by order dated 25.01.2024 (Coram: N.J. Jamadar J.) even when the said co-accused persons had several criminal antecedents. He would submit that Accused No. 3 has not been arrested till date even after being apprehended during the raid for reasons best known to the prosecution. Hence he would urge the Court to consider Applicant's case and allow his Application on ground of parity.

3.2. He would submit that Applicant is the sole breadwinner of his family and has deep roots in the Society. He would submit that Applicant is arrested on 30.10.2021 and he is incarcerated for the past 3 years 4 months and 12 days pending trial. He would submit that investigation being completed, chargesheet being filed long back, commencement and completion of trial in the near foreseeable future is doubtful. Hence he would urge the Court to allow the present Application.

4. Ms. Ganapathy, learned APP for Respondent No.1 – State would submit that Respondent No.2 has stated that Applicant was her neighbour and lured her to come to the lodge with him under the pretext of attending a party and had induced her. She would submit that when she refused the Applicant's demands he allegedly threatened her to disclose her involvement in such activities and defame her in her village. She would submit that the decoy customer stated that on the day of raid Applicant was called by the Manager to send one of the two victims for the alleged act. She would submit that offences alleged by prosecutrix are very serious in nature. She would submit that chances of Applicant re-offending himself cannot be ruled out and thus would urge the Court to reject the Application.

5. Mr. Pandey, learned Advocate for Respondent No. 2 would adopt the submissions made by the learned APP. He would submit that it is crucial to consider prosecutrix's age at the time of the incident. He would submit that under the pretext of attending a party Applicant explored the opportunity to induce her into the alleged activities despite knowing that she was a minor. He would submit that since prosecutrix was a minor her consent is immaterial in determination of the question of trafficking. Hence he would submit that considering the gravity of the crime Court should reject the present Application.

6. I have heard, Mr. Gharbudave, learned Advocate for the Applicant, Ms. Ganapathy, learned APP for Respondent No. 1 – State and Mr. Pandey, learned Advocate for Respondent No. 2 and with their able assistance perused the record of the case.

7. It is *prima facie* seen from the record of the case that there is a clear dichotomy in prosecutrix's own statement in the FIR and two statements recorded in her Medico - Legal Examination Report as prosecutrix has not alleged any threat, force or violence from the Applicant. *Prima facie* the only role and allegation attributed to the Applicant is that of an agent however no *prima facie* evidence whatsoever is placed on record to corroborate the alleged contention. It is also seen that prosecutrix had ample time and opportunity to seek assistance which she failed to do so. *Prima facie* from the statement of prosecutrix it is seen that she stayed with her friend for four months before meeting the Applicant which shows and reflects no involvement of Applicant in the alleged charge of trafficking.

8. *Prima facie* I do not find any significant qualitative difference in the roles attributed to other co-accused in the alleged charge. It is *prima facie* seen that Accused Nos. 2 and 4 have been granted bail by this Court by orders dated 17. 02.2023 and 25.01.2024 respectively. It is prosecution's own case that Accused No.3 – Vikas Yadav i.e. Manager of the lodge though apprehended at the time of the raid is not arrested

till date, save and except that notice under Section 41A (1) of the Cr.P.C is served on him. The above *prima facie* observations from the record of the case persuades me to consider Applicant's case on ground of parity. It is also seen that under Section 370 of the IPC, readwith Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956 readwith Section 12 of Protection of Children from Sexual Offences Act, 2012 the maximum punishment is upto 7 years whereas Applicant in the present case has been incarcerated for 3 years 4 months and 12 days pending trial which further persuades me to consider the long incarceration of Applicant.

9. At this stage, the question of whether the prosecutrix voluntarily engaged in the alleged acts is not relevant as the same can be the subject of trial. However the key question before me is whether the aforementioned *prima facie* facts and circumstances justify overriding the Applicant's right to liberty?

10. The Supreme Court has held in a series of judgments and orders that in situations where the under-trial prisoner / accused persons have suffered incarceration, rather long incarceration for a considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

11. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases.

12. Considering the aforementioned facts and circumstances, Applicant's incarceration for 3 years 4 months and 12 days pending trial persuade me to consider Applicant's case. Furthermore investigation is completed and Accused Nos. 2 and 4 have been granted bail, which further persuaded me to consider the Applicant's case on the ground of parity. Concerns expressed by the learned Advocate of prosecutrix can undoubtedly be taken care of by imposing strict conditions.

13. In view of the above *prima facie* observations and facts , Applicant is granted bail. Bail Application is allowed on the following terms and conditions:-

- (i) Applicant is directed to be released on bail in CR No. 388 of 2021 registered with APMC Police Station, on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

- (ii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iii) Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (iv) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; Applicant shall not make any attempts to re-associate with the prosecutrix in any manner either through a device or in-person;
- (vii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his

release from jail, to the concerned Police Station and also to the trial Court; and

(viii) In case of any infraction of the above conditions and /or two consecutive defaults in marking his attendance before Trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C.i.e. for cancellation of bail.

14. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence led by parties uninfluenced by the present order and strictly in accordance with law.

15. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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