

(2019) 06 UK CK 0076

In the Uttarakhand High Court

Case No : Second Bail Application No. 67 Of 2019

Asha

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 20-06-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 187, 342, 366, 370(3), 370(4), 370(5)
Code Of Criminal Procedure, 1973 — Section 94, 100(4), 437(2)
Immoral Traffic (Prevention) Act, 1956 — Section 15

Citation : (2019) 06 UK CK 0076

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Bilal Ahmed, P.S. Bohra, Farida Siddiqui

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. This is a second bail application, which has been preferred by the applicant, for seeking bail from commission of an offence in which she has been named as an accused and has been registered as Case Crime No. 354 of 2017, under Sections 366, 370(3)(4) (5), 342, 120-B of IPC registered at P.S. Kotwali Ranipur, District Haridwar.

2. As per the set of allegations and on perusal of records, it was found that an FIR was registered at the aforesaid police station on 3.09.2017 by the S.H.O. Anti Human Trafficking Unit of District Haridwar. As per the FIR itself, the applicant to the bail application has been named at S.No. 3. The allegation, which is apparently reflected to be levied against the applicant accused is that when on 3.09.2017 raid was conducted the police team and the S.H.O. Anti Human Trafficking on the basis of the information, which has been received from the Mukhbir, they raided the premises in question, then while committing the raid he found that in the accommodation in question, which the applicant says that it was a rented accommodation, which was taken on rent by one Mr. Ramdas, and

on raid it was found that in the room there were three ladies and two children and one child, who was sitting on the bed, was crying. It has also been recorded in the FIR that when questions were posed to the ladies, that these children belong to whom? none of the ladies have extended any answer but rather they started looking to one another without giving the answer, meaning thereby, it could be presumed at this stage that even the children, who were there in the room, did not belong to any of the three ladies, who were found in the room. Accordingly, the police team after conducting the aforesaid raid and on considering the circumstances, which existed, came to the conclusion that the other ladies, namely, Asha and Seeta, who are the named accused persons, and who were sitting in the adjoining room, were the ladies, who were involved in with other co-accused persons, in the business of human trafficking.

3. Even so much so that the ladies, who were found in the room had made a statement that they have been brought in there with an assurance extended by accused persons for the purposes of providing them with a job, but there was no job ever provided to them and rather the accused persons were using them for illegal human trafficking and also forcing them to indulge in the act of prostitution.

4. Under the aforesaid backdrop, the applicant had earlier filed a bail application before this Court being Bail Application No. 1911 of 2017, and this Court after hearing the counsel for the applicant at length had rejected the bail application after considering the gravity of the offence in which the accused applicant was said to have engaged herself.

5. The argument, which has been extended by the learned counsel for the applicant in order to press his second bail application, is from the view point that there is a non-compliance of sub-section (4) of Section 100 of the Code of Criminal Procedure in order to appreciate the arguments. For the said purpose sub-section (4) of Section 100 is quoted hereunder:

"100. Persons in charge of closed place to allow search.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do."

6. Rather, if we go through the implications and purpose as it shows that its procedural in nature the purpose of it is simply lays down the modalities and the manner in which a search has to be conducted by the police parties, when it is to be done in the closed premises where the ladies and the children were kept as it is the situation in the present case. What he intends to contend is that at the time when the raid was conducted by the police party, there were no independent witnesses, nor any other responsible person of the locality, who had

came forward to support the theory of search, which was conducted by the police party, as reported in the FIR, against the applicant. For answer to the provisions contained under sub-section (4) to Section 100, which is procedural, it is contended by the Government Advocate that there is no reason why to disbelieve the manner in which the raid was conducted by the police party and there is no reason also to disbelieve, more particularly, if see the pleading and arguments as extended by the counsel for the applicant, when the fact of the recovery of the three ladies and the children, from the accommodation in question is not disputed nor the same has been denied by the present applicant. Rather to the contrary to shy away from the responsibility of having indulged in commission of the said offence, the counsel had submitted that the accommodation from where the ladies and the three children were recovered by the police party, in fact, was a tenanted accommodation, which was let out to one Mr. Ramdas, who was the brother of the applicant, and for the said reason the applicant cannot be made responsible because the ladies were recovered from the tenement, which was let out to Mr. Ramdas, who has been released on bail by the Sessions Court by an order dated 01.03.2019. This argument to claim the parity is not very alluring to the Court as the accused applicant and Ramdas whose accommodation was used for commission of the crime had altogether a different role in commission of offence, hence, no parity can be granted to the applicant.

