

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Tapabrata Chakraborty
&
The Hon'ble Justice Tirthankar Ghosh

CRM 6550 of 2020
With
CRAN 1 of 2020

Forej Laskar
versus
The State of West Bengal

For the Petitioner : *Mr. Sandip Chakrabarty,*
Mr. Manish Debnath,
Mr. Souvik Mukherjee.

For the State : *Mr. Ranobir Roy Chowdhury,*
Mr. Mainak Gupta.

For the Intervenors –
Manab Kundu &
Sambhu Kundu : *Mr. Sabyasachi Banerjee,*
Mr. Anirban Dutta,
Mr. Abir Chakraborty.

For the Intervenors –
Aloka Giri &
Sariful Molla : *Mr. Arindam Sen.*

For the Intervenors –
Manas Chanda : *Mr. Arindam Jana,*
Mr. Sumanta Das.

Hearing is concluded on : *24.02.2021.*

Judgment On : **4th March, 2021.**

Tapabrata Chakraborty, J.

1. The present application being C.R.M 6550 of 2020 has been preferred in connection with Mandarmoni Coastal Police Station Case No.28 of 2019 dated 19.07.2019 under sections 366A/368/370/370A/120B/34 of the Indian Penal Code read with sections 3/4/5/6/7/9 of the Immoral Traffic Prevention Act and sections 17/21 of the Protection of Children from Sexual Offence Act.

2. Records reveal that in course of hearing of the application on 21st September, 2020, this Court directed service of show-cause notice upon five co-accused persons, namely, Sarif-ul Mulla, Aloka Giri, Manab Kundu, Sambhu Kundu and Manash Chanda (hereinafter referred to as the said co-accused persons), who were granted bail by the learned court below by an order dated 1st November, 2019. Pursuant to such direction, affidavits were filed by the said co-accused persons.

3. Mr. Chakrabarty, learned advocate appearing for the petitioner, namely, Forej Laskar alias Raju submits that the petitioner has been falsely implicated. No overt act has been attributed to the petitioner. About seven days after the alleged incident, the petitioner was arrested from a place which is about 50 kms away from the place of occurrence of the alleged incident. His name has transpired on the basis of the statements of witnesses recorded under Section 161 of the Code, which is inadmissible in evidence. Surprisingly, one FIR named accused, Raj @ Raz @ Rahid Raj has been discharged. Upon completion of investigation, charge sheet has also been filed but the petitioner is still languishing in custody for more than 18 months.

4. He further submits that the said co-accused persons had a direct involvement in the alleged offence as traffickers and as they had been enlarged on bail, the petitioner cannot be detained any further.

5. Placing reliance upon the affidavits affirmed by Sambhu Kundu (in short, Sambhu) and Manab Chanda (in short, Manab), Mr. Banerjee, learned advocate, appearing on their behalf, submits that upon due consideration of the materials in the case diary, the learned court below was pleased to exercise discretion in their favour and to enlarge them on bail by an order dated 1st November, 2019, after they had suffered imprisonment for a period of about 100 days. There had been no change in the circumstances after 1st November, 2019 warranting cancellation of bail.

6. He submits that Sambhu and Manab have been alleged to be the managers of the hotel cum brothel. Such allegation, even if accepted, they come within the ambit of Section 3(1) of the Immoral Traffic (Prevention) Act, 1986, for which the maximum punishment is of three years and fine.

7. He further argues that Sambhu and Manab are entitled to be enlarged on statutory bail inasmuch as the charge sheet was not filed within a period of 90 days.

8. Mr. Sen, learned advocate appearing for the co-accused persons namely, Sarif-ul Mulla, Aloka Giri adopts the submission of Mr. Banerjee.

9. Mr. Jana, learned advocate appearing on behalf of Manash Chanda (in short, Manash) submits that Manash has no manner of involvement in the alleged offence. He is an auto-rickshaw driver by profession and he plies the said rickshaw, which stands registered in the name of his wife, in the route from Chowlkholā bus stand to Mandarmani. On the date of alleged offence, some passengers boarded his auto-rickshaw for going to the said hotel.

10. Mr. Roy Chowdhury, learned advocate appearing for the State submits that the petitioner and the said co-accused persons are directly involved in the offence as would be explicit from the statements of the minor girls as recorded under Section 161 of the Code of Criminal Procedure, wherein they had categorically stated that they have been sexually exploited for gain by the petitioner herein and the other co-accused persons.

11. He further submits that the order dated 1st November, 2019 granting bail to the accused persons suffers from clear non-application of mind. The learned court below failed to appreciate the gravity of the offence which discloses an organised racket for exploitation of minor girls and others for sex and as such, said order is liable to be set aside.

