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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1610 OF 2018

1. Bebi @ Laxmi Jagannath Patel

2. Shivlibibi Ilambabu Shaikh,

3. Kalya alias Kiran Ashok Sonawane

4. Nanya alias Sunil Mohan Thakare ... Applicants.
Accused Nos.17, 16
11 and 10

V/s.

The Additional Police Superintendent
of Nandurbar and ors ... Respondents

WITH
CRIMINAL BAIL APPLICATION NO.1611 OF 2018

1. Mumtaz Bacchansingh Karmawat

2. Ramansingh Bacchansingh Karmavat ... Applicants.
Accused Nos.9, 7

V/s.

The Additional Police Superintendent
of Nandurbar and ors ... Respondents

Mr. Shriram S. Kulkarni, for the applicants in both the applications.
Ms. Pallavi Dabholkar, APP for the Respondent State.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the applicants and learned APP for the State.

2] These applications are filed by the applicants for regular bail, under Sections 439 of the Code of Criminal Procedure.

3] The facts of the prosecution case are to the effect that on 10.1.2017, on the receipt of the confidential information given by the Research Officer of the Rescue Foundation- an NGO working for welfare of sex workers, Assistant Police Inspector Ankush Borate, of Shahada Police Station, sent a Punter and conducted a trap at the premises situate behind the vegetable market at Shahada, District: Nandurbar. Accused No.1 Hema Singh, accused No.2, Vaishali Pawar, were found red handed. They were arrested and 68 victim girls, including 17 minor girls were taken into custody. Out of these 68 victim girls, eight were from Nepal, six were from West Bengal, two were from Orissa and five from different cities of Maharashtra and the rest 47 were from the State of Rajasthan.

4] On the basis of the complaint lodged by API Borate, C.R.No.5, of 2017, came to be registered against accused No.1 Hema and accused No.2 Vaishali, on the same day.

5] In the initial inquiry conducted by the Judicial Magistrate First Class, Shahada the victim girls admitted that they were working as sex workers in the brothel conducted by accused No.1 Hema Singh and accused No.2 Vaishali Pawar. On 20.1.2017, so called parents/guardians of minor victims applied for their custody and without ascertaining relationship between the victims and the persons claiming their custody and without verifying the fitness of such persons to hold custody of the victims so as to ensure that the victims would not be drawn to sex trafficking again, the Judicial Magistrate First Class, Shahada, issued directions for their release.

6] Being aggrieved thereby, the Rescue Foundation has preferred two Criminal Writ Petition Nos.325 of 2017 and 482 of 2017, in this Court, at Aurangabad Bench. Considering the gravity of the offence, as per the order passed by this Court, Bench at Aurangabad dated 27.6.2017, the State Police Nodal officer was entrusted with the responsibility of investigating into the offence, in respect of prevention of atrocities against women. Assistant Commissioner of Police, Anti Human Trafficking Unit – was also directed to conduct the investigation. As per the order of this Court, "the concerned Officers were expected to find out whether there is inter-State linkage of the crime and if necessary, with the approval of the Home Department and in collaboration with the other States, to form an appropriate

task force and conduct investigation, in respect of offence of trafficking of women, which appears to have spread in multiple States". Further directions were also given for proper investigation into the offence with all seriousness and for rehabilitation of the victim girls. Some of the victim girls, who were minor were handed over to Child Welfare Committee, Nandurbar and their parents were allowed to apply for custody of the minors.

7] The Rescue Foundation then filed Special Leave Petition No.6753 of 2017, in the Hon'ble Supreme Court and the Hon'ble Supreme Court, by its order dated 3rd April, 2018, was pleased to consider, from the material placed on record that, the crime has inter-State implications, as the victim girls were procured from various States like, Maharashtra, Orissa, West Bengal and Rajasthan. It was, therefore, apprehended that applications are likely to be filed in different Courts in different parts of the country, for securing anticipatory bail/regular bail during pendency of the investigation and the trial of the case, hence, it would be difficult to effectively handle the problem. Therefore, direction was given by the Hon'ble Apex Court, that any application, either for anticipatory bail or regular bail, should be moved only before this Court and no other Court should entertain any proceeding in connection with the above mentioned crime. Accordingly, the Hon'ble Acting Chief Justice of this

Court, was requested to designate a Bench for considering such applications exclusively.

8] In view of the above order, the Hon'ble Acting Chief Justice has designated the Bench of the undersigned and directed all these applications to be placed before this Bench. This is how these applications are placed before this Bench.

9] At this stage, it may be stated that during this intervening period, accused No.1 Hema Singh and accused No.2 Vaishali Pawar, came to be released on bail as per the order passed by the Single Judge of Aurangabad Bench of this Court on 21.6.2017; whereas accused No.3 Mayabai came to be released on bail as per order passed by Additional Sessions Judge, Shahada on 1.4.2017.

10] Subsequent thereto, investigation of the C.R.No.5 of 2017 is now complete and supplementary charge sheet is filed against in all 20 accused persons on 3.7.2018, for the offences offence punishable under Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and Sections 3, 4 and 5 of the Protection of Children from Sexual Offences, 2012.

