

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.650/2024

Savita @ Sabita @ Sambha Satish Gore Vs. The State of Maharashtra and another

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri A.D. Hazare, Advocate for applicant
 Shri S.S. Hulke, APP for non-applicant No.1/State
 Ms Radha M. Mishra, Advocate (appointed) for non-applicant No.2

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/09/2024

The applicant came to be arrested on 03/09/2020 in connection with Crime No.479/2018 registered with Police Station, Chandrapur City, Chandrapur, for the offences punishable under Sections 3, 4, 5, 6, 7 and 9 of the Prevention of Immoral Trafficking Act, 1956 and Sections 366-A, 370-A of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of information, which was received from an NGO by name Freedom Firm that present applicant was running a brothel and is forcing minor girls to do illegal activities. Accordingly raid was conducted and during the said raid, the present applicant fled away from the spot. Investigating authority however, nabbed the girl from the spot, recorded her statement and it revealed that the brothel was run by the present applicant and two minor girls were also

found. On the basis of the same, the crime is registered.

3. The present application is filed by the present applicant only on the ground that there is inordinate delay in commencement of the trial. The earlier applications were withdrawn by the applicant.

4. It is submitted by the learned Counsel for the applicant that since the date of arrest i.e. from 03.09.2020, applicant is behind bar and though this Court has directed the learned trial Court to consider the aspect of separating the trial of present applicant and other co-accused, who are absconding and the applicant is in jail for more than 3 years. No steps are taken for the commencement of the trial and the applicant is languishing in jail from approximately four years. He submitted that in view of the observation of the Hon'ble Apex Court in catena of the decisions, wherein it is observed that, *"if the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial. The prosecuting agency should not opposed the plea for bail on the ground that crime was committed is serious one."* He submitted that in view of the above observation of the Hon'ble Apex Court, as the present applicant is in jail from last four years, she be released on bail. In view of that the application deserves to be allowed.

5. *Per contra*, learned APP for the State and learned Counsel for the non-applicant No.2 strongly opposed the said application and submitted that present applicant is the brothel owner who runs the brothel and dealing with the prostitution business. In view of the observations of the Division Bench of this Court in a Criminal Public Interest Litigation wherein the parameters are laid down to consider the application of bail in the cases of human trafficking wherein it is observed that the fundamental right of the victim not to be trafficked is to be taken into consideration and it is held that bail, upon stringent conditions, be granted to the trafficker or the brothel owners only after the statement of the victim is recorded under Section 164 of the Code of Criminal Procedure and only if all other aforesaid conditions are met. They submitted that in view of the said guideline the application deserves to be rejected.

6. After hearing the learned Counsel for the application and learned APP for the State, on perusal of the investigating papers, undisputedly the role of the present applicant is revealed from the investigation papers. It also reveals that she is the brothel owner. In Public Interest Litigation, in the case of *Freedom Firm Vs. Commissioner of Police* (2015) 19 Bom CK 0175, wherein it is held that:

(i) Bail should be denied to habitual offenders, (traffickers) except upon exceptional, special or compelling reasons upon the most stringent

conditions.

The Court shall call for and consider the antecedents reports of the accused in all trafficking cases before passing any order of bail maintained by the Anti-Human Trafficking Unit and the local police.

(ii) It is further held that bail should be refused to brothel owner until the brothel is closed and sealed under Section 18 of the ITPA.

(iii) Bail should also be denied if the victim is a minor except in case of any extraordinary, compelling for special circumstances to be explained in the order itself and upon the most stringent conditions.

(iv) Bail should also be denied its case of violent offence which would be seen from the statements of the victims and witnesses.

(v) If bail is applied on the ground of death of a family member, the Court should ensure that clear documentation is produced to prove the genuineness of the ground.

7. from the investigation papers and from the statement of the victim, the involvement of the present applicant is reveals. As far as the criminal antecedent is concerned, admittedly the copy of the judgment which is produced on record by the learned Counsel for the applicant shows that she is already acquitted from the said charges. There is no dispute to the fact that the applicant is behind bar since the date

of arrest that is for more than four years. This aspect is recently considered in catena of the decisions by the Hon'ble Apex Court and Hon'ble Apex Court in the case of ***Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another reported in 2024 SCC OnLine SC 1693***, wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. By referring the earlier catena of decisions, in the cases of ***Gudikanti Narasimhulu and others and other Vs. Public Prosecutor, High Court of Andhra Pradesh, Shri Gurubaksh Singh Sibbia and others Vs. State of Punjab, Hussainara Khatoon and others Vs. Home Secretary, State of Bihar, Union of India Vs. K.A. Najeeb and Satender Kumar Antil Vs. Central Bureau of Investigation and another***, the Hon'ble Apex Court observed as under:

“If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

The Court further observed that, over a period of time, the trial Courts and the High Courts have forgotten a very well settled principle of law that

the bail is not to be withheld as punishment.”

8. Thus, considering the observation of the Hon'ble Apex Court, in the present case, the applicant is languishing in jail since last four years, there is no progress in the trial as the other co-accused are absconding. Considering all these facts and considering the fact that the right of the present applicant of speedy trial is affected as there is a delay in trial, the applicant is made out a case for grant of bail. In view of that application deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

- (i) The application is allowed.
- ii) The applicant- Savita @ Sabita @ Sambha Satish Gore, be released on bail in connection with Crime No.479/2018 registered with Police Station, Chandrapur City, Chandrapur, for the offences punishable under Sections 3, 4, 5, 6, 7 and 9 of the Prevention of Immoral Trafficking Act, 1956 and Sections 366-A, 370-A of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, on executing PR bond of Rs.50,000/- with one surety in the like amount.
- iii) The applicant shall attend the Chandrapur City Police Station twice in a month on 1st and 15th of every month and the investigating officer shall record

her presence.

iv) The applicant shall not leave Chandrapur District till the culmination of trial.

v) The applicant shall attend the proceeding before the trial Court without seeking exemption if there are exceptional circumstances.

vi) The applicant shall not involve herself in similar type of activities, otherwise the bail granted to the present applicant deserves to be cancelled.

vii) Fees of the appointed counsel be quantified as per the Rules.

9. The present application is disposed of.

JUDGE

R.S. Sahare