



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1489 OF 2024
IN
CRIMINAL APPEAL NO. 331 OF 2024

1. Ramansingh Bachansingh Karmawat
Age 33 years, Occ : Labourer,
(Presently in jail) ...Applicant/Accused no.7
2. Mumtaz Bachansingh Karmawat
Age : 51, Occ : Labourer,
(Presently in jail) ...Applicant/Accused no.9

Both the Applicants R/At: Polyada,
Tal: Devali, Dist: Tong, Rajasthan)

Versus

The State of Maharashtra
(Vide Shahada Police Station) ...Respondent

.....
Mr. Ganesh Gupta (through video conference) a/w Mr. Sahil
Ghorpade and Mr. Jagrut Patil, Advocates i/by M/s. G. G. Legal
Associates for the Applicants.

Mrs. S. N. Deshmukh, APP for the Respondent-State.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23.04.2024

Pronounced on : 07.05.2024

ORDER :

1. Two accuses, who stood convicted by Additional Sessions
Judge, Nandurbar for offence under Sections 3(2)(a), 3(2)(b), 4 and

5 of the Immoral Traffic (Prevention) Act, 1956 [PITA] r/w Section 34 of the Indian Penal Code [IPC] by judgment and order of dated 01.03.2024 in Special Case No.10 of 2017 and Special Case No. 9 of 2018, have put up instant application for suspension of sentence and grant of bail during pendency of appeal bearing Criminal Appeal No. 331 of 2024.

2. It is submitted that both applicants are falsely involved for above offence. According to learned counsel, they were arrested on 07.04.2018 and are behind bars for the last six years. Learned counsel pointed out that there are charges and accusations that accused procured girls from Rajasthan on the pretext of fixing job as domestic helpers and forced them into sex trade. However, according to learned counsel, there is no iota of evidence in support of any of the accusations or charges. He pointed out that as many as 20 persons were booked for above crime. That, though prosecution examined as many as 51 witnesses, none of them had identified accused for procuring girls or making them indulge in flesh trade. It is pointed out that in fact main accused is already set at large. Applicants have no concern. Their involvement is solely on the basis of some bank transactions and they are connected on the basis of some cash entries in their account. He pointed out that there was nothing to connect

applicants. Applicant no.2 is a lady. He pointed out that in fact there are two ladies by similar name. That, recently they are convicted i.e. by judgment and order dated 01.03.2024. That, appreciation at the hands of learned trial court being improper and there being good case on merits, both applicants have preferred appeal. But appeal being recent one, would take long time to be heard and decided and hence, prayers for suspension of sentence and grant of bail.

3. Strongly opposing the above application, learned APP would point out that applicants are proved to be involved in a serious offence of forcing minors in sex trade. According to her, it is offence against society. That, investigation revealed that minor girls are lured of job and brought to Shahada from Rajasthan. All girls are from marginalized societies and they are brought and exploited. Huge amounts are taken for selling girls for prostitution. Learned APP pointed out that thorough investigation revealed that applicants and other 18 persons are involved in this sex racket. Learned APP pointed out that as many as 61 girls were rescued in a special operation. Learned counsel took this Court through the testimony of Investigating Officer and also pointed to the findings reached at by learned Additional Sessions Judge and submitted that there is a serious and grave crime in which guilt of applicants is proved beyond

reasonable doubt. According to her, if relief as prayed is granted, there is every possibility of applicants misusing the liberty. For all above reasons, she prays to reject the application.

4. Heard at length. Perused the papers.

5. Papers show that a tip off was received from an NGO regarding brothel run in Shahada city, where flesh trade is conducted through women and minor girls. On receipt of such information, Shahada police seems to have swung in action and special team and squad was constituted and raid was also planned and carried out. It emerged that two ladies, namely, Hema and Vaishali, used to solicit customers for providing girls and collected money. Therefore, police machinery seems to have sent a decoy customer, who allegedly approached above two ladies seeking girl for sex. He was taken to a house, girls were shown to him. A girl was selected and charge of Rs.400/- was fixed. When the girl and decoy customer were in the room, pre-determined signal was relayed and the raid was effected. That time, above named two ladies were apprehended. Girls were taken in custody and inquiry was made with them. In the presence of panchas, panchanama was drawn. During panchanama, girls were found to be in possession of condoms. Accused and girls were found with the currency notes. Statements of girls were recorded.

6. Further investigation revealed that, as many as 20 persons, including present two applicants, were a part of the said sex racket. 61 girls, who were taken in custody and inquired, were rescued. After gathering sufficient evidence, in all 20 persons were chargesheeted and tried before learned Additional Sessions Judge, Nandurbar. During trial, prosecution examined in all 51 witnesses, including girls who were rescued and learned trial Judge, on appreciation of entire oral and documentary evidence, by its judgment and order dated 01.03.2024, accepted the case of prosecution as proved and held 17 persons guilty of the charges, including present two applicants. Said judgment is taken exception to by many convicts and present applicants have also preferred appeal bearing Criminal Appeal No. 331 of 2024. It is during pendency of the appeal, relief of suspension of sentence and grant of bail is pressed into service.

7. Provision under Section 389 of Cr.P.C. has been pressed into service seeking suspension of sentence and grant of bail. It is a statutory remedy which provides for suspension of sentence and grant of bail if entitled to, during pendency of main appeal. As to when powers under Section 389 Cr.P.C. should be invoked is fairly settled.

