

HIGH COURT OF ORISSA: CUTTACK

BLAPL No. 2612 OF 2020

(In the matter of an application under Section 439, Criminal
Procedure Code, 1973)

PANCHANAN PADHI ... **Petitioner**

Versus

STATE OF ODISHA ... **Opp. Party**

For petitioner : M/s.JitendraSamantaray,
S.G.Das & R.C. Baral, Advocates

For the Opp. Party: Mr. Priyabrata Tripathy,
Addl. Standing Counsel

PRESENT

THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI

Date of Hearing – 05.06.2020 Date of judgment – 29.06.2020

“No nation, with all its boasts, and all its hopes, can ever morally be clean till all its women are really free - free to live without sale of their young flesh to lascivious wealth or commercializing their luscious figures....”-
Justice V.R. Krishna

1.The instant case has once again given an opportunity to this Court to ponder, as to how the opportunistic predators seize upon the vulnerability of some desperate and impoverished girls. The accused herein is allegedly notorious for his aplomb in identifying girls and capitalizing their distress condition but caught red-handed by police. The Petitioner herein has preferred the instant application under Section 439 of the Code of Criminal Procedure vide BLAPL No. 2612 of 2020

against the C.T. Case No. 379 of 2020 pending before the court of the Learned SDJM Bhubaneswar (T), CSI, Bhubaneswar for alleged offences punishable under Sections 4/5 of the Immoral Trafficking (Prevention) Act, 1956 read with Section 370 (3)/ 467/ 471/ 120B and 34 of the Indian Penal Code. The court of the Addl. Sessions Judge, Bhubaneswar has rejected the application seeking grant of bail vide B.A No. 260 of 2019 filed by the Petitioner herein u/s 439 Cr. PC on 4.3.2020.

2.The factual matrix of the instant case as set out in the F.I.R. is that on 21.01.2020 at around 10:00 AM Shri Alok Kumar Jena, Inspector of Police, STF/informant received information from a reliable source that one Ibrahim Khan and one Ruksar Begaum of Danagohiri, from Pipili, Dist. Puri are regularly trafficking girls from Kolkata and other places and engage them in sexual exploitation for commercial purposes from which he derive income. It was also informed that the girls were being procured from Kolkata and they were housed in a rented house at Bishnukunj Ratha Road, PS-Shree Lingaraj, Bhubaneswar. They were being exploited at the instance of Ibrahim Khan and Ruksar Begum. These girls were forcefully sent to various hotels and lodges where they were subjected to sexual abuse and exploitation. Upon receiving such

information, the informant apprised the Superintendent of Police, STF, Bhubaneswar who recorded the said facts vide Station Diary Entry No. 4 dated 21.01.2020 and directed the informant to reach the spot along with a team of police officers including some lady officers to conduct the raid.

3. Accordingly, the informant accompanied by a team of police officers including some lady officers proceeded to the aforementioned house where the kingpin Ibrahim Khan and his wife were residing. After reaching at the said house, which is a double storied building, they gheraoed the said building to prevent the egress or ingress by anyone. The informant proceeded to the first floor and knocked at the door of the first room and in response to the same one of the girls opened the door and he could notice the presence of six girls in the room. He, thereafter disclosed his as well as his team's identity by showing their Identity Cards and asked for production of their identity cards. The six girls disclosed their respective identity and they were stated to have been brought from Kolkata by alluring them to work in some beauty parlors in the city.

4. Before conducting the said raid, the informant secured the presence of two respectable persons of the locality as

witnesses to the search and seizure operation. Thereafter, while conducting the personal search of the girls by the lady police officers, they found six mobile phones, thirty unused condoms etc. Those articles were seized in presence of the seizure witnesses and a seizure list was prepared on the spot which was duly signed by the witnesses as well as the victims.

