

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

Amk

CR. PUBLIC INTEREST LITIGATION NO. 4 OF 2015

Freedom Firm .. Petitioner  
Vs.  
Commissioner of Police, Pune & Ors. .. Defendants

Ms. Roshani Joseph i/b Abhishek Jebaraj for the Petitioner.  
Ms. Sharmila S. Kaushik, APP for the State.  
Ms. Rekha V. Salunkhe, Sr. PI, Faraskhana Police Station, Pune.  
Mr. Gregory Malstead, National Director of Freedom Firm present.  
Mr. Ashwin Rathod, Administrator of the Petitioner present.  
Mr. Satyajee Desai, Liaison Officer of the Petitioner present.

**CORAM : MRS. ROSHAN DALVI &  
MRS. SHALINI PHANSALKAR-JOSHI, JJ.**

Date of reserving the Judgment : 26th OCTOBER, 2015.  
Date of pronouncing the Judgment : 30th OCTOBER, 2015.

**JUDGMENT**

**"I hold that the more helpless a creature, the more entitled it is to protection by men, from the cruelty of men."**

**- Mahatma Gandhi**

1. This petition manifests, demonstrates and exposes the stark reality of the plight the most helpless creatures of our society who are trafficked into prostitution after being drawn into the dark alleys of the society by deceit or force. They are some times rescued upon the efforts of samaritans. A case of trafficking under the Immoral Trafficking (Prevention) Act, 1956 (ITPA) read with Section 370 of the Indian Penal Code, 1860 and other allied provisions comes to be registered. This is the harbinger for various tribulations and travails to befall the helpless rescued victims.

2. The accused applies for anticipatory bail and is readily granted. If he or she is arrested, he or she is often released on bail. He or she then

often not only absconds pending the trial, but repeats committing similar offence. The trial remains at that. The police machinery is required for righting the wrong. It rarely succeeds in the efforts. Justice remains out of bounds. The victim is far from reaching the doors of justice. It is widely known that "*the doors of justice swing both ways*".

3. It is in this precarious condition that the petitioner renders yeoman service of bringing the offenders to book and the victims to justice. The journey to justice is, long, tedious and fraught with numerous obstacles.

4. The main grievance of the Petitioner relates to misuse of the provisions of bail, which results in stalling the proceedings under the ITPA and thereby deprives the victims of their rightful claim to rehabilitation. According to the Petitioner, it has also the effect of indirectly encouraging illegal trafficking. The Petitioner has also proposed to lay down certain guidelines for the Police Officers and the Judicial Officers to be followed at the time of dealing with such cases; especially while deciding the applications for bail. There have been similar petitions upon such conditions of living, which a civilized society must be ashamed of, that have led Courts to pass judgments giving directions [See **Prerna Vs. State of Maharashtra 2003(2) MLJ 105**, **Prerna Vs. State of Maharashtra in Cr. Writ Petition No. 1694 of 2003** being orders dated 10.01.2007 & 18.04.2007, **State Vs. Captain Jagjit Singh, 1962 SC 253**, **Vishal Jeet Vs. Union of India, AIR 1990 SC 1412**, **Prajwala Vs. Union of India, (Civil Writ Petition No.56 of 2004)**] and secondly the State to make rules, issue circulars and follow policies to bring a ray of hope into an otherwise hopeless condition of life. None of these need be repeated though the petitioner has pleaded for its reiteration. Incidentally and though nothing much has been achieved in this case, the report of the State also makes out the same picture.

5. We are confronted with 42 cases of trafficking only in one police

station of the State being Faraskhana Police Station, Pune in which FIRs have been registered and in which the accused are stated to be absconding upon being released on bail. The petitioner claimed to be actively involved in 19-21 of these cases. The petitioner assists or seeks to assist, often without reciprocation, the State in its different avatars being the Police Authority, the prosecution, remand homes and rehabilitation centers etc.

6. The main refrain of the petitioner is that after the accused are released on bail and more specially after the trial begins and in most of the cases if satisfactory evidence is recorded, the accused abscond.

7. The accused have been released on bail without considering the factors, like, the seriousness of the offences, the nature of the evidence in existence, the severity of the punishment, the character, behaviour, means and standing of the accused, the circumstances peculiar to the accused, the reasonable possibility of securing the presence of the accused at the time of trial and the fact that, most of these accused are habitual accused, involved in repetitive offences.

8. It is submitted that in Sessions Case No.132 of 2008, pending in the Sessions Court at Pune, the accused Rani Vyankatramana Nayak was charged with a heinous offence of trafficking of a minor girl, aged 12 years. The victim therein has testified against the accused in the case. Despite that, the bail was granted to the accused, which has resulted in the accused absconding, after all the evidence had been led and when the case was at the final stage of arguments. Though non-bailable warrant was issued against the accused on 22<sup>nd</sup> January, 2010, accused is still absconding and the case is indefinitely stalled.

9. It is also urged that, in another case bearing Sessions Case No.42 of 2010, pending in the same Court, accused Saroja R.N. was arrested

for purchasing and trafficking of three minor girls. The accused was also wanted for a similar previous offence registered against her vide F.I.R. No.52 of 2008 at Faraskhana Police Station, Pune. The accused had absconded in previous case at the time of raid, but was arrested again in connection with the present case. The accused had applied for bail on 6<sup>th</sup> October, 2008 on the ground of illness and medical treatment. The said application was not attached with any medical report or evidence whatsoever. Even then, the application was allowed and the accused has absconded from 3<sup>rd</sup> June, 2010, thereby stalling the trial.

10. The petitioner has also cited the instance of Sessions Case No.929 of 2009, wherein accused are not attending the case despite the warrants issued against them. It is urged that in all these cases, the accused have appeared at the later stage of cancellation of warrants and again remained absent.

