

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-BA-58-2020**

Mohd. Khalid Bapari

... Applicant

Versus

State of Goa &amp; Anr.

... Respondents

Shri Kautuk Raikar, Advocate for the Applicant.

Shri P. Faldessai, Additional Public Prosecutor for the Respondents.

**Coram:- DAMA SESHADRI NAIDU, J.****Date:- 1 DECEMBER 2020****ORAL ORDER :**

The applicant is the second accused in Crime No.128/2019, registered by the Crime Branch, Ribander. The crime attracts section 370(3), read with section 34 of IPC, besides sections 3,4 and 5 of the Immoral Traffic (Prevention) Act, 1956. As the police raided the premises helped by a decoy, the applicant is said to have been caught red handed. Eventually, the police registered the crime, in which there are two other accused.

2. As the record reveals, the first accused and the third accused have already been enlarged on bail. In the course of time, the prosecution has filed the chargesheet as well. Arrested on 11.11.2019, the applicant has been in judicial custody for over one year. His efforts before the trial Court failing, now the applicant has come up with this application under section 439 of Cr PC.

3. Heard Shri Kautuk Raikar, the learned counsel for the applicant; and Shri P. Faldessai, the learned Additional Public Prosecutor for the respondents.

4. In brief, Shri Raikar has submitted that there is no material to show that the applicant has been involved in the offence, especially, that attracts Section 370(3) of IPC. In this context, he has drawn my

attention to the statements of the three victim girls under section 164 of Cr PC. In one of the statements, there is a reference to 'uncle'. On this count, Shri Raikar insists there has been no test identification parade to treat the applicant as that 'uncle'. At any rate, he has further submitted that even if the allegations, as emerged in the chargesheet, are to be believed, the offence would not attract section 370(3) IPC. Shri Raikar has also submitted that the applicant has been in judicial custody for over one year, with no criminal antecedents.

5. On the other hand, Shri Faldessai, the learned Additional Public Prosecutor, has submitted that the applicant has been caught red handed; and that speaks volumes. As to his identity and the complicity in the crime, according to him, they are matters of trial. Therefore, he has urged this Court to dismiss the bail application.

6. As I have noted, the applicant has been in judicial custody for over one year. He has no criminal antecedents. Besides, *prima facie*, section 370(3) of IPC may not get attracted in the case as set out by the prosecution.

7. Under these circumstances, I allow the bail application subject to these conditions:

### **ORDER**

- (i) The application of bail is allowed.
- (ii) The applicant is directed to be released on bail on his executing P.R. Bond for ₹25,000/- and on his furnishing two sureties, each for the like sum, to the satisfaction of the learned Additional Sessions Judge (DJ-I), Mapusa.
- (iii) The applicant should not leave the State of Goa, without prior permission of the learned Additional Sessions Judge (DJ-I), Mapusa.
- (iv) The applicant shall cooperate with the police during the investigation and shall attend the hearing of the case on the dates fixed by the trial Court.

(v) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.

(vi) The applicant shall not commit similar or other offences.

(vii) The applicant's failure to abide by these conditions will entail the prosecution to apply for the cancellation of bail now granted to the applicant.

(viii) The Bail Application stands disposed of.

Parties to act on the authenticated copy of this order.

**DAMA SESHADRI NAIDU, J.**

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