

**IN THE COURT OF DISTRICT JUDGE AND ASSISTANT SESSIONS JUDGE  
AT \_\_\_\_\_**

**POCSO Spl. Case no. \_\_\_\_\_**

State of \_\_\_\_\_

(Through ----- Police Station)

...Complainant

Vs.

...Accused

**WRITTEN SUBMISSIONS ON BEHALF OF THE PROSECUTION**

**MAY IT PLEASE THE COURT**

**A. INTRODUCTION**

This case is about eradicating the “flesh trade” of “poverty-stricken children and girls.” The Supreme Court has held that our judicial system must take “severe and speedy legal action” to stop this “flesh trade, which is being carried on in utter violation of canons of morality, decency and dignity of humankind.” *Vishal Jeet v. India*, 1990 Cri. L.J. 1469 (S.C.), paras. 13, 15. The evidence before this Honorable Court proves beyond reasonable doubt that the accused, namely, \_\_\_\_\_ profited from the flesh trade of Victim by violating **sections 3, 4 and 16 of the Protection of Children From Sexual Offences Act, 2012 (POCSO) and Sections 370, 376, 366-A of the Indian Penal Code (IPC).**

**The Accused:**

“Accused 1”

**The Witnesses:**

PW 1:  
PW 2:  
PW 3:  
PW 4:  
PW 5:  
PW 6:  
PW 7:  
PW 8:  
PW 9:  
PW 10:  
PW 11:

**The Evidence:**

Art. A :  
Art. B :  
Art. C :  
  
Art. D :  
Art. 4 :

**B. FACTS PROVED BY EVIDENCE**

### **A. Pre-Rescue**

(Mention facts in detail)

### **B. Rescue and Evidence Collection**

(Investigation in detail)

### **C. Arrest**

The police arrested Accused \_\_\_\_ on various dates between \_\_\_\_\_ at the \_\_\_\_ Police Station.

### **D. Subsequent Investigation**

(Medical, 164 etc)

### **E. At Trial**

(Describe the trial briefly)

#### **C. PRELIMINARY SUBMISSIONS**

The Prosecution makes the following preliminary submissions because they are generally relevant to all subsequent submissions.

(Cover preliminary grounds)

#### **D. PRIMARY SUBMISSIONS**

(In Pointers)

#### **E. SUBMISSIONS CONFIRMING THERE IS NO REASONABLE DOUBT**

The Supreme Court has clarified that “reasonable doubt” must be doubt that is reasonable and “not imaginary, trivial or merely possible.” Gangadhar Behera v. Orissa, A.I.R. 2002 S.C. 3641, para. 17.

Recently, the Supreme Court, State of Karnataka vs. J. Jayalalitha, (2017) (3) SCC (Cri) has also shed light on the following:

- a) “The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer, is a false dilemma. (...) The evil of acquitting a guilty person light heartedly goes much beyond the simple fact that just one guilty person has gone unpunished.” State of Karnataka vs. J. Jayalalitha, (2017) (3) SCC (Cri), para. 222;
- b) “In all human affairs, absolute certainty is a myth and the law does not require the prosecution to prove the impossible. All that is required is the establishment of such a degree of probability that a prudent man may on this basis believe in the existence of the fact in issue. Legal proof is thus not necessarily perfect proof and is nothing more than a prudent man’s estimate as to the probability of the case. State of Karnataka vs. J. Jayalalitha, (2017) (3) SCC (Cri), para. 224;
- c) “In our criminal justice system, for recording guilt of the accused, it is not necessary that the prosecution should prove the case with absolute or mathematical certainty but only beyond reasonable doubt and the criminal courts, while examining whether any doubt is beyond reasonable doubt, may carry in their mind, some “residual doubt” even though the courts are convinced of the accused persons’ guilt beyond reasonable doubt.” State of Karnataka vs. J. Jayalalitha, (2017) (3) SCC (Cri), para. 226.

(After citing judgements always mention relevance with the case in hand)

**A. There were no contradictions, omissions or improvements in the witness testimony sufficient to create reasonable doubt.**

**There were no discrepancies sufficient to create reasonable doubt.**

i. Minor discrepancies in witness testimony should not be given undue importance when they are about matters like times, descriptions and conversations because witnesses do not possess “photographic memories” and are not “human tape recorders.” *Bharwada Bhoginibhai Hirjibhai v. Gujarat*, 1983 Cri. L.J. 1096 (S.C.), paras. 10-11. Thus, such discrepancies are “hardly a ground to reject the evidence of witnesses when there is general agreement and consistency in regard to the substratum of the prosecution case.” *Punjab v. Wassan Singh*, A.I.R. 1981 S.C. 697, para. 17. Moreover, natural variations in witness testimony prove that the witnesses are honest. In *Tamil Nadu v. Karappusamy*, 1993 Supp. (1) SCC 78, para. 20, the Supreme Court stated that tutored witnesses testify in a parrot-like fashion while natural witnesses are bound to make mistakes.

ii. Any alleged discrepancies in this case are minor, natural and not sufficient to create reasonable doubt because there is “agreement and consistency” about the substratum underlying the offence.

iii. Testimony of the Victim

a. It is a well-recognized fact that victims of sexual abuse undergo severe physical and mental trauma and it takes them a long time to recover from it. As such any discrepancies made by the victim are immaterial and do not affect the substratum of the prosecution case. The Bombay High Court in *Narmada Govind Kamble v. Maharashtra*, 2010 Cri. L.J. 1220 (Bom.) paras 3,4 and 6 has acknowledged the effects trauma can have on victims of sex trafficking and their ability to make exact statements.

