

Calcutta High Court (Appellete Side)

Unknown vs Sangita Sahu @ Shaw on 5 July, 2018

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05.07.18

Sl. No.4 as/akd C. R. M. 3697 of 2018 In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure filed on 11.06.2018 :

A N D State of West Bengal ... Petitioner Vs.

Sangita Sahu @ Shaw ...Opposite Party Mr. Saswata Gopal Mukherjee, ld. P.P. Mr. Pradipto Ganguly, Adv.

...for the petitioner Mr. Debasish Roy, Sr. Adv. Mr. Kaushik Chwodhury, Adv. Mr. Bratin Kumar Dey, Adv.

...for the opposite party Petitioner-State of West Bengal has preferred the application for cancellation of bail granted to opposite party-accused by the learned Judge, Special Court, Additional Sessions Judge, 2nd Court, Alipore and In-charge Additional Sessions Judge, 6th Court, Alipore, in connection with Bishnupur P.S. Case No.868 of 2017 dated 22.9.2017 under sections 363/366/370/370A/372/373/120B/34 of the Indian Penal Code (hereinafter referred to as I.P.C.), R/W sections 3/4/5/6/7/9 of the Immoral Traffic (Prevention) Act, 1956, [hereinafter referred to as I.T.(P) Act], sections 4/6/17 of The Protection of Children from Sexual Offences Act (hereinafter referred to as POCSO Act) and section 81 of Juvenile Justice (Care and Protection of Children) Act, 2015.

Learned advocate appearing for the petitioner-State of West Bengal submitted that the learned Judge granted anticipatory bail mechanically to the opposite party-accused who is the owner of the hotel where immoral activities were being carried on. It is also submitted that there are ample materials on record including the statements of victims recorded under Section 161 of the Code of Criminal Procedure prima facie disclosing the involvement of the opposite party-accused in sexually exploiting them for gain. It is further submitted that the order granting pre-arrest bail and the consequential order of regular bail suffers from clear non-application of mind as to the gravity of the offence which discloses an organised racket for exploitation of minor girls and others for sex. Hence the impugned orders are liable to be set aside.

Learned senior advocate appearing for the opposite party- accused submitted that the opposite party-accused is a lady and is suffering from various ailments. He further submitted that the learned Sessions Judge considered her critical health condition as well as the fact that she was wholly unaware of the nature of activities carried on in the premises while granting pre-arrest bail. It is also brought to our notice that the statements of the so-called victims were belatedly recorded and none

of the victims whose statements were recorded under Section 164 of the Code of Criminal Procedure immediately after the occurrence has implicated the opposite party-accused in the alleged crime.

We have given our anxious consideration to the rival submissions of the parties. Undoubtedly, cancellation of bail stands on a higher pedestal than denial of bail. However, if an order granting bail/pre-arrest bail to an accused suffers from patent non-application of mind as to the gravity of offence and other relevant considerations, it is the duty of the superior court to set aside such perverse order.

We have examined the order granting pre-arrest bail to the opposite party-accused in that perspective. Apart from referring to the health condition of the opposite party-accused, there is absolutely no reference to the nature and gravity of the offence as well as evidence collected in support thereof and the involvement of the said opposite party-accused in the alleged crime in the impugned order. We are pained by the laconic and casual manner in which the learned Judge chose to allow an application for pre-arrest bail and that too in a case where the allegations relate to commercial sexual exploitation of underage girls by an organised crime racket. Undeniably, the opposite party-accused is the owner of the premises where such immoral activities were being carried on.

We have considered the materials which have been collected in the course of investigation. We note that innumerable victims have graphically described the principal role of the opposite party-accused in sexually exploiting them for gains. We have also taken into consideration the fact that the delayed recording of the statements of the said witnesses was due to the laxity in investigation by the initial Investigating Agency and such statements were recorded only after the transfer of investigation to the more specialised agency. We, however, note with concern although the said victims made incriminating disclosures in the course of their statements recorded under Section 161 of the Code of Criminal Procedure, their statements were not recorded before the learned Magistrate under Section 164 of the Code of Criminal Procedure. The instant case relates to exploitation of underaged girls and other women. The victims are without doubt vulnerable witnesses who require preservation not only of bodily integrity but also support and rehabilitation on a social and economic plane. It would be a matter of minutes for powerful organised criminals to win over such witnesses if they are left to the vagaries of life and to survive on their own strength. It is, therefore, most important that witnesses of such fragile and vulnerable status should be given adequate protection and care not only at the time of their recovery but also during the course of investigation, trial and even thereafter so that they can depose without fear of consequences which may befall on them in future.