5. During examination of the victims, they revealed that the aforesaid Ibrahim Khan and Ruksar Begum and certain other unknown persons have procured them from Kolkata and on some false pretext of employment in beauty parlors forced them into sexual slavery and prostitution. As per victims' statement made under Section 161 of Cr. P.C. the present petitioner was forcibly sending them to various hotels and lodges and were arranging customers for such illegal act. The Petitioner herein was acting in concert with aforesaid principal accused by making wide publicity among the prospective customers to be in touch with them for such act. The victims have further disclosed that Ibrahim Khan and Ruksar Begum have kept them in the said rented house and they used to give them a sum of ₹ 1000/- per day as allowance and lion's share of the amount received was pocketed by them. The informant and other officers nabbed Ibrahim Khan and Ruksar Begum from the adjacent rooms of the said building. On being

interrogated they confessed that they were running a prostitution racket by forcefully exploiting the victims in the adjoining rooms. During the search of Ibrahim Khan, 5 Aadhaar Cards of the girls along with a mobile phone and cash of ₹40,000/- were recovered from his pant pocket and were seized in the presence of witnesses. During interrogation, the above-named accused persons also confessed that the Aadhaar Card were forged documents to facilitate the business of prostitution.

6.The victims were rescued and were kept in shelter homes. The accused persons were apprehended U/s. 4 and 5 of Immoral Trafficking (Prevention) Act read with Sections 370(3), 467, 471 & 120B/34 of Indian Penal Code who were later produced along with seized articles before STF. Accordingly, the FIR was drawn and these accused persons have been forwarded U/s.4/5 Immoral Trafficking (Prevention) Act read with Section 370(3), 467, 471 & 120B/34 of Indian Penal Code on 22.01.2020.

7.Heard Shri Jitendra Samantaray learned counsel for the petitioner who submitted that, the accused person has been falsely implicated in this case. No incriminating material like agreement between the landlords and tenant for running the

brothel at such place has been seized by police. There is also no material to show that the accused person was living on the earnings of prostitution or have procured/trafficked the victims for running a prostitution ring. The petitioner has no previous criminal antecedents. Hence, he may be released on bail.

8. Per contra, learned Additional Standing Counsel has vehemently objected to the instant application stating that in this case police have conducted raid on getting reliable information and during the said raid, they have rescued the victim girls. They have also seized so many incriminating articles from the said house. It is alleged to have discovered that the accused person was working in collaboration with one Ibrahim Khan and one Ruksar Begum by procuring the victim girls and using them for the purpose of sexual exploitation and prostitution. He along with another was forcefully sent them to different hotels which turned out to be a means of generating income. He further submitted that such activities encircle the life and dignity of the victims fomenting immorality and related crimes in the society. These impenetrable syndicates are functioning seamlessly in terms of recruitment, movement and destination for such act.

9. Perused the up-dated case diary and the rival submissions of the parties, wherein it is deciphered that the victim girls have clearly stated against the accused persons in their statements recorded U/s. 161 of Cr. PC. It prima facie reveals that the principal accused Ruksar and Ibrahim have kept them in the house for the purpose of sexual exploitation. The statement of the victim girls also hints that the accused persons were threatening them to face starvation if they try to flee from the said house. In addition, the accused have fabricated their Aadhaar Cards and the seizure list also reveals that 30 unused condoms along with their mobile phones were seized from the possession of victim girls. The instant petitioner was also alleged to have been working in partnership with principal accused. Prima facie, it appears to be a complete racket run by the principal accused and his accomplice though the complete picture will emerge from a thorough trial.

10. The crime of trafficking girls is dehumanizing as well as utterly shameful to our civilized society. This issue has sufficiently captured the attention of our Constitution makers and also appeared on the radar screen of modern Indian Law. Despite constitutional dictums and legal provisions, the humanity is still struggling to combat human trafficking. It is

a complex policy challenge which intersects many policy paradigms. The international policy frameworks have also been in place since long, especially, since 1904, the international community has been working together to understand and put together the pieces of the human trafficking puzzle. There are six international treaties that explicitly address issues related to human trafficking. However, this issue has only topped the policy agendas of the international community in 2000.¹

11. The present issue has been covered under the Separation of Immoral Traffic in Women and Girl's Act (in short 'SITA'), under this Act prostitution *per se* was not made illegal and the legislation was not intended to punish a woman who offers herself for prostitution. The said Act, thereafter, got newly incarnated as "The Immoral Traffic (Prevention) Act, 1956" (ITPA for short). After having experienced some inadequacies and practical nuances in implementation, the Act was amended in 1978. In 1986, further amendments were made to widen the scope of the Act by covering all persons, whether male or female, who are exploited sexually for commercial purposes. In addition to the above, there are various

¹United Nations drafted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Anti Human Trafficking Protocol-2000).

provisions in the Indian Penal Code which broadly deal with the instant issue.²

12. Interestingly, the term “trafficking in persons” is not defined in ITP Act. As per the United Nations Palermo Protocol³, it is an obligation on the State parties to devise adequate mechanism to prosecute perpetrators, protect victims and prevent trafficking. The Protocol defines ‘trafficking in persons’ as under:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”

The above definition has to be taken into account while framing charges against a person accused of trafficking. This

² Article 23, 24, 39 (f) and Article 51-A(e).

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (supplementing The United Nations Convention Against Transnational Organized Crime), 2000. [ratified by India on 5.05.2001]

is more so in view of the settled law laid down in Vishakha Case⁴:

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.”

13. Unfortunately, despite the protection afforded by the Constitution, the stringent laws and large number of treaties and conventions, commercial sexual exploitation with its concomitant human rights abuse is expanding multi-fold. The human rights discourse is profoundly silent on this grave issue. Such exploitation is now not confined to conventional brothels, but is spreading everywhere including residential areas, hotels, clubs etc. as apparent in the present case. One cannot be oblivious of the fact that the ‘flesh trade’ today is evolving into varied forms with the advent of new technologies. This makes the strict enforcement of these laws even more challenging. The Parliamentary Standing Committee Report on

⁴*Vishaka and Ors. vs. State of Rajasthan and Ors* 1997 (6) SCC 241

the Immoral Traffic (Prevention) Amendment Bill, 2006 dated 23.11.2006 notes that there were about 30 lakh women in the prostitution trade. According to the National Crime Records Bureau, 5264 human trafficking cases were reported in India in 2018. Disturbingly, about 25 percentage of such cases were for the purposes of sexual exploitation for prostitution and child pornography. The commercialisation of sexuality is seen as a part of the explanation for prostitution. It is seen as a worst expression of the unequal distribution of power between men and women. Despite the substantial role of poverty in promoting sex commerce and human trafficking, the complexities of cultural values, attitudes, and practices towards sex deserve serious consideration as well. The multi-pronged approach to gender reforms – one that ranges from institutional education to grass-root activism – will provide the rupture in the tradition of a perverted imagined values towards sexuality.

14. Taking note of the nature of crime involved in trafficking, **the Report of the Committee on Amendments to Criminal Law**⁵, observed that:

⁵ The Committee constituted by the GOI to look into the possible amendments of Criminal Law to provide for quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women. The Committee headed by Justice J.S Verma (Retd) had submitted its report on 23.1.2013.

“Trafficking is an organized crime but yet we are not satisfied that traffickers are brought to book. Notwithstanding the very well-meaning publications of UNODC as well as the provisions of the ITPA, we do not find that State Governments have taken any synergistic steps. We also find that in spite of excellent resource materials, this has not weighed on the priority of the police. We are also of the view that even though the NHRC and the MHA have issued circulars and advisories (especially after the mass killings of children in Nithari village), the provisions of registering complaints is not being strictly followed. It is clear to us that even though Anti-Human Trafficking Units have been set up in the country we are surprised that such units have not cracked any gangs and particularly gangs, which operate at a national and international level. We also must point out that human trafficking is no less a serious crime than drug trafficking.”

15. The High Courts of several states have not only recognized the menace of human trafficking but also taken up cases for strengthening the Institutional Machinery and various statutory agencies mandated by various laws. The High Court of Delhi in ***Bachpan Bachao and Ors. vs. Union of India***,⁶ High Court of Gauhati (Agartala Bench) in ***Tara Das vs. State of Tripura***⁷ and High Court of Gujarat in ***Sahyog Mahila Mandal and Ors. vs. State of Gujarat and Ors***⁸ have delved into issues of human trafficking, prostitution and its implications on the society. It has been emphasized on the fact those courts and other instrumentalities of the State have

6(UOI) and Ors. ILR(2010) Supp. (5) Delhi 376.

72009(1) Crimes745(Gau.)

8 2004 GLH (2) 236: (2004) 2 GLR 1764.

to deal with these issues in a sensible manner and there is a need to come out of stereotype attitude. Even if the accused had a limited role in selling the victims or in the prostitution business, no leniency can be shown to him inasmuch as he played a major role in the racket to push the helpless and innocent girls into prostitution. If any leniency is shown for committing such heinous crime, like forcing a girl into prostitution, it would amount to an affront to the statutes which govern the field and, more importantly, the Constitution of India.

16.The Apex Court in ***Vishal Jeet vs. Union of India (UOI) and Ors.***⁹ while discussing the evils of prostitution, observed the need for the courts and law enforcement agencies to take stringent action to curb the menace. In particular, it was held as under:

“This devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy legal action against all the erring persons such as pimps, brokers and brothel keepers. The Courts in such cases have to always take a serious view of this matter and inflict condign punishment on proof of such offences. Apart from legal action, both the Central and the State Government who have got an obligation to safeguard the interest and welfare of the children and girls of this

9(1990)3 SCC 318.

country have to evaluate various measures and implement them in the right direction.”

The Supreme Court further in ***Bachpan Bachao Andolan vs.***

Union of India (UOI) and Ors¹⁰ observed:

“Trafficking in women and children has become an increasingly lucrative business especially since the risk of being prosecuted is very low. Women and children do not usually come to the brothels on their own will, but are brought through highly systematic, organized and illegal trafficking networks run by experienced individuals who buy, transport and sell children into prostitution. Traffickers tend to work in groups and children being trafficked often change hands to ensure that neither the trafficker nor the child gets caught during transit. Different groups of traffickers include gang members, police, pimps and even politicians, all working as a nexus. Trafficking networks are well organized and have linkages both within the country and in the neighbouring countries. Most traffickers are men. The role of women in this business is restricted to recruitment at the brothels.”

17.The kingpins behind such sex rackets exert considerable influence in the area and are bound to intimidate the victims. More importantly, the safety and security of the witnesses is a major concern, especially in view of the fact that these are organized crime syndicates. The nature of crime is such that grant of bail will only embolden such hardened criminals, who keep evading the law and punishment, to perpetuate such heinous crimes. The complex and troubling issue as emerged

10 2011 (5) SCC 1.

in the instant case, in essence, demonstrates a conflict between collective morality of the society and markedly skewed legislations which mismatches the culpability of the participants in question (i.e. service provider, facilitator) and the recipient of the services. Though it involves clandestine and unlawful trafficking of girls but the law makers have missed the opportunity to prescribe a stringent punishment regime, even though the present offence is far more heinous than drug trafficking. There seems to be an all-pervasive puritan, moral, anti-prostitution posture of the Government, but in practice, there is a yawning gap between the law and its enforcement which results in abysmally low conviction rates.

18.Reverting to the facts of the instant case, the principal accused, other accomplices and the co-accused, namely, Ibrahim Khan, Ruksar Begum, Ajay Bihari, Sunil Kumar Moharana, Keshab Sahoo, Aluddin Khan, Prashant Kumar Pradhan have already been granted bail by this court in BLAPL No. 2973 of 2020 vide order dated 18.5.2020, BLAPL No. 2809 of 2020 vide order dated 14.5.2020, BLAPL No. 2842 of 2020) vide order dated 14.5.2020, BLAPL No. 2972 of 2020 vide order dated 18.5.2020, BLAPL No. 2841 of 2020 vide order dated 14.5.2020, and BLAPL No. 2571 of 2020 vide

order dated 2.6.2020 respectively. This court is, therefore, constrained to grant bail to the accused in the instant case on the grounds of parity alone.

19.In view of the facts and circumstances of the case as discussed above, it is directed that the petitioner may be enlarged on bail on some stringent terms and conditions as deemed just and proper by the learned S.D.J.M, Bhubaneswar. It is, however, clarified that the above observations shall not come in the way of a fair trial before the Ld. Trial Court and it will proceed to decide the matter on its own merits, uninfluenced by any of the observation made hereinabove. The bail Application is accordingly disposed of.

[S.K.PANIGRAHI,J.]

Orissa High Court, Cuttack.
The 29th day of June, 2020. LNB.