In *U.P. v. Shankar*, A.I.R. 1981 S.C. 897, para. 38, the Supreme Court accepted the testimony of witnesses who varied as to collateral facts explaining that uncertainty about collateral facts does not overturn multiple eyewitness testimony that goes to the substance of the prosecution and hence does not vitiate the trial.

**B. There were no investigation irregularities sufficient to create reasonable doubt.**

1. **There were no investigation irregularities that prejudiced the accused or that caused a miscarriage of justice.**

**(Explain)**

**C. NGO’s involvement in the case was lawful and, thus, does not create reasonable doubt.**

1. It is not material that the Complainant was an NGO employee.

i. “[e]very citizen is competent and entitled to detect crimes and report, and if any information regarding the commission of any crime is known to any person, such information can be passed on to the police...” *Rajasthan v. Shambhoogiri*, (2004) 8 S.C.C. 169, para. 9.

ii. The Bombay High Court held in *Narmada* that there was “no reason to doubt” a complainant’s testimony who was employed by International Justice Mission because it is not material whether IJM is religious or an NGO; it is only material that IJM is an “NGO [that] takes interest in rescue of women involved in [prostitution]... Merely because persons working for NGO pursued the matter, it cannot be held that he had any personal interest in the matter and that he had falsely implicated anybody in the case.” *Narmada Govind Kamble v. Maharashtra*, 2010 Cri. L.J. 1220 (Bom.), paras. 4, 13.

2. It is commendable for NGOs to support the cause of vulnerable persons.

i. The Supreme Court held in *Childline* that it was lawful than an advocate for a human rights organization had been closely involved in the investigation and trial of persons accused of child sexual abuse, even to the point of taking witness statements. *Childline India Foundation v. Allan John Waters*, Crim. App. Nos. 1208-1210 of 2008 with Crim. App. Nos. 1205-1207 of 2008, (March 18, 2011), paras. 5, 10, 18. The Court commended the advocate for her role in the case, stating that she “undoubtedly supported [the] case for taking the cause of vulnerable street children and ... played [her] role in a responsible manner.” *Id.*

#### **D. The witnesses are credible beyond reasonable doubt.**

i. The Supreme court in (2004) 8 SCC 153, Para 21 held that there is no rule of law that the victim’s testimony cannot be acted upon without corroboration in material particulars.

ii. The Supreme Court has held that (1) the evidence of a police officer should not be automatically rejected merely because he is a police officer, and (2) the presumption that a person acts honestly in court applies as much to a police officer as to an ordinary person. *Girja Prasad v. Madhya Pradesh*, A.I.R. 2007 S.C. 3106, para. 24.

iii. In this case, the police witnesses were credible because they testified truthfully and acted on information provided by a respectable NGO.

2. Even if this Honourable Court finds some or all of the witnesses to be interested, their evidence still supports the prosecution’s case beyond reasonable doubt.

i. The Supreme Court has held that even uncorroborated interested witness testimony may prove a prosecution’s case because “[a]ll that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution.” *Hari Obula Reddi v. Andhra Pradesh*, A.I.R. 1981 S.C. 82, para. 12. The Court has also explained that “[rejecting evidence] on the sole ground that it is partisan would invariably lead to failure of justice.” *Masalti v. Uttar Pradesh*, 1965 Cri. L.J. 226 (S.C.), para. 14.

3. Thus, the witnesses are credible beyond reasonable doubt.

#### **E. The prosecution examined all material witnesses needed to prove its case beyond reasonable doubt.**

1. The prosecution needs only to examine witnesses who are “necessary . . . for unfolding the prosecution story” and not those who are “unnecessary and redundant.” *Mehmood Beg v. State*, 1973 Cri. L.J. 806 (S.C.), paras. 3, 9. The Supreme Court held in *Munshi* that “it is the quality of the

evidence and not the quantity which is required.” *Munshi Prasad v. Bihar*, 2001 Cri. L.J. 4708 (S.C.), para. 11.

Thus, the prosecution examined all material witnesses needed to prove its case beyond reasonable doubt.

