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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1530 OF 2023

1. Saurabh Vijay Tiwari,
Age - 23 Years,
Occupation : Private,
Resident of Dahegaon Rangari,
Taluka Saoner, District Nagpur.
2. Sanjay Zibal Bibre
(Correct name Sanjay Zibal Bembare),
Age – 48, Occupation : Private,
R/o New Manegaon, Khaparkheda,
Taluka Saoner, District Nagpur.

.... APPLICANTS

// VERSUS //

State of Maharashtra Through
Police Station Officer,
Police Station, Khapa,
Nagpur Rural, District Nagpur.

.... NON-APPLICANT

Mr. Sumedh Kadam, Advocate for the applicants.
Ms. S. S. Dhote, APP for non-applicant /State.

**CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 09.12.2025
PRONOUNCED ON : 16.12.2025**

JUDGMENT : (PER : URMILA JOSHI-PHALKE, J.)

1. **Admit.**
2. Heard finally with the consent of the learned Counsel
of the parties.
3. Present application is preferred by the applicants for
quashing of the First Information Report (for short 'FIR') in

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connection with Crime No.401/2023 dated 18.09.2023 registered with Police Station Khapa, District Nagpur for the offence punishable under Sections 363 and 366-A of the Indian Penal Code (for short 'IPC') and under Sections 3 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short 'PITA Act') and the consequent proceeding arising out of the same bearing RCC No.427/2025 pending before the 3rd Joint Civil Judge Junior Division and Judicial Magistrate First Class, Saoner.

4. The criminal law was set in motion as the FIR was lodged against the six persons including the present applicant on the basis of a report lodged by the Police Officer Sapna Kailash Ingole. As per the recitals of the FIR, a secrete information was received at the Police Station that the girls were brought in a lodge for immoral trafficking and kept in Ekant Lodge. On receipt of the secrete information, the raid was conducted in presence of the panchas in the Ekant Lodge. During raid, it reveals that there was no entry of customers in the register maintained at lodge on 17.09.2023. During raid, in one hall of the lodge, three persons were present, whereas in one room one boy and girl were present and in second room two girls were reported to be present. The girl who was present along with the boy was 20 years old and the boy was the present applicant No.1. Whereas, in another room one girl was seen who was aged

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about 17 years. During the investigation it revealed that one Pankaj Hirole had brought the minor girl and there was acquaintance between the said minor girl and the girl who was found along with the present applicant and they were brought for the prostitution purpose. On the basis of the said report, police have registered the crime against the present applicants.

5. After registration of the crime, the investigation was carried out and after completion of the investigation, the charge sheet was filed against the present applicants and the other co-accused.

6. Heard learned counsel for the applicants, who submitted that the prosecution has come with a case that the present applicants had procured or attempted to procure the girls, whether with or without their consent for the purpose of prostitution and thereby they have committed the offence. However, none of the statements, even the statement of the victim, nowhere shows that it was present applicants who have procured them for the purpose of the prostitution and therefore, offence under Sections 3 and 5 of the PITA Act has not made out. He submitted that none of the statement shows that the present applicants have brought the victim from the lawful custody of her parents and therefore, offence under Section 363 of the IPC is also not made out. He submitted that at the most

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the present applicants can be considered as a customer and the offence punishable under Sections 3 or 5 of the PITA Act is not made out against the present applicants. As Section 3 of the said Act prescribed punishment for keeping a brothel or allowing premises to be used as a brothel. As far as the present applicants are concerned, who have not maintained a brothel or allowed their premises to be used as brothel therefore, the offence under Section 3 of the PITA is not made out. The offence under Section 5 of the PITA Act is also not made out, as there is nothing on record to show that it was the applicants who had procured or attempted to procure the girls. Thus, considering the ingredients of the offence are not made out, the application deserves to be allowed.

7. Per contra, learned APP strongly opposed for the same and submitted that considering the statement of the victim and the present applicant was found during the raid along with the girl, the *prima facie* offence is made out. In view of that, the application deserves to be rejected.

