

Party Name : AMINA KHATUN ON BEHALF OF ACCD. DILWAR HOSSAIN @ DELOYAR HOSSAIN Vs THE STATE OF TRIPURA

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

The Superintendent of Police, Sipahijala District is present in person and has brought to the notice of this Court the judgment dated 11.05.2015 delivered by the Judicial Magistrate, 2nd Class, Sonamura, West Tripura in which the following order has been passed:

“*As the convicts are Myanmar National and entered illegally into Indian Territory through Bangladesh, so they shall be pushed back alongwith their respective children to Bangladesh through O/C MTF, Sonamura with the aid of O/C Sonamura P.S on completion of their period of sentence.***”**

It is pointed out that all the persons who are allegedly in traffic have now been pushed back to the Bangladesh. The Superintendent of Police, Sipahijala District has acted on the basis of the order passed by the Court. Personal appearance of the Superintendent of Police, Sipahijala District is dispensed with.

As far as this application for grant of bail is concerned, which has been filed by the petitioner, Smti Amina Khatun on behalf of accused Dilwar Hossain @ Deloyar Hossain in connection with Melaghar P.S Case No.28 of 2015 registered against the accused under Section 120(B)/370 IPC.

In the present case, the allegation of the police is that from the house of Kurban Ali 24(twenty-four) people were recovered. Out of whom, 23(twenty-three) belong to Myanmar and one Abdul Rashid Dar belong to J & K. It is alleged that these 23 people who belong to Myanmar illegally entered in India through Bangladesh. These 23 persons included adults and children. The adults confessed to their crime and they were sentenced to three months imprisonment and thereafter they were directed to be pushed back into Bangladesh.

Admittedly, all these 23 persons are not in India any longer. The allegation against the accused is that he assisted these 23 persons to cross the border and enters into India and thereby committed an offence punishable under Section 120B read with Section 370 of IPC which deals with trafficking of person.

Trafficking under Section 370 IPC has been defined to mean recruiting, transporting, harbouring, transferring or receiving a person by using threat, using force, abduction, practicing fraud or deception by use of power and by inducement.

In the present case, the allegation against the accused is of having helped the 23 Myanmar Nationals who entered in India without Passports. Prima facie I am of the view that from the evidence on record it cannot be said that an offence of trafficking has been certainly committed. The State will have to lead some evidence in this regard and unfortunately for the State the main witnesses have already been pushed back out of India into Bangladesh.

I fail to understand, what evidence the State shall now lead to prove threat to the those 23 Myanmar Nationals, use of force against them, use of coercion, abduction, practice of fraud or deception, abuse of power etc.

Therefore, even if the allegations are accepted to be correct, the accused may be guilty of having abetted an offence under the Passports Act but there is very little evidence of trafficking at this stage.

Keeping in view the facts, it is directed that the accused namely, Dilwar Hossain @ Deloyar Hossain be enlarged on bail on his furnishing bail bond in the sum of Rs.20,000/- (rupees twenty thousand) with two sureties in the like amount to the satisfaction of the learned trial Court undertaking therein:-

- (i) That, the accused is directed not to tamper with or in any manner influence the prosecution witnesses;
- (ii) That, the accused shall ensure that no threat directly or indirectly is given to any of the prosecution witnesses;
- (iii) The accused is further directed not to cause any hindrance in the investigation;
- (iv) The accused shall not leave Tripura without permission of the appropriate Court;
- (v) The accused shall appear before the trial Court on each and every date of hearing. In case, he absent himself on any date, then the trial Court shall cancel the bail and the accused shall be arrested. Thereafter, the accused shall have to again approach this Court for grant of bail;
- (vi) In case, the accused violates any of the conditions or tries to delay the trial, the prosecution shall be at liberty to apply for cancellation of bail.

With these observations, the bail application is disposed of.

On the petitioner filing application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to the petitioner by tomorrow.