## **F. SENTENCING**

- a) Trafficking of persons is a serious offence, especially when a child and minors are involved. The IPC clearly recognizes the gravity of the offence by (i) prescribing heavy punishments for trafficking offences and, (ii) dramatically increasing those punishments for minor or child victims.
- b) The trafficking in this case is especially abominable considering that the victim was a minor. The Accused 1 – 11 have readily (1) provided her for prostitution and (2) received payment in exchange for her sexual exploitation.
- c) The behavior of the accused was egregious and demands swift and heavy punishment. Therefore this Honorable Court should impose consecutive sentences pursuant to Cr. P.C. Section 31. .” See *Vishal Jeet v. Union of India*, 1990 Cri. L.J. 1469 (S.C.), paras. 6, 13-15. In *Vishal*, the Supreme Court directed our judicial system to take “severe and speedy legal action” to stop the “flesh trade [,] which is being carried on in utter violation of canons of morality, decency and dignity of humankind.”
- d) The accused’s sentences should “be consistent with the brutality” that they inflicted on young victim because “[t]he Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong.” *Madhya Pradesh v. Kashiram*, 2009 Cri. L.J. 1530 (S.C.), para. 17.
- e) This Court is empowered to inflict consecutive sentences and the facts of this case call for consecutive sentences. Under Cr.P.C. Section 31, sentences should generally run consecutively and commence after expiration of the other.
- f) According to the single transaction rule, concurrent sentences may be legitimate where two separate offences arise out of a single transaction. *Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti v. Assistant Collector of Customs*, 1989 Cri. L.J. 283, para. 10. However, the rule has no application if there were separate transactions or different facts are used to prove the different offences.
- g) Accused Nos 1-11 have committed several criminal transactions that have resulted in these charges. They procured the young minor victim. Additionally, they used certain premises as a brothel. The young minor victim has undergone immense trauma because of the prostitution forced on her by the above-named Accused persons and also because some of the Accused persons had sexual intercourse with her without her consent and then prostituted her as well. Therefore, all the Accused must serve separately for the abuse that they inflicted on the young minor victims.

## **G. VICTIM COMPENSATION**

- a) The Prosecution would like to request the Court to direct the accused and the State to pay compensation so that the victim can have resources for immediate rehabilitation and the Accused can be deterred from committing these crimes. The Supreme Court has directed lower courts to provide compensation to victims. In *Manish Jalan v. Karnataka*, A.I.R. 3074, para. 11 (S.C. 2008), the Supreme Court expressed frustration at lower courts for failing to utilize § 357 for “comprehensive” victim compensation, “Time and again the Courts have been reminded that the provision is aimed at serving the social purpose and should be exercised liberally yet the results are not very heartening.”

- b) Under Cr.P.C. S. 357, the Accused persons should be directed to pay the victims compensation for the brutality, psychological and physical suffering they have inflicted on the victim girl and for giving the victim girl M.D drugs without her consent and for making her an addict of the said drug. In Hari Kishan v. Sukhbir Singh, A.I.R. 1988 S.C. 2127, para. 10, the Supreme Court upheld the lower court's use of § 357(3) and encouraged courts to "liberally" order convicts to pay reparatory compensation to victims who suffered as a result of the convicts' actions.
- c) At the same time, the Prosecution urges that there is also need to provide compensation to the victim from the State. The accused on conviction would approach the appellate court and the victim is compelled to wait for years together to attain compensation. This is gross miscarriage of justice to the victim who has already suffered a lot due to the convict's actions. Therefore, it is humbly stated that the victim is granted compensation under §357 of Cr.P.C. so that District Service Legal Authority can probe into the matter and provide her with immediate relief. The code of criminal procedure (1973) § 357 (hereafter Cr.P.C" and § 357A in subsection (3) states that "if the trial Court at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it makes recommendation for compensation." Subsection (2) of the same section also states that when a recommendation is made by the Court for the compensation, the District legal Service authority will decide the quantum of compensation for the victim.

## **H. BROTHEL CLOSURE**

*In Prerana vs. The State of Maharashtra, Writ Petition No. 1694 of 2003, in para. 6(d), the Bombay High Court instructs Magistrates and Sessions Judges: "[t]o pass orders under section 18 of I.T.P.A. {being The Immoral Traffic (Prevention) Act, 1956} when convicting a person of an offence under section 3 and / or section 7 of I.T.P.A." Section 18(2) of I.T.P.A. states: "(1) A Court convicting a person of any offence under S. 3 or S. 7 may pass orders under sub section (1) without further notice to such person to show cause as required in that sub-section.*

Therefore, in view of the above, it is expedient in the interests of justice that this Honorable Court order the eviction of the occupiers and order the closure of the brothel.

## **I. PRAYERS**

The prosecution humbly prays that this Honorable Court does the following:

1. Convict Accused \_\_\_\_ with imprisonment for life for violating Sections 3, 4 and 16 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) and Sections 370, 376, 366-A of the Indian Penal Code (IPC).
2. Imprison Accused \_\_\_\_\_ for violating the aforementioned offenses, mindful of the suffering inflicted upon Victims
3. May fine the accused and use the proceeds to compensate the victims of the accused's' heinous and inhuman crime.
4. May direct DLSA to order adequate victim compensation under S.357 of Cr.P.C to the victims of this crime.
5. Order for the closure of the brothel ----- and all other lodges used as brothels for the purpose of prostitution of the minor victim girl in the said case.
6. Award any other relief that the Court deems proper.

PLACE: Mumbai  
DATE:

ADVOCATE OF THE VICTIM / INTERVENER: