

07.09.2022.
15.
Ct.No.28
as/PA
(Rejected)

C.R.M. (DB) 2718 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Bidhannagar South P.S. Case No.40 of 2019 dated 13.04.2019 under Sections 3/6 of the Immoral Traffic (Prevention) Act, 1956.

In the matter of: Ved Prakash Arya.

... Petitioner.

Mr. Y. J. Dastoor, Ld. Sr. Adv.,
Mr. Phiroze Edulji,
Ms. Minalini Majumdar,
Ms. Samira Grewal.

...for the Petitioner.

Mr. Saswata Gopal Mukherjee, Id.P.P.,
Mr. Madhusudan Sur, Id. A.P.P.,
Mr. Dipankar Paramanick.

...for the State.

Mr. Ranadeb Sengupta.

...for the minor victims.

Mr. Shekhar Barman,
Mr. Rohit Prasad.

...for the victim girl.

Petitioner has renewed his prayer for bail. He contends he is the owner of a premises named and styled as 'Ashroy Guest House' wherein it is alleged prostitution was carried on. On an earlier occasion petitioner approached this Court seeking bail in CRM (DB) 1477 of 2022. During the hearing of the matter this Court was surprised to note without reference to any judicial or statutory authority, the investigating agency had unilaterally de-sealed the guest house.

Being disturbed by the irregularity in the investigational process, this Court was constrained to issue direction upon

the Commissioner of Police, Bidhannagar Commissionerate to take steps for protection of the vulnerable witnesses, particularly the minor. Commissioner of Police was also directed that cases involving trafficking of women particularly minors for sexual exploitation are transferred to the Anti Human Trafficking Units and investigated by specialised officers preferably lady officers. Directions were also given for protection and support to the minors in the form of support person, counselling and interim compensation was also provided.

When the present bail application came up for hearing, we were apprised by Mr. Dastoor the minor victims have not supported the prosecution case. Perusal of their evidence shows their versions were patently absurd and they were hiding the truth. They had been won over and had come out with a ludicrous version in court to protect the offenders. From the aforesaid state of affairs, it appears directions of this Court to provide protection, assistance and counselling to the minor victims were turned into mere lip service and hardly had any impact at the ground level.

Under such circumstances, we directed Secretary, High Court Legal Services Authority to appoint a learned Advocate to represent the minor victims. At that stage, Mr. Shekhar Barman entered appearance on behalf of one of the major victims and submitted she and another victim had been arrayed as accuseds in this case. Noting such fact, by order dated 1st September, 2022, we called upon the investigating

officer to explain why victims of sexual exploitation were arrayed as accuseds.

Pursuant to such direction affidavit is filed before us. From the affidavit it appears that the raid at the guest house had been conducted by one Ashis Deb, the then Inspector-in-charge of Bidhannagar (South) Police Station. For reasons best known to the officers, he arrested two victims of sexual exploitation along with the minors who were present at the house. They were produced before the jurisdictional court as accused persons and remanded to custody. The deponent who is the investigating officer of the case did not pray for their discharge but proceeded to treat them as accused persons and filed charge sheet. Though during hearing of their bail applications, learned Public Prosecutor stated they ought not to be arraigned as accuseds, charges were mechanically framed against them under Sections 366A/370/341 of the Indian Penal Code, Sections 3/4/5/6/7/9 of the Immoral Traffic (Prevention) Act, 1956 and Section 17 of the POCSO Act.

In support of his showing the aforesaid victims as accused, the investigating officer referred to the evidence of one of the minor victims who stated that she was returning home along with one of them when one of the accused took them to the guest house.

We are unable to understand how such statement creates even a semblance of an impression that the major victims were hand in glove with the accuseds in the case.

There is no legally admissible evidence against the two major victims which justify the charges framed against them.

The aforesaid conspectus of events clearly show how the process of law instead of protecting the victims of sexual exploitation have been abused in the hands of ignorant and insensitive agencies. The investigating agency arrested the victims and they suffered custodial detention for 60 days. Mechanically adverting to the facts of the case, the prosecution proposed and the trial court framed charges against them and put them on trial. This is unfortunately an egregious example of secondary victimisation of victims of sexual exploitation.

Having noticed such facts it becomes incumbent on the part of this Court to exercise its inherent powers to set the law in its proper course and extend immediate succor to the victims.

We are conscious that we are considering a bail prayer of an accused. Whatever be the nature of jurisdiction invoked, every court particularly a superior court while exercising such jurisdiction continues to possess inherent powers. Inherent powers of a court are to be exercised *ex debito justitiae* to ensure the interest of justice is upheld and any injustice meted out to an individual particularly a victim of sexual exploitation as in the present case, is immediately extinguished. Exercising such wholesome jurisdiction is the bounden duty of every court to uphold the rule of law and ensure justice is done.

We have meticulously gone through the materials on record but are unable to find even an iota of legally admissible material which would give rise to any inference far less a reasonable one that the major victims of sexual exploitation (whose names have not been disclosed in this order) can be arrayed as accuseds in the present case. Hence, continuation of the proceeding against them is wholly unwarranted, vexatious and requires to be quashed at the earliest.

Accordingly, we set aside the charges framed against the said major victims of sexual offences. We are further of the view these victims are vital witnesses whose examination is most essential for a just decision of the case. Hence, we direct that the major victims (who had been illegally arrayed as accuseds) be examined as court witnesses by the trial court in exercise of power under Section 311 of the Code of Criminal Procedure.

In view of the aforesaid circumstances which show malevolent impact on vital witnesses who had turned hostile during trial and as we have proposed other victims of sexual exploitation to be examined as witnesses, we do not consider it prudent to enlarge the petitioner on bail at present.

Accordingly, the prayer for bail of the petitioner is rejected.

We request the trial court to pass appropriate orders in accordance with the directions given by us hereinabove and examine the major victims of sexual exploitation as court

witnesses at the earliest and conclude the trial within six months from the next date fixed before the said court.

Having noticed the callous, indifferent and insensitive manner in which the present case has been handled, we direct the Director General of Police and Inspector General of Police, West Bengal to take appropriate steps including disciplinary proceedings against Ashis Deb, the then Inspector-in-charge who without any legal justification arrested the major victims of sexual exploitation as well as the investigating officer who filed charge sheet against them without any credible material showing their complicity in the crime.

We also express our displeasure at the mechanical way in which the charges were framed against the said victim by the judge in the present case.

We direct the Member Secretary, State Legal Services Authority to forthwith release interim compensation to all the victims including the minor ones immediately, if not already done. Necessary police protection and support be extended to the major victims who have been proposed to have been examined as witnesses.

We further direct as follows:-

- a) In no case registered under the Immoral Traffic (Prevention) Act, provisions of the Indian Penal Code and POCSO Act involving exploitation of the victims for commercial sex, the said victims shall be arrested or arrayed as an accused in the police report, unless there are credible materials to show that they are themselves

the perpetrator/ conspirator in the crime. Adequate reasons based on materials on record must be recorded by the investigating officer in the case diary prior to arresting or arraying any victim of sexual exploitation as an accused;

- b) Victims recovered in the course of raid shall be treated as vulnerable witnesses and they shall be extended all necessary protection including counselling and interim compensation. Minor victims shall be referred to the Child Welfare Committee for assistance and rehabilitation;
- c) Cases registered under Immoral Traffic (Prevention) Act at the police station under the provisions of Indian Penal Code, POCSO Act and Immoral Traffic (Prevention) Act relating to exploitation of victims for commercial sex shall forthwith be transferred to the Anti Human Trafficking Units and be investigated preferably by a lady police officer;
- d) Any police officer who arrests a victim of commercial sexual exploitation and/or arrays such victim as an accused in the course of investigation in contravention of directions in clause (a) shall be deemed to have committed dereliction of duty and appropriate disciplinary proceeding shall be initiated against him;
- e) No judicial authority shall remand a victim of sexual exploitation to custody in course of investigation or frame charge against such victim unless the authority is

satisfied that there are credible and legally admissible materials to show the victim is a perpetrator/conspirator in the crime;

Copy of this order be sent to the Director General of Police, Inspector General of Police, West Bengal, Principal Secretary, Home Affairs Department, Member Secretary, State Legal Services Authority for due compliance.

Copy of this order be also sent to the Registrar General for circulation amongst the judicial officers in the State of West Bengal.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)