

ABA No.1716/2023

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in C.R. No.42/2023

MHCC020115942023



Presented on : 03-08-2023

Registered on : 03-08-2023

Decided on : 24-08-2023

Duration : 21 Days

**IN THE SPECIAL COURT FOR NARCOTIC DRUG AND
PSYCHOTROPIC SUBSTANCES ACT, 1985, AT GR. BOMBAY**

ANTICIPATORY BAIL APPLICATION NO.1716 OF 2023

IN

C.R. NO.42 OF 2023

Gopal Dhokal Mandal)
Age : 45 years, Occ: Service,)
R/at : B1/203, Sunder Sagar, B1, CHS)
LTD, Mira Bhayander, Near Police)
Station, Mira Road (East), Thane -) .. Applicant
401107.

V/s.

The State of Maharashtra)
(At the instance of DCB-CID Unit-VIII,)
Mumbai, vide C.R. No.42/2023).) .. Respondent/Prosecutor

Appearance :

Ld. Adv. Mr. Prabhanjay R. Dave, for the applicant.

Ld. APP Mr. P.J. Tarange, for the respondent/prosecution.

CORAM : K.P KSHIRSAGAR
ADDL. SESSIONS JUDGE (C.R.43)

DATE : 24/08/2023

ORAL ORDER

Applicant has taken out present application for grant of pre-arrest bail under section 438 of Code of Criminal Procedure apprehending his arrest in Crime No.42/2023 registered in DCB-CID Unit-VIII, Mumbai for the offences punishable under section 370(3), 465 and 471 r/w 34 of the Indian Penal Code (here-in-after referred as “IPC”), for the offences punishable under Section 4 and 5 of the Prevention of Immoral Traffic Act (hereinafter referred as “PITA”) and for the offences punishable under section 8(c) r/w section 22(b) and section 29 of Narcotic Drug and Psychotropic Substances Act, 1985 (hereinafter referred as “NDPS Act”).

2. Perused the application, documents annexed therewith and the reply of the prosecution. Heard, Ld. Advocate for the applicant and Ld. APP and Investigating Officer.

3. Learned Advocate for the applicant argued that, from accusations in the FIR it is clear that, the co-accused Nos.1 and 2 during investigation informed that, present applicant used to supply the foreigner girls for sex work/(prostitution) and he had supplied the foreigner girls/victims to the bogus customer in the present matter. The victims were majors. From the prosecution case itself it is clear that, they were voluntary involved in sex work and the applicant had not used any threats, force, coercion, or practiced any fraud, or deception

and applicant had not abducted or abuse his power and induced them. From the FIR it is clear that, the applicant is not having any nexus with offence punishable under section 465 and 471 of IPC and offence punishable under section 8(c) r/w section 22(b) and section 29 of the NDPS Act. Though as per the prosecution reply and the panchnama present applicant had brought said foreigner victims to the hotel for the sex work CCTV footage in the hotel is not produced or relied by the prosecution. There was no inducement by the applicant to the victims. The victims themselves in their statement stated that, they voluntary came to the India for sex work. Therefore, prima facie case for the offence punishable under section 370(3), section 4 and 5 of PITA Act and the other offences is not made out against the applicant. Applicant is falsely implicated in the present crime. The bogus customer is a extortionist. The applicant was not present in Mumbai on the date of incident as he had been to his native place in Jharkhand. Therefore, Ld. Advocate for the applicant prayed that, application be allowed.

Ld. Advocate for application kept reliance on the following citations :

No.1 *Ashok Sukar Yadav VS. The State of Maharashtra, in Anticipatory Bail Application No.377/2022, dated 29/09/2022 of Hon'ble Bombay High Court.*

No.2 *Hiraman Lalmohan Mandal VS. The State of Maharashtra, in Anticipatory Bail Application No.890/2014, dated 06/08/2014 of Hon'ble Bombay High Court.*

No.3 *Harbindra Kour Sukindar Singh @ Rekha*

VS. The State of Maharashtra, in Anticipatory Bail Application No.1625/2017, dated 29/09/2017 of Hon'ble Bombay High Court.

No.4 Nakul Kumar Kamleshwar Yadav @ Mukul Yadav VS. The State of Maharashtra, in Anticipatory Bail Application No.1772/2015, dated 15/04/2016 of Hon'ble Bombay High Court.

No.5 Banti Ramrao Rathod VS. The State of Maharashtra, in Anticipatory Bail Application No.1905/2023, dated 18/07/2023 of Hon'ble Bombay High Court.

No.6 Abhishek Babu Chandan VS. State of Maharashtra, in Anticipatory Bail Application No.768/2023, dated 29/03/2023 of Hon'ble Bombay High Court.

Court has gone through the observations made therein.

4. On the other hand, Ld. APP and Investigating Officer submitted that, the applicant had given inducement of giving payment or benefits and thereby sexually exploited victims. Therefore, prima facie case for trafficking is made out. The consent of the victims is not material. As the two victims were trafficked the punishment provided for the offence may extend for imprisonment upto life. Therefore, the punishment provided for the offence is sever and the alleged offence is of heinous nature. The CDR analysis of the mobile of the applicant reveals that, on the date of incident he was present nearby the spot of incident. Therefore, there is no substance in the contention of the

applicant that on the date of incident he was at his native place in Jharkand. The applicant is having eight criminal antecedents of the similar nature. The above fact reveals that, the applicant is involved in the racket of trafficking victims for sexual exploitation. The passports of the victims are detained by the wanted accused. The applicant might have nexus with the wanted accused. Therefore, custodial interrogation of the applicant is necessary for obtaining material information in respect of the racket of trafficking for recovery of passport and pertaining to sexual exploitation of the victim. The custodial interrogation is also necessary for ascertaining whether the applicant is having role in supply of narcotics and the sex racket. Investigation will be hampered if the applicant is released on the pre-arrest bail. Hence, Ld. APP submitted that, application be rejected.