8. The import of powers under Section 389 Cr.P.C. is discussed in numerous cases like *Vikay Kumar v. Narendra* (2002) 9 SCC 364 ; *Ramji Prasad v. Rattan Kumar Jaiswal* (2002) 9 SCC 366 ; *Kishorilal v. Rupa* (2004) 7 SCC 638 ; *Vasant Tukaram Pawar v. State of Maharashtra* (2005) 5 SCC 281.

All these above rulings deal and discuss with the relevant factors which are required to be considered while granting relief under Section 389 Cr.P.C.

The ratio that has been culled out and the principle that is settled is that appellate court, while exercising power under Section 389 Cr.P.C., should consider gravity and seriousness of the offence, nature of accusations, nature of crime committed role and lastly, the desirability of releasing the accused on bail.

In the case of *Vijay Kumar* (supra) and *Ramji* (supra), the Hon'ble Apex court held that in cases involving serious crimes, it is only in exceptional cases that the benefit of suspension of sentence can be granted. It is reiterated in *Vijay Kumar* (supra) that in cases involving serious offence like murder, court should consider the relevant factors like the nature of accusations made against the accused, the manner in which the crime is alleged to have been

committed, the gravity of the offence and the desirability of releasing accused on bail after held guilty for offence of murder.

9. In the case of ***Gomti v. Thakurdas and others*** (2007) 11 SCC 160, the Hon'ble Apex Court succinctly discussed the object of Section 389 Cr.P.C. and also drew distinction between bail and suspension of sentence. The relevant observations read as follows :

“Section 389 of the Code deals with suspension of execution of sentence pending appeal and release of the appellant on bail. There is distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement of appellate court to record reasons in writing for ordering suspension of execution of sentence or order appealed. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.”

What is thus held is that, the appellate court while exercising powers under Section 389 Cr.P.C. is expected to objectively assess the matter and record reasons for the conclusion as to whether the case warrants suspension and grant of bail or not.

10. Keeping above settled legal parameters at forefront, it is to be assessed and ascertained whether case in hand deserves said relief of suspension as well as bail.

11. It is emerging that in all 20 accused were impleaded and chargesheeted for commission of various offences under Immoral Traffic (Prevention) Act, 1956. Undisputedly, considering the object of such legislation, crimes of such nature are viewed as against society at large. Instances have surfaced where prostitution is got done not only by engaging adult ladies, but also by procuring and forcing minors in flesh trade, and income earned from such illegal business has itself become a profession and occupation for some. The marginalized, destitute, girls and women from economically weaker sections who are soft targets, are dragged in the said trade and exploited by giving false assurance of job. Human trafficking has assumed complex dimensions both, at national as well as at global level. The concern becomes more severe and grave when children are forced and used for carrying out such trade. Case in hand also is of such nature.

12. Above discussion and the gist of the chargesheet is that at the behest of NGO, information was received about flesh trade being got done through women and minor girls who were procured and brought to Shahada taluka, district Nandurbar, which happens to be a town on the borders of the States of Gujarat and Madhya Pradesh. In the case in hand, information and investigation revealed that girls are procured from State of Rajasthan. Present applicants, i.e. accused no.7 and accused no. 9 also hail from said State. Investigation revealed them to be belonging to the same community to which the rescued girls also belong to. As discussed above, raid and investigation revealed that out of 61 girls, three are minors. Investigating machinery claims that the kingpin or the main accused no.1 was frequently transferring money to present applicant accused no.7, namely, Ramansingh. He and accused no.9 hail from same village and are also shown to be in contact with each other and to be beneficiaries of monetary transactions. Bank statements laid hands on by investigating machinery are connecting both applicants with the said sex racket. Learned APP strenuously submitted that occupation of applicants is shown as labour, but huge unaccounted amounts are deposited in their bank accounts. Services of police officer who, was a Cyber expert, seem to have been extracted to unveil the links and connections *inter se* between accused persons and there is said to be

record to that extent establishing complicity of accused. CDRs have revealed regular contacts between each other. Details of the same are reflected in Exhibits 410 to 417.

13. Testimony of Investigating Officer PW51 shows that present applicants Ramansingh and Mumtaz were instrumental in sending victims from Rajasthan to main accused no.1 Hema and accused no.2 Vaishali, who were operating at Shahada. Specific case of prosecution is that earnings from said illegal trafficking was the main source of income and occupation of accused and they were living on the income earned from above business got done from women and girls. It is also the case of prosecution that girls from poor section were lured and assured of domestic job and good income and were finally made to enter in sex trade.

14. Prosecution claims that out of rescued women and girls, three were proved to be minors.

15. No doubt, initially while recording statements under Section 161 Cr.P.C., witnesses did support prosecution, but in substantive evidence, most of them have resiled. This is what generally happens in cases of such nature. However, here, it is not the only oral account

but there is documentary evidence in the form of bank transactions and CDRs connecting each of the accused tried and held guilty.

16. Perused the operative part of the judgment dated 01.03.2024 delivered by learned Additional Sessions Judge. Conviction is awarded for offence under Sections 3(2)(a), 3(2)(b), 4 and 5 of PITA r/w Section 34 of IPC and for maximum sentence is 10 years imprisonment.

17. Taking into account the nature of charges, peculiar features of the case and the roles attributed to both applicants, mere aspect of main accused to be already at large or present applicants being behind bar since last six years, would not be a ground for suspension of sentence and grant of bail. In the considered opinion of this Court, this is not a fit case to grant relief as prayed. Hence, following order is passed :

ORDER

The application is dismissed.

[ABHAY S. WAGHWASE, J.]