
(2013) 11 DEL CK 0124

In the Delhi High Court

Case No : Criminal M.C. 4444 of 2013 and Criminal M.A. 15903 of 2013

Central Bureau of Investigation

APPELLANT

Vs

Birendra Kumar Singh @ Virendra Kumar Singh @ Pandit

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Constitution of India, 1950 — Article 43
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 437(1)(i), 439, 439(2)
Immoral Traffic (Prevention) Act, 1956 — Section 4, 5
Penal Code, 1860 (IPC) — Section 120B, 302, 342, 343, 344

Citation : (2014) 207 DLT 680

Hon'ble Judges : Sunita Gupta, J

Bench : Single Bench

Advocate : Sonia Mathur, St. Counsel for CBI and Seema Pahuja, IO, for the Appellant; Davinder Hora, Advocate and Party-in-Person, for the Respondent

Final Decision : Disposed Off

Judgement

Sunita Gupta, J.—This is a Criminal Miscellaneous Main Petition u/s. 439(2) read with section 482 of the Code of Criminal Procedure for cancellation of bail granted to the respondent on 26.09.2013 by the Court of Additional Sessions Judge, Delhi. The brief facts giving rise to the present petition are as under:

(i) An Anti-Human Trafficking Unit was constituted by the petitioner in January 2012 to develop specialization in the area of illegal human trafficking, especially trafficking of children and women for the purpose of begging, prostitution, pornography, forced labour in industries and other forms of exploitation.

(ii) On 17.02.2012, an e-mail was received by the petitioner from one Sh. Nirnay John, a functionary of an NGO namely "Mankind On Action For Rural Growth", based at 14/B, Dali Fatak, Darjeeling regarding missing of a 14-year-old girl from Darjeeling. It was mentioned in the e-mail that "there seems to be an interstate gang operating and that there are more girls along with the victim".

(iii) Acting on the said information, victim child was rescued by Anti Human Trafficking Unit of the petitioner from the area of village Munirka, New Delhi on 22.02.2012, while roaming in the company of one Smt. Sanjana Rai @ Ankita Rai.

(iv) Victim child was brought to CBI office where she was examined. The examination of the victim child revealed that she was brought to Delhi from Darjeeling on the pretext of providing her job at Delhi and thereafter she was raped by Anand Vishwa @ Bishwa and then was sexually exploited for commercial gain by the respondent and the co-accused persons.

(v) Accordingly on her complaint, a case was registered by Anti Human Trafficking Unit of the petitioner on 24.02.2012.

(vi) Since 04.02.2011 and till she was rescued, she was repeatedly raped by the accused persons as well as by their customers.

(vii) Investigation revealed that the victim child was forced to have sex with 8 to 10 customers daily and the accused persons were minting money from the said exploitation of the poor child victim. Investigation further revealed that the modus operandi adopted by the accused persons involved in the business of flesh trade is that, they were bringing minor girls of poor background from West-Bengal, North-Eastern States, Andhra Pradesh, Orissa etc. to Delhi under the false promise of providing suitable jobs to them and subsequently these poor girls were being raped and sexually exploited by the traffickers for monetary considerations. Investigation also revealed that these traffickers were residing in different colonies on rent basis and they were purchasing minor/major girls for a week or so and these girls were subjected to forcible sex by 8-10 customers daily.

(viii) During investigation, 5 traffickers were arrested by the Anti Human Trafficking Unit including the respondent. The respondent was arrested on 22.03.2012.

(ix) Three cases were filed, by which the petitioner could break the organized racket of traffickers in Delhi to some extent and arrested as many as 21 traffickers who were involved in trafficking of minors for the purpose of their commercial exploitation.

(x) On completion of investigation, a charge sheet u/s 120B read with Sections 343, 344, 366A, 376, 420, 506 of IPC and Section 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 was filed by the petitioner on 22.05.2012.

(xi) The charges were framed against the accused persons. On 17.07.2013, the victim child was examined as PW-3 but her examination could not be concluded. Thereafter on 06.09.2013, she was further examined, cross-examined and discharged. On 09.09.2013, an application for grant of bail was filed by the respondent which was opposed by the petitioner. The bail application was heard by the learned Trial Court and respondent was admitted to bail.

2. Feeling aggrieved by this order, the petition has been filed for cancellation of

bail on the ground that the Trial Court has granted bail to the respondent mainly on two grounds, firstly that during her deposition, victim child has made substantial improvements qua allegations against accused and secondly, that accused is in custody for last 18 months. The impugned order is against the settled principles of law and is liable to be set aside because the learned Trial Court has merely considered the improvements in the evidence of victim child but has not given due weightage to the following facts:-

(i) that she has correctly identified the accused in Court in her examination on 17.07.2013;

(ii) it was stated by her that accused Sanjana had sent her to Pandit (respondent herein) at Munirka.

(iii) Pandit had given money to Sanjana.