11] The applicants are the accused Nos.17, 16, 11, 10, 9 and 7, respectively. They are arrested in between 07.4.2018 to 27.04.2018. The allegations against applicant Bebi @ Laxmi in Application No.1610 of 2018 is that she forced victim Pooja Laxman Dhanavat into

prostitution. The allegation against applicant No.2 Shivlali Bibi in Application No.1610 of 2018, is that she had forced victim Shilpa Teli, from Rajasthan into prostitution. The allegation against applicant No.3 Kalya Kiran A. Sonawane and applicant No.4 Nanya @ Sunil , in Application No.1610 of 2018, is that they alongwith accused Nos. 10 and 12 provided temporary unauthorized house to the minor girls procured for prostitution. The allegation against applicant No.1 Mumtaz in Application No.1611 of 2018, is that she aided other accused in procuring minor girls for the purpose of prostitution. The allegation against applicant No.2 Raman Karmavat in Application No.1611 of 2018 is that he alongwith accused Nos. 5, 8 and 9 procured minor girls and women from Rajasthan by giving them false promise of a good job.

12] The grievance of the applicants is that the main accused No.1 Hema, accused No.2 Vaishali and accused No.3 Mayabi, are already released on bail. The allegation against accused No.2 Vaishali and accused No.1- Hema, was that they were running the brothel, whereas allegation against accused No.3 Mayabai was that she has given her house on rent for running the brothel. Hence, according to learned counsel for applicants, if the main accused, against whom there were far more serious allegations, are already released on bail, then the present applicants, the allegations against whom are of a

minor nature, are also required to be released on bail on the ground of parity.

13. It is also submitted by learned counsel for the applicants that the statements of witnesses against these applicants are very vague in nature and generalized.

14] It is submitted by learned counsel for the applicants that at the most, the applicants can be liable for the offence under Section 5 of the Immoral Traffic (Prevention) Act, and no other offence can be attributed against them. Hence it is urged that the applicants deserve to be released on bail, as already the investigation is complete and the charge-sheet is also filed in the Court.

15] The learned APP, has strongly resisted these applications by submitting that in the instant case, in all 68 women were rescued and out of them 17 were minors, when the raid was conducted on the information received from Rescue Foundation. It is urged by learned counsel for applicants that considering the number of girls who were found at the place and rescued, it can be clearly be inferred that there was a systematic racket run by these applicants and other accused persons and hence merely because the charge sheet is filed in the Court, they cannot be released on bail. It is urged that if the applicants are released on bail, some more girls will be trafficked for sexual exploitation.

16] According to learned APP, the allegations made against accused Nos. 1 to 3 are of totally different nature than the allegations which are made against these applicants. The allegations made against these applicants, are far more serious and grave, having serious ramifications, therefore, on the ground of parity also, these applicants cannot be released on bail.

17] Further it is submitted that apart from the statements of victim girls, there are statements of other witnesses also, who have deposed about the racket run by the applicants and other co-accused. According to learned APP, therefore, no case is made out for releasing these applicants on bail merely because charge-sheet is filed in the Court.

18] Having given my thoughtful consideration to the submissions advanced at Bar, this Court is constrained to observe that the offence alleged in the present case is very serious and grave in nature. Needless to state that human trafficking, especially if it is for sexual exploitation, it is a blot on humanity and is the worst type of offence. In this case, prima facie also, there is sufficient material to indicate that a systematic racket is conducted to procure the girls from different States, for running this lucrative business of prostitution.

19] It is true that some of the victim girls are major and some

are on the verge of majority, but as rightly submitted by learned APP, the victim girls have clearly taken the names of these applicants and their statements reveal that they were lured on the false promises of attractive jobs and brought to this place and were forced into prostitution.

20] Against applicant Nos. 1 and 2 Baby Shivlibibi, there are statements of victim minor Shabana, Pooja, Anjali stating that applicants forced victim Pooja and victim Shilpa into prostitution. Against applicant Nos.3 and 4 Kalya in Application No.1610 of 2016 and Nanya, there are statements of victims Manisha, Pooja, witnesses Guru Sonawane, Dilip Shimpi, Sanjay Chavan stating that applicants provided temporary unauthorized house to the victims and brought customers and thereby made monetary gain. As against applicants Mumtaz and Ramansingh in Application No.1611 of 2018, there are statements Guru Thore, Shayani, Dilip Jain, Laxman Satyanarayan, Rajaram Gudadava, minor victim Manisha etc, stating that applicants aided other accused in procuring minor girls for the purpose of prostitution.

21] Merely because these victim girls are major or on the verge of majority, the gravity of the offence alleged against these applicants cannot be reduced. The very fact that in 68 victims, forced into prostitution, were found and out of them 17 were minor girls,

goes to show that a systematic racket was run. Hence, if the applicants are released on bail, at this stage, there will be the danger of similar such girls being forced into human trafficking. There is also the possibility of applicants pressurizing or tampering with these victim girls and other prosecution witnesses. Their evidence is yet to be recorded by the trial Court.

22] Hence, considering the nature of the offence which is attributed and alleged against present applicants, which is of a repetitive nature, it becomes necessary that at least at this stage, they should not be released on bail, so that the prosecution case can be taken to its logical conclusion. If they are released on bail, at this stage, it will create hurdles in effective trial of the case. As it is informed that the charge-sheet is filed and the case is kept for framing of the charge on 05.09.2018. Therefore, this is not fit case to release the applicants on bail. Hence these applications stand dismissed.

23] As regards submission that the applicant Kalya is suffering from H.I.V. and Aids, the learned APP has submitted that appropriate treatment is being provided to him, in the jail itself. In view thereof, this also cannot be a ground to release her on bail.

24] However, the learned trial Court is directed to expedite the hearing of the case and shall make endeavour to dispose of the same preferably within one year.

25] At this stage, learned counsel Mr. Kulkarni, for the applicants fairly submits that if the trial is not completed within a period of one year, the applicants be given liberty to approach this Court, again. Liberty as prayed for is granted.

[DR.SHALINI PHANSALKAR-JOSHI, J.]