5. From the matter on record it appears that, Crime No.42/2023 is registered against the applicant and other co-accused by DCB-CID Unit-VIII, Mumbai for the offences punishable under section 370(3), 465 and 471 r/w 34 of the IPC, for the offences punishable under Section 4 and 5 of the PITA Act and for the offences punishable under section 8(c) r/w section 22(b) and section 29 of NDPS Act. As per Advocate for the applicant role of the applicant is concerned only to the extent of the offence punishable under section 370(3) of IPC and section 4 and section 5 of PITA Act. The punishment provided for the offence punishable under section 370(3) of the IPC is imprisonment which may extend imprisonment for life. Moreover, the punishment provided for the offence punishable under section 5 of the PITA Act may extend upto 7 years. As such the offences alleged to be committed by the applicant is of serious nature.

6. From the prima facie appreciation of material on record it appears that, the applicant is having involvement in supplying the foreigner victims in the present matter for sex work and for that purpose he used to receive commission and he used to make payment of some amount to the victims. The statements of the victims of the offence reveals that, the wanted accused Sabina detained their passports and visa and the applicant had made arrangement for their residence and he used to supply the victims to the customers for the sex work and he used to give a very small amount to them from the amount charged to the customers for the sex work. Thus, prima facie from the statements of the victims it appears that, applicant used to provide them for sex work and he used to give little payment out of the amount charged to the customers and the victims used to receive payments for doing the sex work with the customers whichever were provided by the applicant. Therefore, from the material on record prima facie it appears that, the applicant had trafficked the victims of the offence for their sexual exploitation by inducement i.e. by giving payments and benefits to them. Moreover, as per section 370 explanation consent of the victim is immaterial in determination of the offence of trafficking. Therefore, there appear no substance in the contention of the applicant that, applicant had not induced the victims for sexual exploitation and therefore, section 370(3) of IPC is not attracted.

7. Mere fact that, the victims are major and they were doing sex work on their own will does not mean that, the offence punishable under section 370(3) of IPC is not attracted. On the other hand, in view of the observations of Hon'ble Bombay High Court in **Abhishek Babu Chandan Vs. State of Maharashtra** cited supra relied by the applicant it appears that, the case of the applicant falls under this category of

section 370(1) of IPC category number 6 i.e. inducement, which includes giving or receiving of payments or benefits, in order to achieve consent of any person for having control over the person recruited. Therefore, from material on record it appears that, the applicant had recruited the victims for sexual exploitation by means of inducement and therefore, prima facie section 370(3) of IPC is applicable in the present matter.

8. Moreover, from the statement of the victim and the copy of FIR and material on record it appears that, the applicant had taken the victims in the hotel for providing them to the customers. The CDR analysis details of the cell phone of the applicant provided reveals his presence near the spot of incident on the date of incident. Moreover, from the reply it appears that, the applicant is having eight criminal antecedents of similar nature from the year 2009 till 2016. The material on record also reveals that, the applicant used to charge huge amount of Rs.22,000/- from the customers for one victim and used to provide them only amount of Rs.5,000/-. The above fact prima facie reveals sexual exploitation of the victims by the applicant by inducing and recruiting them for the sex work.

9. Prima facie there appear inducement by the applicant for recruiting the victims for their sexual exploitation. Considering the facts of the present case and the fact that prima facie the provision of section 370(3) of IPC and section 4 and 5 of PITA Act are attracted in the present matter, in the humble opinion of this Court the facts of the judgment cited supra relied by the applicant are different than the facts of the present case. Therefore, in the humble opinion of this Court the facts of the present case and the judgment cited supra are different and

the judgment relied by the applicant are not helpful to the applicant in the present matter.

10. Considering the nature of the offence and the material on record there appear substance in the contention of the respondent that, there is necessity of the custodial interrogation for obtaining the material information. Considering the nature of the offence, the role of the applicant and his criminal antecedents there appear necessity of the custodial interrogation for obtaining material information in respect of the crime and for the investigation whether there is nexus between the applicant and the other wanted accused Sabina.

11. Considering the above facts, grievous nature of the offence and the fact that, there appear necessity for the custodial interrogation of the applicant and from the prima facie appreciation of the material on record the grant of pre-arrest bail to the applicant is likely to be prejudicial to the further investigation and investigation is likely to be hampered.

12. Considering the nature of the offence, gravity of the offence and fact that, investigation in respect of the applicant and wanted accused is yet to be completed there appear no justifiable grounds for releasing the applicant on pre-arrest bail. As such the present application is liable to be rejected. Hence, the following order.

ORDER

1. Anticipatory Bail Application No.1716/2023 of applicant **Gopal Dhokal Mandal** in C.R. No.42/2023, is rejected.

ABA No.1716/2023

..9..

in C.R. No.42/2023

2. Anticipatory Bail Application No.1716/2023 is disposed of accordingly.

(Pronounced in open Court)

Date : 24/08/2023.



(K.P. Kshirsagar)
N.D.P.S Special Judge
City Civil & Sessions Court,
Gr. Bombay (CR.43)

Dictated on : 24/08/2023
Transcribed on : 24/08/2023
Checked on : 25/08/2023
Signed on : 25/08/2023

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
28.08.2023	01.00 p.m.	Sanjay Baliram Kaskar (Stenographer Grade-I)
Name of the Judge		H.H.J. SHRI. K.P. KSHIRSAGAR NDPS Spl. Judge (C.R.No.43)
Date of Pronouncement of Judgment/Order.		24/08/2023
Judgment/order signed by P.O on		25/08/2023
Judgment/order uploaded on		28/08/2023