8. On hearing both sides and on perusal of the entire investigation papers, at the outset, we are required to consider the prosecution's story as well as the material collected and presented by way of charge sheet by the investigating agency against the present applicants as to whether they are making out

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such offence under Sections 3 or 5 of the PITA Act. It would not be out of place to mention here that the allegation against the present applicant is only to the extent that he was found along with the girl who has attained the age of majority. During the investigation, nothing was found to show that the present applicants had either called her or procured her for that purpose. Even no amount was seized either from the present applicants or from the victim as far as the procurement is concerned. In order to bring the case under Section 5 of the Act prosecution should have come with a case that applicants had taken the girls, or causes them to be taken, from one place to another with a view to their carrying on, or being brought up to carry on prostitution. Charge-sheet does not contain such allegations.

9. Relevant portion of Section 5 of PITA Act runs as follows:

5. Procuring, inducing or taking [person] for the sake of prostitution.—(1) any person who—

(a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or

(b) induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or

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(d) causes or induces a person to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section,— (i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and (ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;].

10. Prosecution has come with a case that present applicants had 'procured' or 'attempted to procure the girls', whether with or without their consent, for the purpose of prostitution. In order to cover the case under Section 5 (1) (a) above, the investigation papers nowhere shows that the present applicants had induced the girls to go from any place, with the intent that they may for the purpose of prostitution become the inmate of, or frequent, a brothel to cover the case under Section 5 (1) (b) above. In order to bring the case under Section 5 (1) (c) of the Act prosecution should have come with a case that the applicants had taken or attempted to take the girls, or causes them to be taken, from one place to another with a view to their

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carrying on, or being brought up to carry on prostitution. Charge-sheet does not contain such allegations. Now, Section 5 (1) (d) of the Act prescribes that if a person has caused or induced a person to carry on prostitution, then such person would be liable for punishment. Two main ingredients are necessary for a case to be covered under this provision. They are 'causing' or 'inducing'. Word 'Cause' has not been defined in PITA Act. The dictionary meaning of word 'cause' means 'A person or thing that gives rise to an action, phenomenon, or condition.' In law, the term carries different meaning taking into consideration different references. Taking into consideration the object of the Act, it can be said that the said word is used with a sense that those persons who are responsible to throw the victim in the flesh trade should be punished. Further there is element of use of force attached to the said meaning. As per the prosecution story and the statements of the witnesses the girls were already into the said business. There is no evidence in the form of statement of any person that present applicants had paid specified amount and procured the girls. The statement of witness and the panchnama which is drawn also nowhere shows that the applicants were found in any awkward condition along with the victim.

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11. The facts of this case involving the applicants are also required to be considered that the applicants were found along with the girl, but at the most he can be considered as a customer. Taking into consideration the prosecution story and material placed along with charge sheet would show that there is no evidence against the applicants to show that they have either procured the girl for the purpose of prostitution.

12. As far as the offence punishable under Section 363 of IPC is concerned, which nowhere discloses that the victim was taken from the lawful custody of her parents by the present applicants. Even there is no allegation that either they had called or induced the victim to leave the company of her parents and join them. Thus, not a single ingredient showing that there was any inducement or attempt by the present applicants to obtain the custody of the victim for procuring her for the prostitution purpose therefore, the offence punishable under Section 363 of IPC is also not made out. The offence of procuration of minor girl under Section 366-A is also not made out. Therefore, there is no *prima facie* case against the present applicants. Such a case will fall under the guidelines issued by the Hon'ble Apex Court in the case of **State of Haryana and others Vs Bhajan Lal and others** reported in **AIR 1992 SC 604**.

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"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

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13. Thus, considering the allegations levelled against the present applicants and the material collected during the investigation, which nowhere shows that the applicants have either procured the girls for the prostitution or used the girls for the prostitution purpose therefore, the offence under Section 3 or 5 of the PITA Act, as well as under Sections 363 and 366-A of IPC, are not made out. In view of that, the application deserves to be allowed. Accordingly, we proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The First Information Report in connection with Crime No.401/2023 dated 18.09.2023 registered with Police Station Khapa, District Nagpur for the offence punishable under Sections 363 and 366-A of the Indian Penal Code and under Sections 3 and 5 of the Immoral Traffic (Prevention) Act, 1956 and the consequent proceeding arising out of the same bearing RCC No.427/2025 pending before the 3rd Joint Civil Judge Junior Division and Judicial Magistrate First Class, Saoner, is hereby quashed and set aside to the extent of the present applicants.

The application is disposed of.

(NANDESH S. DESHPANDE, J) (URMILA JOSHI-PHALKE, J)