

A.F.R.

Reserved :- 24/04/2023

Delivered :- 05/05/2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 76

CRIMINAL MISC. BAIL APPLICATION No. - 6693 of 2023

Applicant :- Moharpal Maurya

Through :- Sri Nagendra Kumar Singh, Advocate

vs.

Opposite Party :- State of U.P.

Through :- Sri Sunil Srivastava, A.G.A. and Ms. Maimoona

Fatima, Advocate

CORAM :- HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Facts of the present case are disturbing which indicate that this case is of immoral child trafficking. Victim is a minor girl aged about 14 to 15 years and was working as an scavenger. According to F.I.R., lodged by father of victim, she was missing since 29.9.2020 and one of the co-accused Chhabinath was a suspected person that he has enticed the victim and kidnapped her from lawful guardianship.

2. It appears that victim returned on 25.2.2022 i.e. after 1 year 5 months. Statement of victim were recorded under Sections 161 and 164 Cr.P.C. wherein she narrated her entire ordeal of repeated sexual assault and how she was sold from one accused to another.

3. According to victim, her ordeal of immoral trafficking was commenced when co-accused Gaurav alias Sonu kept her for about 45 days in a house belonging to his brother where he repeatedly raped her and later on sold to present applicant for ₹ 60,000/-.

4. Thereafter, applicant solemnised marriage with victim and she stayed for about 1 year along with him and thereafter co-accused Gaurav again contacted her and sold to other co-accused viz., Surendra Kumar Singh @ Shani for Rs. 50,000/- where she again lived as his wife for about 3-4 months, however, he repeatedly assaulted her and on one day, victim slipped away from that place and when she met co-accused Rinku. The victim solemnised Court marriage with him and lived there as husband and wife and thereafter was traced from his house.

5. Sri Nagendra Kumar Singh, learned counsel for applicant has submitted that applicant has not purchased the victim on payment, rather they lived together as husband and wife after solemnizing marriage without any force and she left his company on her own will. In the statements also, victim has not stated that applicant has committed any cruelty with her or he assaulted her or entered into physical relationship against her will. He is not part of any child trafficking.

6. Learned counsel has also submitted that co-accused Surendra Kumar @ Shani, who has been alleged by victim that not only he married to her but he assaulted her also, has already been granted bail by co-ordinate Bench of this Court.

Therefore, applicant who is in jail since 16.10.2022 may be released on bail.

7. Sri Sunil Srivastava, learned A.G.A. for State as well as Ms. Maimoona Fatima, learned counsel for High Court Legal Services Committee have opposed the bail and submitted that it was a case of child trafficking, wherein victim was sold to accused persons one after another and accused persons have solemnised marriage of convenience with victim and sexually assaulted the victim also. All accused persons were acting like a gang and one of the co-accused (Gaurav) was kingpin, who acted like a broker. The victim has narrated her ordeal in details in her statement recorded under Sections 161 and 164 Cr.P.C. Therefore, applicant may not be released on bail and this Court may deal with accused persons strictly.

8. Heard learned counsel for parties and perused the record.

9. **LAW ON BAIL - A SUMMARY**

(A) The basic rule may perhaps be tersely put as bail, not jail.

(B) Power to grant bail under Section 439 Cr.P.C., is of wide amplitude but not an unfettered discretion, which calls for exercise in a judicious manner and not as a matter of course or in whimsical manner.

(C) While passing an order on an application for grant of bail, there is no need to record elaborate details to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal. However, a Court cannot completely divorce its decision from material aspects of the case such as allegations made against accused; nature and gravity of accusation; having common object or intention; severity of

punishment if allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of witnesses being influenced by accused; tampering of evidence; character, behaviour, means, position and standing of accused; likelihood of offence being repeated; the frivolity in the case of prosecution; criminal antecedents of accused and a prima facie satisfaction of Court in support of charge against accused. The Court may also take note of participation or part of an unlawful assembly as well as that circumstantial evidence not being a ground to grant bail, if the evidence/ material collected establishes prima facie a complete chain of events. Parity may not be an only ground but remains a relevant factor for consideration of application for bail.

(D) Over crowding of jail and gross delay in disposal of cases when undertrials are forced to remain in jail (not due to their fault) may give rise to possible situations that may justify invocation of Article 21 of Constitution, may also be considered along with other factors.

(See, **State Of Rajasthan, Jaipur vs. Balchand @ Baliay** (AIR 1977 SC 2447 : 1978 SCR (1) 535; **Gurcharan Singh vs. State (Delhi Administration)**, (1978) 1 SCC 118); **State of U.P. vs. Amarmani Tripathi**, (2005) 8 SCC 21; **Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr** (2010)14 SCC 496; **Mahipal vs. Rajesh Kumar**, (2020) 2 SCC 118; **Ishwarji Mali vs. State of Gujarat and another**, 2022 SCC OnLine SC 55; **Manno Lal Jaiswal vs. The State of U.P. and others**, 2022 SCC OnLine SC 89; **Ashim vs. National Investigation Agency** (2022) 1 SCC 695; **Ms. Y vs. State of Rajasthan and Anr** :2022 SCC OnLine SC 458; **Manoj Kumar Khokhar vs. State of Rajasthan and Anr.** (2022) 3 SCC 501; and, **Deepak Yadav vs. State of U.P. and Anr.** (2022) 8 SCC 559)

10. The Court has taken note of apathy of the victim. The Court has summoned Chairperson, CWC, Shahjahanpur in order to verify whether the Committee has discharged all responsibilities towards victim diligently or not? It was

informed that victim was communicated her rights and that she can avail facility of a support person by a written communication. However, the victim has denied. She has given statement before the members of C.W.C. and narrated same version as stated her statement recorded under Sections 161 and 164 Cr.P.C. and that she wants to live along with her mother.

11. This Court has passed certain directions in regard to working of C.W.C. in the judgement of **Rajendra Agarwal Urf Bablu vs. State of U.P. and others, Bail Application No. 833 of 2023** and relevant parts thereof are mentioned hereinafter -:

“25. The above referred procedure of Committee and additional functions and responsibilities of Committee entrusted a great responsibility to Child Welfare Committee that it shall hold its sittings in the premises of a children's home or, at a place in proximity of children's home or, at a suitable premises in any institution run under the Act for children in need of care and protection. It further provides that it shall be ensured that no person or persons unconnected with case remains present in room when session is in progress and only those persons shall be allowed to remain present, in presence of whom child feels comfortable. Committee shall hold its sittings in a child friendly premises which shall not look like a Court Room in any manner. Committee has to review the Children's Suggestion Book atleast once in a month.

26. Concept of Child Welfare Committee has important factor in implementation of JJ Act, 2015 and JJ Rules, 2019. In the present case considering gravity of allegations, victim does require a very

special and effective counselling by an experienced counsellor.

27. In the backdrop of above referred statutory provisions it is clear that Child Welfare Committee has a great responsibility when it is dealing with a case of minor girl victim, as the case in hand, who has suffered mental and physical trauma of repeated assault for many years. In such cases it would not be a mere formality of Child Welfare Committee to comply with above referred statutory provisions but it would require more cautious approach. In such cases victim should be dealt with extra care and responsibility and for that members of Child Welfare Committee required a trained support system, who can undertake counselling of such victims keeping in view their sufferings.

28. National Commission for Protection of Child Rights (NCPCR) has launched a training module for Child Welfare Committee. The module will be more beneficiary if it includes a requisite training to deal with minor victims of sexual assault.

29. Effect of act/ offence of rape is not momentary but it got pasted on mind, heart, body and soul of the victim and the object of Child Welfare Committee is to undertake such endeavours to erase such memories by counselling and it should be done by well trained counsellors who have experience of treating such minor victims under proper guidance.

30. In view of above, Ministry of Women and Child Development, Government of U.P., Lucknow through its Secretary is directed to ponder on above referred issue by initiating process of interaction with all stakeholders in order to make Child Welfare Committee and its Members more competent, more responsible, more generous and more compassionate to deal with such cases, as the case in hand.

31. While undertaking above exercise it shall also take note the provisions of Rule 35 of JJ Rules, 2019 which provides mental health for children at Child Care Institution. Sub-rule (5) thereof provides that every Institution shall have the services of trained counsellors or collaboration with external agencies such as child guidance centres, psychology and psychiatric departments or similar Government and non-Governmental agencies, for specialized and regular individual therapy for child.

32. The object of above exercise is to provide sincere and appropriate counselling to minor victim and exercise shall not be limited to above observations. It is up to the senior officers of Department to come up with a concrete plan in order to achieve the above referred observations of this Court.”

12. Considering above referred factual aspects of this case as well as submission of learned counsel for rival parties and law as referred above, it transpires that in the present case, a minor girl has suffered a lot not only her body was ravished many times by number of persons but she has suffered mental trauma also. From the facts as referred above, it is evident that victim was sold to accused persons one after another and they solemnised marriage of convenience and sexually assaulted the victim and some accused persons have physically assaulted her also. There are evidence that victim was sold and purchased like a commodity. This act of selling the human being like a commodity was nothing but a dark huge black spot on society and accused persons including applicant are not only accused of the offence committed against victim but they are accused to the entire society as well.

13. The applicant and co-accused have treated a minor girl like a vegetable sold in an open market and not only entered a marriage of convenience but made physical relationship with her with or without consent which was illegal as the settled position of law is that consent, if any, of a minor girl for physical relationship is immaterial.

14. In the present case, the only relationship between accused persons including applicant and victim was a relationship with her body only. There was no relationship of mind or emotions.

15. Contention of learned counsel for applicant that victim had stayed along with him on her own will and he was not part of any child trafficking appears to be contrary to the evidence on record including the confessional statement as well as consistent statement of victim recorded under Sections 161 and 164 Cr.P.C.

16. It has also been brought on record that co-accused Surendra Kumar @ Shani has already been granted bail by co-ordinate Bench of this Court, however, reasons given therein do not appear to be in terms of judgement of Supreme Court in the cases of **Manoj Kumar Khokhar vs. State of Rajasthan and Anr. (2022) 3 SCC 501** and **Brijmani Devi vs. Pappu Kumar, (2022) 4 SCC 497** wherein Supreme Court has held that while granting bail to accused persons, High Court should give specific findings/reasons in this regard. The reasons given by co-ordinate Bench in co-accused case are as follows -:

“After perusing the record in the light of the submissions made at the bar and after taking an

overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.”

17. Considering the reasons given by co-ordinate Bench as well as law as held in Manoj Kumar Khokhar and Brijmani Devi (**supras**), it appears that certain relevant facts were not brought on record before co-ordinate Bench as well as that it was a case of child trafficking, therefore, this Court is declining prayer for bail on the ground of parity.

18. As discussed above and considering that applicant is part of child trafficking nexus and it is not only a crime against victim, a minor girl, but it is a crime against society and, therefore, the Court is of considered opinion that no case of bail is made out in favour of applicant in Case Crime No. 438 of 2020 under Sections 366, 120-B, 176, 372, 373, 376 AB I.P.C., Section 3/4 of POCSO Act and Section 5 of Immoral Traffic (Prevention) Act, 1956, Police Station- Nigohi, District- Shahjahanpur.

19. Before parting with this judgement, some reference is required to the menace of child trafficking in India.

20. The National Crime Record Bureau compiles crime statistics reported by different States and Union Territories and same are published in its manual publication. In the report of 2022, it was reported that number of cases in which children below 18 years trafficked during 2018 to 2020 were 941, 883

and 750 respectively as well as number of children traffic below 18 years during 2018 to 2020 were 2772, 2863 and 2222 respectively. It also gives the profile of child below 18 years rescued in India from 2018 to 2020 were 2383, 2693 and 2135 respectively. All the above details are based on consolidated report from all the States.

21. If we look the anti trafficking laws in India, they are Article 21 of the Constitution of India which prohibits trafficking in human beings and beggar and other similar forms of forced labour and in contravention of this provision, there shall be a punishable offence in accordance with law. There is an Act viz., Immoral Traffic (Prevention) Act, 1956 which indicates that with the prior object to abolish the traffic as an organized means of living. There are other laws viz., Child Labour (Prohibition and Regulation) Act, 1986, etc.

22. The Government of India as well as a State Government are having dedicated Ministries as well as Commissions and there are number of Non Government Organisation who are actively trying to eradicate the trafficking of human being of child as well as to rescue the children from the web of illegal trafficking. Still a lot has to be done. The child trafficking is a crime against humanity and Society, therefore, each citizen of the country has to give some effort in order to check and to stop such trafficking and for that citizens have to kept their eyes open and in case of any suspected movement of children or otherwise is found, they have to report immediately to the concerned police station or NGO or any other appropriate place as well as we have to discourage child labour, child beggars to

create a movement in the society so that nexus between web of child trafficking maybe cracked and innocent children may not be trapped in their web as well as we have to take care as the society to help the rescued child/children.

23. Accordingly, the outcome of above discussion is that bail application of applicant is **rejected** with above observations.

Order Date :- May 05, 2023

Nirmal Sinha

[Saurabh Shyam Shamshery, J.]