(iv) she stayed there for two days;

(v) Pandit had galat kaam with her;

(vi) besides him, about 8-9 persons used to do galat kaam with her;

(vii) she also proved the pointing out memo of the house of Pandit as Ex. PW3/B;

(viii) she also proved the identification memo regarding the identification of Pandit as Ex. PW3/E;

(ix) she also stated that when she used to stay in the house of Pandit, he used to lock the door from outside;

(x) she also named Pandit in her statement recorded u/s 164 Cr.P.C.;

(xi) she has denied the suggestion that she did not visit the house of any accused with CBI officials;

(xii) she stated that she visited the house of Ajay and Pandit with CBI officials;

(xiii) she has denied the suggestion that she did not make any allegation against Pandit in her statement on 02.03.2013 or that she did not stay with him at Munirka, or that Virender@Birender, who was present in the Court is not Pandit or that she has falsely implicated the accused at the instance of the Investigating Officer of the case.

3. It was alleged that if the Court wanted to consider the evidence of the victim child, due weightage should have been given to the entire evidence and the same should not have been read in piecemeal. As such, it was submitted that the impugned order be set aside and directions be given for re-arrest of the respondent.

4. Notice of this application was given to the respondent who appeared in person with Sh. Davindra Hora, Advocate. However, learned counsel for the respondent submitted that he does not wish to file any reply to the application.

5. I have heard Ms. Sonia Mathur, Standing counsel for CBI and Davinder Hora, Advocate for the respondent and have perused the record.

6. It was submitted by learned counsel for the petitioner that the Trial Court has passed the impugned order while granting bail to the respondent mainly on two grounds. Firstly, that during her deposition the victim child has made substantial improvement qua allegations against the accused and secondly that accused is in custody for the last 18 months. Impugned order is against the settled principles of law. At the stage of consideration of bail, the Court can only go into the question of prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of the prosecution witnesses can only be tested during the Trial. By the impugned order, the Trial Court has virtually acquitted the accused of all the charges leveled against him even before completion of trial. Learned Trial Court has not given due weightage to the fact that the prosecutrix has correctly identified the accused in Court. During her examination on 17th July, 2013, she has deposed against the respondent stating therein that he had given money to Sanjana and stayed at his house for two days during which period, he did "galat kaam" with her. Besides him, 8-9 other persons used to do "galat kaam" with her daily. She also identified him correctly and proved the pointing out memo of the house of the accused. Her statement u/s 164 Cr.P.C. was also recorded wherein she gave detailed version including the role played by the accused. The allegations are very serious. It was a complete racket which was indulging in child abuse. The modus operandi was to bring minor girls of poor background from various parts of the country on the false pretext of providing suitable jobs to them and subsequently, these poor girls were being raped and sexually exploited by the traffickers for monetary considerations. By ways of three cases, the petitioner could break the organized racket of the traffickers in Delhi to some extent and arrested as many as 21 traffickers who are involved in the trafficking of minors for the purpose of their commercial sexual exploitation. Keeping in view the seriousness of the allegations which have been totally ignored by the Trial Court, bail is liable to be cancelled. Reliance was placed on *Puran Vs. Rambilas* and *Another etc. etc.*, ; *State Vs. Amarmani Tripathi*, and *Satish Jaggi Vs. State of Chhattisgarh* and Others, .

7. Per contra, it was submitted by the learned counsel for the respondent that the impugned order does not call for any interference. As such, there is no merit in the application and the same is liable to be dismissed.

8. I have given my thoughtful consideration to the respective submissions of learned counsel for the parties and have perused the record.

9. It is well settled that the matters to be considered in an application for grant of bail are:-

(i) whether there is any prima facie or reasonable ground to believe that the

accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (vide *Prahlad Singh Bhati Vs. N.C.T. Delhi and Another*, and *Gurcharan Singh and Others Vs. State (Delhi Administration)*, .

(xii) Dealing with this aspect of the matter in *Amarmani Tripathi (supra)*, Hon''ble Apex Court referred to the following principles relating to grant or refusal of bail as stated in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another*, :

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- c. Prima facie satisfaction of the court in support of the charge. (see *Ram Govind Upadhyay Vs. Sudarshan Singh and Others*, and *Puran Vs. Rambilas and Another* etc. etc., .

(xiii) It was further held:

The condition laid down u/s 437(1)(i) is sine qua non for granting bail even u/s 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence

alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.

10. Reference was made to Panchanan Mishra Vs. Digambar Mishra and Others, , wherein the Hon"ble Supreme Court observed:

13. The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime.... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation.

The general rule that this Court will not ordinarily interfere in matters relating to bail, is subject to exceptions where there are special circumstances and when the basic requirements for grant of bail are completely ignored by the High Court. (see Pawan @ Tamatar Vs. Ram Prakash Pandey and Another, ; Ram Pratap Yadav Vs. Mitra Sen Yadav and Another, and Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another,).

11. In Puran (supra), it was observed:-

Generally speaking, the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. However, these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation.

12. In Satish Jaggi (supra), it was observed:-

In granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence. At the stage of granting of bail the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the

witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.

13. In that case, the bail was granted by the High Court. The matter went to the Supreme Court for cancellation of bail. It was a case u/s 302/120B IPC. It was observed that while granting bail, the High Court did not consider the nature and gravity of the offence and its impact on the society. It recorded findings on credibility and reliability of witnesses at the stage of bail and virtually acquitted the accused even before trial. Such finding recorded at the stage of bail was held not to be sustainable. The order granting bail was set aside.