In the backdrop of the aforesaid facts where prima facie involvement of the opposite party-accused in a grave organised crime racket for exploitation of women was wholly ignored and pre-arrest bail was granted merely on the ground of health of the opposite party-accused, we are constrained to hold that the impugned order such order granting pre-arrest bail to her is perverse and is liable to be set aside. Consequential order of bail is also set aside.

Opposite party-accused is directed to surrender before the trial court forthwith and pray for regular bail. In the event she fails to do so or evades the process of law it will open to the Investigating

Agency to take appropriate steps against her in accordance with law.

Although the menace of trafficking of women and minors have assumed alarming proportions, we note with grave concern the lackadaisical manner in which offences involving commercial sexual exploitation of women and children like the present one are investigated, prosecuted and/or pursued. As discussed hereinabove, investigation in such offences requires to be done by sensitized and specialised agencies and adequate witnesses protection programmes as well as restitutive and rehabilitative measures require to be extended to the victims immediately upon their recovery, pending prosecution and even thereafter.

Accordingly, we direct:-

(a) any First Information Report (for short F.I.R.) registered under the I.T.(P) Act or under sections 370/372/373 of I.P.C. or under the provisions of the POCSO Act involving commercial sexual exploitation of women or children should be investigated by a specialised agency like Anti-Human Trafficking Unit;

(b) Such F.I.R.s registered with the local police station must, within 24 hours thereof, be transferred to the specialised agencies for further investigation;

(c) In order to facilitate the investigation in these cases, State Government is directed to set up Anti-Human Trafficking Units in every district which shall be manned by specially trained police personnel not below the rank of Inspector who would be preferably women. These officers shall be notified as special police officers under section 13 of the I.T.(P) Act.

(d) statements of victims who are recovered in the course of raid or thereafter must be mandatorily recorded under Section 164 of the Code of Criminal Procedure;

(e) victims must be extended medical assistance which shall include psychological counselling in terms of section 357B of Cr.P.C. at appropriate specialised medical institutions of the State;

(f) upon the recording of their statements under Section 164 of the Code of Criminal Procedure necessary financial assistance by way of interim compensation and/or other rehabilitation measures provided under the Victim Compensation Scheme formulated by the State of West Bengal under Section 357A must forthwith be extended to the victims. In the event, the victims are minors they must be forwarded before the Child Welfare Committee for care, custody, rehabilitation, etc.

(g) Jurisdictional Magistrates/Special Courts to whom the cases are reported shall seek report from the Investigating Agency as well as from the Secretary, District Legal Services Authority with regard to providing of medical assistance, compensatory and/or other rehabilitation assistances to the victims of such crimes;

(h) wherever there is a threat perceptible to the victims and/or their families, they shall be extended police protection and other necessary protective measures by the trial court.

(i) prosecution of such cases shall be done with utmost promptitude and be concluded at an early date.

(j) during trial, learned Public Prosecutors shall ensure the recording of depositions of the victims at the earliest without unnecessary delay preferably within a month from the date of commencement of trial so that any chance of winning over or intimidation of the victims may be minimal.

These directions shall be undertaken in the form of a standard operating procedure in the investigation and prosecution of crime involving commercial sexual exploitation of women and children.

Department is directed to forthwith send the copy of order to Principal Secretary, Home Department, Government of West Bengal, Women and Child Development and Social Welfare Department, Government of West Bengal, Law and Justice, Government of West Bengal, Director General of Police, Government of West Bengal, Secretary, State Legal Services Authority, Secretaries, to all District Legal Services Authority, Director of Prosecution, Government of West Bengal, Chairpersons, Child Welfare Committees, for due implementation.

Accordingly, the application for cancellation of bail is disposed of.

Let photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned advocate of the parties on usual undertaking.

(Ravi Krishan Kapur, J.) (Joymalya Bagchi, J.)