



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

CRIMINAL APPLICATION (BA) NO. 831 OF 2023

Sunil Manohar Madkar V/s State of Maharashtra and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. P.E. Chakranrayan, counsel for applicant.

Mr. M.J.Khan, APP for the non-applicant.

Ms. Shubhada K. Phaltankar, counsel (appointed) for non-applicant No.2.

Mr. Digvijay P. Singh, counsel for Assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 19/03/2024.

1. The present application is preferred by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure as the crime is registered against him vide Crime No.469/2022 under Sections 370, 370-A, 376, 376(3), 376(2)(n), 366(A), 354(A)(1) read with Section 34 of the Indian Penal Code, 1860, Sections 3, 4, 5, 6, 7 of the Immoral Traffic (Prevention) Act, 1956 (for short 'ITPA') and Sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The applicant is arrested on 28.10.2022 and since then he is behind bar.

3. As per the accusation, the report is lodged by one Freedom Firm, Nagpur which is Non-Governmental Organization (NGO) at the Police Station, Bramhapuri alleging that on 18.09.2022 they received the information that one minor girl was brought and she was indulged in the business

of prostitution. On receipt of the said report, police have conducted the raid by sending a dummy person in the house of one Manjit Ramchandra Lonare by giving five currency notes of denomination of Rs.500/-. Accordingly, the dummy person went at the house of the co-accused and subsequently, police have conducted the raid and rescued minor girl from the house of the present applicant. On the basis of these allegations, the crime was registered. During the investigation, it reveals from the statement of the victim that the present applicant is also involved in trafficking of the victim girl and therefore, he was arrested.

4. As per the contention of the learned counsel for the applicant that all the other co-accused are released on bail, the co-accused Manjit Lonare, who is released on bail and the role assigned to the present applicant is similar one. The applicant is not involved in the trafficking. He further submitted that the similar role which is attributed to the co-accused is released on bail.

5. In view of the observation of the Division Bench of this Court in the case of Criminal Public Interest Litigation, in the case of ***Freedom Firm vs Commissioner of Police, Pune and others in Criminal P.I.L No. 04/2015 decided on 30/10/2015***, wherein the ground of parity was considered by the Court, and he submitted by referring the para-26 wherein the Division Bench has considered that the prevention rather than punishment as the guiding factor in the prosecution of such crime and lays down guidelines for the grant of bail in case of

human trafficking. While considering the application for bail, the court must take into account ;-

(a) The fundamental right of the victim not to be trafficked- All else is subservient.

(b) The antecedents of the accused - the trafficker would be easily seen to have been earlier apprehended and arrested. Such accused are habitual offenders.

(c) The repetitiveness of the offence - since it is a career in crime, it is bound to be repeated upon the accused being released on bail thus trafficking further similar victims which is the State's duty to prevent.

(d) The intimidation and threat that accompanies the relationship between the accused and the victim - the victim is the helpless chattel of the accused, the accused being in a position to threaten her to lie and coerce her to turn hostile and thus tamper with the evidence.

(e) The economic position of the accused, if a trafficker,- this would reflect in the brothel that he or she runs and which is statutorily required to be sealed and closed by the police that this would be the most potent antidote. The crime of trafficking in humans is an organized crime. It is one of the most profitable criminal activities worldwide.

(f) The violence involved in the case reflected from the statement of the victim and the other witnesses, if

any. The violence suffered by the victim would show the strength in the position of the accused.

(g) The subterfuge deployed by the accused in diverting the police machinery from himself or herself when non traffickers and other docile persons who may be working for the accused in various positions may be kept in the frontline for arrest and who need to be released on bail as harmless co-accused.

6. He submitted that, as this Court has already released the co-accused on bail and the allegation against the present applicant is on the similar footing. The ground of parity is available to the present applicant. In view of that, he be released on bail.

7. Learned APP as well as the original informant – NGO and the victim strongly opposed the said application, on the ground that the statement of the victim which is recorded by the investigating agency, during the investigation, clarifies the role, which attract that the present applicant is involved in a trafficking. In view of that and in view of guidelines issued by the Division Bench in the said Criminal Public Interest Litigation, the application deserves to be rejected.

8. Having heard learned counsel for the applicant and learned APP for the State. On perusal of the statement of the victim recorded by the Police as well as Magistrate under Section 164 of the Code of Criminal Procedure, 1973 which shows that she is original resident of Calcutta and she came at Nagpur along with one girl. She was taken by that girl for

doing the prostitution business. Thereafter, that girl had sent her with one co-accused Simran. The said Simran has sent the victim, at the house of the present applicant. The present applicant took her from Nagpur to Chandrapur and involved her in the prostitution. The allegation further shows that the applicant has not only taken her along with him at Chandarpur, but he has sent her at the house of the customers for the prostitution. The present applicant induced her for the prostitution and used to obtain monetary benefit from the customers. Thus, the allegation against the present applicant shows that the applicant is involved in the trafficking.

9. Learned APP rightly relied upon the decision of the Division Bench of this Court in ***Criminal PIL No. 04/2015 in the case of Freedom Firm V/s Commissioner of Police, Pune decided on 30/10/2015***, wherein the Division Bench has taken into consideration the aspect of the human trafficking and it is observed that keeping in mind, the diverse ways to frustrate justice adopted in various modes and after fully appreciating and considering the aforesaid aspects the Magistrate/Judge must give the grounds and the reasons as to why in a transient offence such as trafficking also he/she has deemed it fit to grant bail, more especially to the trafficker and the brothel owner.

10. Upon the aforesaid main aspects being specifically noted, the Court may proceed to consider the application for bail as in other cases. Hence the Court would, as a general principle, refuse bail to an accused who is shown as a

trafficker in human beings as such accused pursues a career in such crime, which is prone to reputation, which is expected to have antecedents and which is generally indisposed to intimidation and threats. The Division Bench further held, the Court would certainly release on bail such of the accused or co-accused as are themselves not the traffickers but may be shown to have played some minor role in the commission of the offence. The Court would release on bail a brothel owner but only subject to the closure and sealing of his brothel under Section 18 of the ITPA.

11. The Division Bench further lays down the guidelines for the prosecution of the cases of human trafficking and held that the bail should be denied to habitual offenders, except upon, exceptional, special and the compelling reasons upon the most stringent conditions. The Court shall call for and consider the antecedents report of the accused in all trafficking cases, before passing any order of bail maintained by the Anti Human Trafficking Unit and the Local Police. The bail should be refused to brothel owner until the brothel is closed and sealed under Section 18 of the ITPA. The Bail should also be denied, if the victim is a minor except in case of any extraordinary, compelling or special circumstances to be explained in the order itself and upon the most stringent conditions.

12. In view of the above, the said guidelines in the present case, the statement of the victim clarifies the role of the present applicant who is involved in the trafficking and

also availed the monetary benefits by indulging the victim in a prostitution work. Considering the involvement of the present applicant in the trafficking of the victim, who is a minor, the application deserves to be rejected, as the prima-facie case is made out against the present applicant. In view of that, application deserves to be rejected. Accordingly, I proceed to pass the following order.

- a] The criminal application is **rejected**.
- b] The fees of the learned appointed counsel be quantified as per the Rules.

[URMILA JOSHI-PHALKE, J.]