12. In **Jayendra Saraswathi Swamigal -Vs. - State of Tamil Nadu** reported in **(2005) 2 SCC 13**, it has been held that the consideration which will normally weigh with the Court in granting bail in non-bailable offences should include among others, the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; reasonable apprehension of witnesses being tampered with and the larger interest of the public or the State.

13. In **State of U.P. -Vs. - Amarmani Tripathi** reported in **(2005) 8 SCC 21** it has been held that the following factors should be taken into consideration in an application for bail: *“(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being*

repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (vii) danger of course, of justice being thwarted by grant of bail.”

14. In **State of Bihar –Vs. – Rajballav Prasad** reported in **(2017) 2 SCC 178**, the following paragraphs which require consideration are set out as follows:

“15. We may also, at this stage, refer to the judgment in Puran v. Rambilas [Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] , wherein the principles while dealing with application for bail as well as petition for cancellation of bail were delineated and elaborated. Insofar as entertainment of application for bail is concerned, the Court pointed out that reasons must be recorded while granting the bail, but without discussion of merits and demerits of evidence. It was clarified that discussing evidence is totally different from giving reasons for a decision. This Court also pointed out that where order granting bail was passed by ignoring material evidence on record and without giving reasons, it would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. This ground for cancellation, the Court held, is different from the ground that the accused misconducted himself or some new facts call for cancellation.

16. The present case falls in the former category as the appellant is not seeking cancellation of bail on the ground that the respondent misconducted himself after the grant of bail or new facts have emerged which warrant cancellation

of bail. That would be a case where conduct or events based grant of bail are to be examined and considered. On the other hand, when order of grant of bail is challenged on the ground that grant of bail itself is given contrary to principles of law, while undertaking the judicial review of such an order, it needs to be examined as to whether there was arbitrary or wrong exercise of jurisdiction by the Court granting bail. If that be so, this Court has power to correct the same.

22. *...Further, while making a general statement of law that the accused is innocent, till proved guilty, the provisions of Section 29 of the Pocso Act have not been taken into consideration, which reads follows:*

“29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.””

15. We have given our anxious consideration to the rival submissions of the parties and have considered the materials in the case diary. The prayer for bail of the said co-accused persons was dismissed on merits. The argument that the said co-accused persons are entitled to statutory bail is not the subject matter of adjudication in the present *lis*.

16. Undoubtedly, cancellation of bail stands on a higher pedestal than denial of bail. However, in the event the order granting bail suffers from patent non-application of mind as to the gravity of the

offence and other relevant conditions, it is the duty of the superior court to set aside such perverse order.

17. Perusal of the order dated 1st November, 2019 reveals that the court was swayed by the submission of the Special Public Prosecutor to the effect that there is sufficient material in the case diary only against Forej Laskar alias Raju. There was absolutely no consideration of the nature and gravity of the offence, more so, when the allegations relate to commercial sexual exploitation of under-aged girls by an organized crime racket.

18. We have perused the statements of the minor girls recorded under Section 161 of the Code which consistently refers to the petitioner herein and the said co-accused persons, who were granted bail by the learned court below. The statements recorded by the minor girls under Sections 161 and 164 of the Code need to be read bearing in mind that the victims are vulnerable witnesses and they can be easily influenced by powerful organized criminals. The learned court below erred in law in granting bail to the said co-accused persons who are clearly involved in a grave organized crime racket for exploitation of women and as such, the said order dated 1st November., 2019 is not sustainable in law and is accordingly set aside.

19. Consequently, the bail order dated 01.11.2019 passed by Learned Additional Sessions Judge, 1st Court, Contai, of Manab Kundu, Sambhu Kundu, Alaka Giri and Sariful Molla is hereby set aside. As such their bail bonds are cancelled and they are directed to surrender forthwith before the Learned Additional Sessions Judge, 1st Court-cum-Judge, Special Court, Contai. In case the aforesaid persons do not surrender within a week from date the learned Special Court will be at liberty to issue non-bailable warrant of arrest and

subsequently, on receipt of report of execution, issue proclamation against the aforesaid four persons whose bail has been cancelled.

20. As the complicity of the petitioner, namely, Forej Laskar is similar to that of the said four accused persons, we are not inclined to grant him bail and the application being CRM 6550 of 2020 is also dismissed. The application being CRAN 1 of 2020 filed in connection with CRM 6550 of 2020 has already been disposed of earlier by an order dated 30th September, 2020.

21. However, the complicity of the co-accused person namely, Manash Chanda, was only to the extent that some passengers had boarded his auto-rickshaw to reach the concerned hotel. Therefore, we are not inclined to cancel the bail granted to him by the learned court below.

22. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Tirthankar Ghosh, J.)

(Tapabrata Chakraborty, J.)