

A.F.R.

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18835 of 2018

Applicant :- Prem Kumar Urf Pappu Urf Prem Prakash

Opposite Party :- State Of U.P.

Counsel for Applicant :- Daya Shankar Mishra, Chandrakesh Mishra

Counsel for Opposite Party :- G.A., Imran Ullah

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. Daya Shankar Mishra, learned Senior Advocate assisted by Mr. Chandrakesh Mishra, learned counsel for the applicant, Mr. Imran Ullah, learned counsel for the informant and Mr. Om Prakash Mishra, learned A.G.A. for the State.

2. Perused the material on record.

3. The above mentioned bail application has been filed by the **applicant-Prem Kumar @ Pappu @ Prem Prakash** with a prayer to enlarge them on bail in Special Trial No. 161A of 2006, under Sections 3, 4, 5, 6, 9, 14 and 15 of Immoral Traffic (Prevention) Act, 1956, Police Station- Maduadeeh, District-Varanasi, during the pendency of the trial.

4. It transpires from the record that a first information report has been lodged by Mr. T.N. Tripathi, the then Circle Officer, Bhelupur, District-Varanasi on 13th November, 2005 at 19:45 hours alleging therein that on 13th November, 2005 in pursuance of the letter of the Superintendent of Police (City), Varanasi, at 5:00 reading recovery of minor girls in Maduadeeh area, all the police personnel of Bhelupur Police Station along with two independent witnesses reached the red-light area at Shivdaspur. Firstly they raided the house of Mehtab, where Sangeeta @ Shakeena, Mala @ Nargish, Pratibha @ Shabnam have been recovered and Mehtab was arrested, whereas Jaiki and Mantar have succeeded to escape from the house of Mehtab as there was darkness. The recovered girls stated that they were present and Mantar was threatening them but they ran away.

Thereafter the Police raided the house of Rehmat and from his house Fatima @ Babali, Urmila @ Rubeena have been arrested and about whom, the recovered girls stated that they threatened them to do illegal flesh trade. From the house of Rehmat, Sheru and Raja ran away to the Pokhari as there was darkness. Thereafter they have raided the house of Kali and from her house, Shabana @ Kaloj were recovered. On enquiry, Shabana stated the sister of Kali, namely, Mukhiya told her to do illegal flesh trade and she scolded her and ran away. On inquiry all recovered seven victims told that they were forced by Rehmat, Afjal, Sheru, Raja, sister of Kali, Mukhiya, Jaiki and Mantar to do illegal flesh trade. All the victims were brought there from West Bengal on the pretext of temptation and enticing. They were forced to do illegal flesh trade without their consent and they were tortured for not doing the same. The culprits have an organized gang. After carrying women and girls from various places, they used to forced them to do illegal flesh trade without their consent and they used to beat them for not doing it. They earned money from the clients who came there. The said raid was carried at 5:45 p.m. as per the directions of the Hon'ble Supreme Court of India.

5. It has been argued by the learned counsel for the applicant that the name of the applicant is Prem Kumar Sonkar and his surname is not Pappu @ Prem Prakash. Neither he applicant has been named in the first information report nor in the statements of the victims recorded under Sections 161 and 164 Cr.P.C. his name has surfaced. Before the doctor also, who has conducted the medication examinations of the victim, his name has surfaced. He has not committed any offence punishable under the provisions of Immoral Traffic (Prevention) Act, 1956. No girl or woman has been recovered from his house, his school and himself. After submission of the charge-sheet, the case was committed to the Sessions Court and consequently, the same has been registered as Sessions Trial No. 161 of 2006 (State Versus Afjal & Others) and during the course of trial, the applicant has been summoned under Section 319 Cr.P.C.

in Sessions Trial No. 161A of 2006. It has further been argued that the applicant is a peace loving and reputed person. All the details of the applicant i.e. his name, his father's name and place are different from the person against whom non-bailable warrant was issued after summoning order under Section 319 Cr.P.C. It has further been argued that difference about the age of victim in the medical examination is found to be two years. As per the medical examination report, all the victims are 20 years old. The recovered victims were not named as accused. Only three named accused has been charge-sheeted. In both the charge-sheet nos. 1 and 1A of 2006, the victims have not been proposed as one of the prosecution witnesses. It is next contended that there is no possibility of the applicant of fleeing away from the judicial process or tampering with the witnesses and in case, the applicant is enlarged on bail, the applicant shall not misuse the liberty of bail. The applicant is in jail since 3rd April, 2018.

6. Per contra, learned A.G.A. as well as the learned counsel for the informant have vehemently opposed the prayer for bail of the present applicant by contending that the genesis of the present case arose when an information was received by the Police regarding a full fledged red light area at Shivdaspur, Police Station Maduwadeeh, District-Varanasi in which young and minor girls were forced into prostitution. The information was also received that the young girls who were brought from the entire country and were being sold in the aforesaid red-light area forcing them into prostitution. On the said information, the Police recovered 7 minor girls from the aforesaid red-light area. It has further been contended that after the minor girls were recovered and their statements were recorded, on the basis of which the accused were charge-sheeted. The trial proceeded vide Sessions Trial No. 161 of 2006 in which one of the victim (minor girl at that point of time), namely, Vrinda @ Mala @ Nargis i.e. was examined as P.W.-11 and before the trial court she stated that she was 12 years old, she was traveling along with her, Mausii and when she was at Bardhaman Railway Station,

