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

Interim Application No.4641 of 2024

In

Criminal Appeal No.1076 of 2024

Sahawan Ali @ Mannu Chanai Kaviraj

Age: 45 years,

Residing at Room No.2425, Rafiq Compound,

Wakanpada, Nallasopara, Dist: Palghar

(presently at Nashik Central Prison)

... Applicant

versus

1. The State of Maharashtra
(Through Aarey Police Station)

2. XYZ

Age: 31 years, Occ: Service

Aarey Police Station

... Respondents

Mr Avinash Kori, i/b. Mr Shreyansh Mithare, for the applicant.

Mr SV Walve, APP, for respondent No.1/ State.

Mr Kunal Rathod, i/b. Ms Vrushali Maindad, for respondent
No.2, through VC.

PSI Tukaram V Mengal, Aarey Police Station, Mumbai, is
present.

Coram: R.N. Laddha, J.

Date: 11 September 2025.

P.C.:

The applicant faced trial in Sessions Case No.153 of 2020
before the Court of Special Judge under the Protection of

Children from Sexual Offences Act, 2012, Borivali Division, Dindoshi, Mumbai, for the offences punishable under Section 370(3) of the Indian Penal Code ('IPC') and Sections 3, 4, 5, and 7(1)(b) of the Immoral Traffic (Prevention) Act, 1956 ('PITA'). By the judgment and order dated 25 July 2024, the applicant was convicted for the offences punishable under Section 370(3) of the IPC and Sections 3, 4, 5 and 7(b) of PITA. He was sentenced as follows: (i) suffer rigorous imprisonment for ten years and pay a fine of Rs.10,000/-, with default stipulations, for the offence punishable under Section 370(3) of the IPC; (ii) suffer rigorous imprisonment for one year and pay a fine of Rs.2,000/-, with default stipulations, for the offence punishable under Section 3 of PITA; (iii) suffer rigorous imprisonment of one year and pay a fine of Rs.1,000/-, with default stipulations, for the offence punishable under Section 4 of PITA; (iv) suffer rigorous imprisonment for three years and pay a fine of Rs.2,000/-, with default stipulations, for the offence punishable under Section 5 of PITA; and (v) suffer rigorous imprisonment of three months for the offence punishable under Section 7(b) of PITA. The sentences were directed to run concurrently.

2. Aggrieved thereby, the applicant preferred an appeal before this Court and, by the present application, seeks

suspension of the sentence and release on bail.

3. Mr Avinash Kori, the learned Counsel appearing on behalf of the applicant, submits that the prosecution's case suffers from material infirmities and inherent contradictions in the evidentiary record. It is his contention that the testimonies of the prosecution witnesses are vitiated by omissions, inconsistencies, and discrepancies, thereby rendering them unreliable and insufficient to establish the applicant's culpability beyond reasonable doubt. He further argues that the prosecution has failed to examine the most material witness, namely, the decoy customer, Amit Harishankar Jalan, who is alleged to have played a pivotal role in the case of the prosecution.

4. The learned Counsel further submits that, as per the deposition of PW1, Panch Umer Khan, it is alleged that the applicant acted as a tout and facilitated the victims' involvement in prostitution. However, it is pertinent to note that Umer Khan himself was not examined by the prosecution, thereby severing the evidentiary link. PW1 has, in fact, categorically admitted that the CCTV footage of the hotel in question was never collected. Furthermore, the prosecution has failed to examine crucial witnesses, namely the hotel receptionist, hotel manager, hotel staff, as well as the taxi driver

allegedly involved in transporting the victims.

5. The learned Counsel further argues that the guest registration for further m of the hotel bears only the name and signature of the decoy customer. This is inconsistent with the deposition of PW1, who stated that the form bore the signatures of the decoy customer, the panch witness, the victim girl, and the present applicant. Additionally, discrepancies exist in the prosecution witnesses' testimonies regarding the exact timings of their arrival at the scene of the incident.

6. It is further pointed out that, out of the two alleged victim girls, only one was examined. In her deposition, she categorically stated that since 2016, she has been working as an actor. She further admitted that the present applicant had contacted her on 11 October 2019 at about 12:00 noon to introduce her to a music album producer. She voluntarily went to the said hotel, where she was asked to sit in an adjacent room while the applicant and panch witnesses were present elsewhere. PW3, in her examination-in-chief, makes no mention of any decoy customer being present with her in the adjacent room. Thus, her testimony does not corroborate that of PW1.

7. The learned Counsel further highlights that the

prosecution witnesses Nos.1, 4, 5, and 6 are all police personnel, and no independent witness has been examined to support the prosecution's case. Moreover, the deposition of PW3 clearly establishes that she was neither forced, coerced, induced, nor subjected to any compulsion to engage in prostitution. On the contrary, PW3 unequivocally admitted that she had been brought to the hotel for the purpose of being introduced to a producer in connection with her acting career.

8. Mr SV Walve, the learned Additional Public Prosecutor representing the respondent/State, and Mr Kunal Rathod, the learned Counsel appearing on behalf of respondent No.2, jointly oppose the applicant's request and referred to the seriousness of the charge on which the applicant has been convicted. The learned APP submits that the evidence on record strongly supports the prosecution's case and does not warrant the suspension of sentence and release on bail.

9. An examination of the record reveals that the alleged incident is of the year 2019. The prosecution has attributed certain acts to the applicant; however, the case is beset with considerable uncertainty regarding the manner in which the alleged incident is said to have occurred. This Court notes that the prosecution has failed to examine certain material witnesses, whose testimonies were crucial for unfolding the true

genesis of the case. The non-examination of such witnesses has created serious gaps in the prosecution's case, thereby affecting the evidentiary value of the material placed on record. It is further pertinent that the present appeal, which challenges the conviction and sentence, was instituted in the year 2024. In view of the substantial pendency of earlier appeals before this Court, it appears highly unlikely that the present appeal will be taken up for final hearing in the near future. Consequently, if relief is denied at this stage, there exists a grave possibility that the applicant may undergo the entire term of sentence even before his appeal is heard and decided.

10. This Court also finds relevance in the fact that the victims in the alleged crime are of legal age, and therefore the considerations applicable to minor victims do not arise in the present case. Furthermore, out of the total sentence of ten years imposed upon him, the applicant has already undergone a period of five years and eleven months of incarceration, which constitutes a substantial portion of the sentence.

11. Considering the totality of the circumstances, including the deficiencies in the prosecution's case, the improbability of an early disposal of the appeal, and the significant portion of sentence already undergone by the applicant, this Court is of the considered view that the applicant has made out a case for

suspension of sentence. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide the judgment and order dated 25 July 2024, passed by the Court of Special Judge under the Protection of Children from Sexual Offences Act, 2012, Borivali Division, Dindoshi, Mumbai, in Sessions Case No.153 of 2020, stands suspended during the pendency of the appeal.

(ii) The applicant shall be released on bail upon executing a PR Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.

(iii) The applicant shall inform and update the investigating officer of his contact information and residential details.

(iv) The applicant shall refrain from contacting the victims and their family members in any manner whatsoever.

12. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)