

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1010 of 2020

Arising Out of PS. Case No.-67 Year-2019 Thana- KISHANGANJ District- Kishanganj

1. DILIP KUMAR GUPTA S/o Late Nandlal Gupta R/o village- Dumariya Bhatha, P.S.- Kishanganj, District- Kishanganj
2. Prakash Sarkar S/o Direndranath Sarkar R/o village- Ruidhasha, P.S.- Kishanganj, District- Kishanganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Radha Mohan Singh
For the Respondent/s	:	Mr.Abhay Kumar

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 29-06-2020 The present appeal has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard the learned counsel for the appellants and the learned APP for the State.

The present appeal has been filed on behalf of the appellants against the judgment of conviction dated 11.2.2020 and order of sentence dated 17.2.2020 passed by the learned Additional Sessions Judge-I Cum Special Judge, Kishanganj whereby and whereunder the appellants have been



convicted under Sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act and sentenced to undergo rigorous imprisonment for a period of two years and pay fine to the tune of Rs. 2,000/- each under Section 3 of the Immoral Traffic (Prevention) Act and in case of non-payment of the fine, it has been directed that the appellants shall further undergo rigorous imprisonment for a period of two months. As far as Section 4 of the Immoral Traffic (Prevention) Act is concerned, the appellants have been sentenced to undergo rigorous imprisonment of two years and pay a fine of Rs. 1,000/- and in default of payment of the fine, it has been directed that the appellants shall undergo rigorous imprisonment for a further period of two months. As far as Section 5 of the Immoral Traffic (Prevention) Act is concerned, the appellants have been sentenced to undergo rigorous imprisonment of three years and pay a fine of Rs. 2,000/- and in default of payment of the fine, it has been directed that the appellants shall undergo rigorous imprisonment for a further period of two months.



As far as Section 6 of the Immoral Traffic (Prevention) Act is concerned, the appellants have been sentenced to undergo rigorous imprisonment of seven years and pay a fine of Rs. 10,000/- and in default of payment of the fine, it has been directed that the appellants shall undergo rigorous imprisonment for a further period of three months.

The learned counsel for the appellants has submitted that there is gross inconsistency in the evidence produced by the prosecution and the learned trial court while recording the judgement of conviction has ignored the inconsistency in the statement of the prosecution witnesses. It is further submitted that none of the victim girls / ladies have been produced during the course of the trial nor their statement have been recorded under Section 164 Cr.P.C. before the learned Magistrate, hence, the learned court below has committed a gross error in convicting and sentencing the appellants. It is further submitted that the appellants are owner of the hotel in question and they have got no complicity in the



alleged occurrence. It is also submitted that the appellants were all along on bail during the course of trial. Lastly, it is submitted that the similarly situated co-convicts have already been granted the privilege of bail by coordinate Benches of this Court vide order dated 2.6.2020 passed in Criminal Appeal (SJ) No. 992 of 2020 and vide order dated 17.6.2020 passed in Criminal Appeal (SJ) No. 1057 of 2020.

Per contra, the learned APP for the State has vehemently opposed the prayer for bail.

considering the facts and circumstances of the case, taking into account the submissions made by the learned counsel for the appellants and upon perusal of the materials on record, including the judgement of conviction and order of sentence, which has been impugned in the present appeal, I deem it fit and proper to suspend the order of sentence dated 17.2.2020 passed by the learned court of Additional Sessions Judge-I Cum Special Judge, Kishanganj, till further orders and direct for release of the appellants herein on bail



on furnishing bail bonds of Rs. 10,000/- (rupees ten thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-I Cum Special Judge, Kishanganj in connection with Special Case No. 18 of 2019, (C.I.S. No. 9 of 2019) arising out of Kishanganj P.S. Case No. 67 of 2019.

It is further directed that during the pendency of the appeal, the realization of fine shall remain stayed.

List this appeal for hearing in due course.

(Mohit Kumar Shah, J)

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