14. Turning to the case in hand, the allegations against the respondent are undisputedly very serious. As per the prosecution case, on receipt of an e mail from an NGO, namely, "Mankind on Action for Rural Growth-"MARG", based at 14/B, Dali Fatak, Darjeeling regarding missing of a 14 year aged girl from Darjeeling, the victim child was rescued by Anti Human Trafficking Unit of the petitioner and during the course of investigation it was revealed that the child victim was forced to have sex with 8-10 customers daily and the accused persons were minting money from the said exploitation of the poor child victim. The modus operandi adopted by the accused persons involved in the business of fresh trade was that they were bringing minor girls of poor background from different parts of the country to Delhi under false promise of providing suitable jobs to them and subsequently these poor girls were being raped and sexually exploited by the traffickers for monetary considerations. The investigation further revealed that traffickers were residing in different colonies on rent basis and they were purchasing minor/major girls for a week's time or so and the girls were subjected to forcible sex by 8-10 clients daily. These traffickers were in touch with each other and they circulated these minor girls from one to another. During investigation, five traffickers were arrested by Anti Human Trafficking Unit including the respondent. Number of premises were raided by the Anti Human Trafficking Unit of the petitioner and during such raids, two more minor girls were rescued besides two major girls. In respect of two minor girls, two separate cases were later registered and 21 traffickers were arrested who are involved in trafficking of minors for the purpose of their commercial sexual exploitation.

15. Under Article 43 of the Constitution of India trafficking in human is prohibited as held in Geeta Kancha Tamang Vs. State of Maharashtra, . Such Act constitutes the grossest violence of human rights of the victim child. In State of Maharashtra and Anr. vs. Mohd. Sajid Hussain Mohd. S. Hussain, Appeal (Crl.) 1402-1409 of 2007, decided on 10th October, 2007, Hon"ble Supreme Court observed that "immoral trafficking is now widespread. Victims, who are lured, coerced or threatened for the purpose of bringing them to the trade, should be given all protection".

16. In State of Rajasthan Vs. Om Prakash, , it was observed that child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of the sexual pleasure. It cannot be more obscene than this. It is a crime

against humanity. In *Childline India Foundation and Another Vs. Allan John Waters and Others*, , it was observed that Children are the greatest gift of humanity. The sexual abuse of children is one of the most heinous crimes. It is appalling violation of their trust, an ugly breach of our commitment to protect the innocent. These are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children which is free from abuse and exploitation.

17. Turning to the factual matrix of the case, the respondent along with other accused was charged for offences u/s 120B r/w Section 342/343/344/366A/376/420 and 506 IPC r/w Section 4 & 5 of The Immoral Traffic (Prevention) Act, 1956 and substantive offences u/s. 343/366A/376 of IPC and Section 4 & 5 of Immoral Traffic (Prevention) Act, 1956. The punishment prescribed u/s. 366A is imprisonment which may extend to imprisonment for life. Punishment prescribed u/s 5 of Immoral Traffic (Prevention) Act is for term of seven years which may extend to imprisonment for term of 14 years. That being so, the offence alleged against the accused is very serious in nature.

18. The bail has been granted by learned Additional Sessions Judge on two grounds only:-(i) the victim has made substantial improvement qua allegations against the accused; (ii) the accused is in custody for the last 18 months.

19. As observed above, in *Satish Jaggi (supra)*, the Court had granted bail to the accused facing trial in a case u/s. 302/120B IPC by referring to the testimony of the witnesses and recording findings of their credibility and reliability. It was held by Hon"ble Supreme Court that question of credibility and reliability of the prosecution witnesses can only be tested during the trial and the findings recorded by the High Court virtually amounted to regular trial pointing out deficiency of reliability/credibility of the prosecution witnesses which was totally unwarranted.

20. In the instant case also, the bail has been granted by observing that the victim has made substantial improvement qua allegations against the accused which affect the credibility and reliability of the victim. Learned Public Prosecutor for CBI led this Court to the statement made by the victim u/s 161 Cr.P.C. as well as Section 164 Cr.P.C. wherein consistently she has made allegations against the accused regarding not only commission of rape upon her by him but also forcing her to have sex with 8-10 customers and that money was paid by the respondent to Sanjana.

21. The other factor which weighed with the learned Trial Court for releasing the accused on bail was that he was in custody for the last 18 months. It is settled law that mere long period of incarceration in jail by itself would not entitle the accused to be enlarged on bail as held in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another*, ; *Shahnawaz vs. State of UP*, 2009 Cri. LJ 3839; *Meenu Dewan Vs. State*, and *Uma Charan vs. State of UP*, 2009 Allahabad High Court. For the reasons afore stated, the order of learned Additional Sessions

Judge granting the bail is not sustainable in law. It is accordingly set aside. The bail bond and the surety of the respondent stands cancelled. He is directed to be taken back to the custody forthwith.

The petition and the application stand disposed of.

It is clarified that no observation is being made on the merits of the case or on the credibility of the prosecution witnesses.

Copy of this order be given dasti.