she met an unknown lady who offered her a cup of tea and after taking it, she became unconscious. When she regained her consciousness, she found herself in a room where the applicant and other co-accused persons came and applicant purchased her by giving money to the woman who had offered her a cup of tea and thereafter the applicant took her on the premises of co-accused Afzal (who has already been convicted in the present case for ten years). She has further stated that she was mercilessly beaten by the applicant and was also raped, therefore, she was forced into prostitution and the applicant was regularly taking commission from her in the trade of prosecution. Thereafter on an application so preferred by the prosecution under Section 319 Cr.P.C. vide order dated 10th August, 2016, the applicant was summoned by the trial court. It has been pointed out by the learned counsel for the informant that the applicant is a history sheeter and he has 9 criminal cases including two cases of Immoral Traffic (Prevention) Act, 1956. It has further been pointed out by the learned counsel for the informant that in the same case, two co-accused, namely, Smt. Afjal and Smt. Kali were tried and convicted for 10 years. They have been enlarged on bail by this High Court but their bail orders have been cancelled by the Apex Court vide order dated 16th January, 2018 a copy of which is on record at page-39 of the counter affidavit filed on behalf of the informant. Though the said order of summoning was challenged by the applicant before this Court by means of Application U/S 482 No. 42899 of 2019 but the same was upheld.

7. It has further been argued by the learned counsel for the applicant that the the trial court has passed illegal order in summoning the applicant under Section 319 Cr.P.C. as there is no evidence on record, is also liable to be rejected on the ground that from the statement of the Prosecution Witness No.11 (P.W.-11), namely, Vrinda @ Mala @ Nargis, it is clear that there is strong and cogent evidence against the applicant for which the court below has rightly exercise its jurisdiction provided under Section 319 Cr.P.C. by summoning the applicant and the order of the court below has

already been upheld by this Court in Application under Section 482 Cr.P.C. filed by the applicant. In support thereof, learned counsel for the informant has placed reliance upon the Constitution Bench judgment of the Apex Court in the case of **Labhuji Amratji Thakor Versus State of Gujarat** reported in 2018 SCC OnLine SC 2547, wherein in paragraph-8, following has been laid down:

"8. Answering the Issue No.(iv) as noticed above, in Paragraph Nos. 105 and 106 of the judgment, following was laid down by the Constitution Bench:-

"105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."

8. It has further been argued that the contention of the learned counsel for the informant that the applicant has wrongly been

arrested and he is not Prem Kumar @ Pappu @ Prem Prakash, his name is Prem Kumar Sonkar, has no leg to stand on the ground that as per the Pradhan of village Shivdaspur, a copy of which is on record as Annexure-C.A.-4 to the counter affidavit filed on behalf of the informant, Pappu @ Prem Prakash @ Prem Kumar is resident of Maduwadeeh in front of Hanuman Mandir. There is no confusion about his identity to the Police in the present case. The applicant only in order to get favourable order from this Court, is trying to mislead on the basis of certain documents.

9. So far as the contention of the learned counsel for the applicant that he is not named in the first information report is concerned, learned counsel for the informant has argued that since the applicant was not present at the time when the Police raided the place, he was not named in the first information report. The Prosecution Witness-11, namely, Vrinda @ Mala @ Nargis in her statement before the trial court has specifically stated that since she was under coercion of the applicant as well as one Reshma, she did not name the applicant earlier. The applicant is a hardened criminal and nobody in the vicinity has the courage to depose against him. It is for the said reason, earlier the name of the applicant has not come in the statement of the other victims of the present case.

10. It has then been submitted that the applicant is in jail since 3rd April, 2018. He is a history sheeter and earlier also indulged in cases of immoral trafficking. He has committed cruel act with the victim of the present case as evident from her statement. The applicant, as evident from the statement is habitually involved in kidnapping, raping and forcing the minor girls into prosecution. The applicant, if enlarged on bail with threaten the witnesses and tamper with the evidence and will also commit the crime again. The applicant has misuse the bail granted to him earlier cases.

11. So far as the averment made in the bail application with regard to false identity of victim Vrinda @ Mala @ Nargis (P.W.-11) is concerned, it is submitted that she herself has stated in her

statement that her name and address were changed time to time by the persons, who had kept her forcibly. Moreover, all these grounds were taken in Application U/S 482 No. 42899 of 2019, in which this High Court had upheld the order summoning the applicant under Section 319 Cr.P.C.

12. It is lastly submitted by the learned counsel for the informant as well as the learned A.G.A. for the State that the trial has already commenced and the charge has already been framed in Sessions Trial No. 161A of 2006, whereas Sessions Trial No. 161 of 2006 has already been decided and the accused have been convicted as noted above. Apart from the above, it is submitted that the two accused, namely, Smt. Afjal and Smt. Kali, who were tried and convicted for 10 in Sessions Trial No.161 of 006, have been granted bail from this Court but the same have been challenged before Apex Court and the Apex Court has cancelled the same by observing that the appeals filed by them before the High Court may be disposed of within six months, a copy of which is on record as Annexure-C.A.-3 to the counter affidavit filed on behalf of the informant. As such, it is urged that instead of considering the bail application of the applicant, the interest of justice shall better be served in case the trial itself is directed to be expedited by this Court.

13. Having considered the submissions made by the learned counsel for the applicant, the learned A.G.A. for the State and upon perusal of the evidence brought on record as well as the complicity of the applicant but without commenting on the merits of the case, I do not find any good reason to exercise my discretion in favour of the accused applicant. Thus, the bail application stands rejected.

14. The trial court is directed to expedite the trial of the present case and conclude the same within six months from the date of receipt of certified copy of this order, keeping in view the law laid down by the Apex Court in the case of **Alakh Alok Srivastava Vs. Union of India & Another** reported in *AIR 2018 (SC) 2440*, if there is no legal impediment. If possible, the trial court shall proceed with

the matter on day to day basis.

15. Office is directed to transmit a certified copy of this order to the court concerned within a fortnight.

(Manju Rani Chauhan, J.)

Order Date :- 24.04.2019

Sushil/-