7. Second argument, which has been extended by the learned counsel for the applicant, was that no medical examination was conducted on the ladies, who were recovered by the police from the premises in question, and hence, the story as developed by the police in the FIR cannot be believed with because the set of allegations was with regards to forcing the ladies to indulge in prostitution and that allegation could have only been established had the medical been conducted on them. He further submits that the story of the prosecution is highly improbable because one of the ladies, who was recovered by the police party, was the lady who was married about 10 to 12 years earlier and it cannot be believed with that the lady of the said age, could be confined by the applicant in the room in question and would be forced to indulge in the act of prostitution.

8. He has submitted that there had been a non-compliance of Section 15 of the Immoral Traffic (Prevention) Act of 1956, which reads as under:

"15. Search without warrant.-

(1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer 49 [or the trafficking police officer, as the case may be,] has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a 50 [person] living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.

(2) Before making a search under sub-section (1), the special police officer 51

[or the trafficking police officer, as the case may be] shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order in writing to them or any of them so to do: 52 [Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search.]

(3) Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

(4) The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove therefrom all the persons found therein.]

(5) The special police officer 51 [or the trafficking police officer, as the case may be, after removing⁵⁴ [the 50 [person]] under sub-section (4) shall forthwith produce 55 [him] before the appropriate magistrate.

(5A) Any person who is produced before a magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases. Explanation.-In this sub-section, "registered medical practitioner" has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956).]

(6) The special police officer 51 [or the trafficking police officer, as the case may be,] and other persons taking part in, or attending, and witnessing a search shall not be liable to any civil or criminal proceedings against them in respect of anything lawfully done in connection with, or for the purpose of, the search.

(6A) The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated, it shall be done by a woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organisation. Explanation.- For the purpose of this sub-section and section 17A, "recognised welfare institution or organisation" means such institution or organisation as may be recognised in this behalf by the State Government.]

(7) The provisions of the Code of Criminal Procedure, 1973, (2 of 1974) shall, so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under section 94 of the said Code."

9. Section 15 of the said Act yet again it only lays down the process of search of premises without issuance of a warrant. Rather to the contrary, Section 15 starts

with a non-obstinate clause, wherein, it provides that irrespective of the provisions contained under Section 15, it will not create any impediment over the powers of the Special Police Officer or the Trafficking Police Office, as the case may be merely that only on a reasonable belief, they can always raid a premises and search the premises for which a warrant may not be necessary prior to the search, more particularly, when it involves the confinement of the children and ladies in the premises. Rather if we scrutinize the intention and the purpose of Section 15 of the said Act, the non-compliance of which is complaint of by the applicant in its very specific terms, has laid down that the search of a premises with warrant cannot be made without an undue delay, because an officer would have to wait for issuance of the warrant and after recording the grounds for not getting the warrants issued and on the ground of the belief of an offence itself, the Special Officer and the Officer involved in protection of human trafficking had been conferred with the power to enter the premises and search the premises even without the issuance of the warrant.

10. Lastly, the learned counsel for the applicant submits that there was a non-compliance of the provision contained under Section 437 sub-section (2) of the Code of Criminal Procedure. It was to the effect that wherever the ladies, who are said to be involved in the commission of an offence and they are kept under the police custody, if they are below the age of 16 years or is a woman who is sick or infirm, she has to be released on bail. Section 437(2) of Cr.P.C. is quoted hereunder:

"(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non- bailable offence, but that there are sufficient grounds for further inquiry into his guilt the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail] or at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided."

11. After going through the set of allegations, which has been narrated in the First Information Report as registered against the present applicant, at no point of time or at any stage of the proceedings subsequent thereto, which has been affirmed by evidence that the applicants, who are named in the FIR, fulfill the conditions of sub-section (2) of Section 437 so as to entitle them for grant of bail because according to the finding, which has been recorded in the FIR, age of Asha-applicant of the present bail application is shown to be a lady of about 32 years of age, as apparent from the memo of the bail application filed by herself even. Similarly, the other co-accused Seeta, who is an applicant to the connected bail application is also a lady of about 60 years of age, hence, under these circumstances the implications as intended by sub-section (2) of Section 437 will not come into play, as both the accused person though being a lady they were beyond the age prescribed by sub-section (2) of Section 437 of the Code of Criminal Procedure.

12. On considering the set of allegations in its totality as levelled in the FIR pertaining to the commission of an offence under Sections 366, 370(3) (4) (5), 342, 120-B of IPC, this Court is not inclined to grant the second bail, as there is no changed circumstances, which has taken place after the rejection of the earlier bail application on 14.09.2018 to consider the Second Bail Application.

13. Consequently, the Second Bail Application is rejected.