11. The result of this sordid system is that the victims and their families are subjected to face untold trauma and difficulties in the entire painful process. The grant of bail also many a times results in the accused interfering with the witnesses or pressurizing them through direct or indirect means.

12. It is seen that the Court issuesailable and nonailable warrants without success and without execution whilst the trial remains debilitated. The police spend much time and efforts in trying without success to procure their presence. The cases are stalled, at times at the stage of arguments or even judgment. In fact it is endemic that after the evidence of the victim is led and when it is satisfactory to merit a conviction, bail is granted and the accused absconds. We cannot but see the malaise as both astonishing as how a judicial officer can grant such bail and artful as to how an accused would successfully overreach law and justice.

13. The petitioner has shown 8 priority cases in which the accused have absconded resulting in the situation described above.

14. The State set up what has been stated to be a "special drive" in the aforesaid area to trace the accused. Only 4 accused, one of whom is the co-accused in another case also, have been arrested. 38 other accused are yet at large.

15. The Court has adjourned this petition from time to time with the abiding hope and with patience to see the fruits of the NBWs which have been issued. It is seen that these are now lost causes, unless of course, the State, with the conscience which is required of it, performs its function of executing them.

16. The contentions of both the petitioner and the State have shown one common factor that the bane of the trafficking cases is grant of injudicious bail and once that is granted, the road to slip away is open to the accused. It is, therefore, a fully conceded fact that the bail in heinous offences such as trafficking has to be only stringently granted to the accused other than the main traffickers.

17. It may be mentioned that not being trafficked is a fundamental right of every Indian citizen, the only provision in the chapter on Fundamental Rights which appears to be completely forgotten. We would, therefore, do well to reproduce Article 23 (1) of the Constitution of India which gives the fundamental rights against exploitation thus:

**23. Prohibition of traffic in human beings and forced labour.**- (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

18. The Protocol to prevent, suppress and abolish trafficking of any person, especially, women and children, also addressed as the Palermo Protocol, adopted by the General Assembly of United Nations in Palermo, Italy, 2000 came into force on 25<sup>th</sup> December, 2003. It imposes a duty on each and every State signatory to take effective steps for preventing and combating trafficking in women and children. India being a signatory to the said Protocol, it becomes the duty of the Government and the Judiciary to ensure that the menace of trafficking is curbed by adopting stringent measures.

19. Trafficking in humans, heinous as it is, and as the name suggests, is a crime against humanity resulting in human rights violations. It transcends to trafficking minors also. Age knows no bar in trade amongst humans. In fact a lesser age is considered a better target. Minors, who are trafficked, would be victims even under the The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and are required to be treated with the sensitivity and empathy (portmanteau - sentipathy) statutorily set out thereunder. Even the accused who have violated and victimized minors are shown to be released on bail. The result is the subsequent absconding in many of those cases.

20. Releasing accused on bail and issuing warrants against their arrest which cannot be easily and smoothly executed results in the situation of "*Cure the decease and kill the patient*".

21. However to remedy the ill in the 42 cases in which damage has been done, almost irretrievably, we even called upon no less than the Commissioner of Police, Pune to attend before us and to give priority to these cases of human suffering and violation. The Commissioner of Police has set up what is called the special drive in the locality with some result but not as much as was expected of the State machinery for enforcement of criminal

justice.

22. The reasons assigned by the Police for the difficulty, almost impossibility, in securing the presence of the accused are several e.g. some of the accused are from the neighbouring countries of Nepal and Bangladesh and once they are released on bail and leave India, Police are stated to have no control over them to secure their presence. As per the Police, some of the addresses provided by the accused at the time of releasing them on bail are their temporary residence in Pune; their permanent residence being in some other States like Andhra Pradesh, Karnataka etc. Therefore, it is stated to be just not possible to secure their presence. Further it is submitted that, even the documents of the sureties, which are furnished with the bail, are not adequate. At times, it becomes even difficult to prove the identity of the person as the same accused because, by the time their presence is to be secured for the trial, their appearance has undergone substantial changes. Hence, according to the Police and the State, it is necessary to put certain conditions and lay down guidelines to be followed while releasing the accused on bail in such serious offences. The learned APP has also requested the Court to prepare a check-list which can be used fruitfully by the Trial Courts when such applications for bail are filed and are to be decided. The Petitioner on its own has filed a note on proposed guidelines. Similarly, the A.P.P. has also, at the request of this Court, undertaken the exercise of preparing the points for the guidelines of the Court.

23. The copy of the proposed guidelines submitted by the Petitioner was also directed to be circulated to all Principal District Judges, Chief Judicial Magistrates of the Districts in Maharashtra and Special Judge, ITPA and it was further directed to elicit responses of the Judges conducting trial of such cases in their respective District. The responses of various Judges have been received. They are comprehensive in nature and address majority of the issues.

24. This Court, therefore, has thus an advantage of going through the responses of the Judges dealing with these cases and also the suggested guidelines prepared by the Petitioner, an N.G.O., which has experience in actual field work, and of the Police, who are having the difficult task of securing the presence of the accused once they are released on bail.

25. It now falls upon us to marshal what has been stated by all the functionaries at the grassroot level as also what has been oft stated by the Courts. As Andregide, French Author and Writer, has stated : *“everything has been said already but as no one listens, we must always begin again”*.

26. We, therefore, consider it apt and appropriate to have a forward looking approach to prevent such wanton and egregious callousness to human lives and to have prevention rather than punishment as the guiding factor in the prosecution of such crime. We, therefore, deem it fit to lay down guidelines for the grant of bail in cases of human trafficking thus:

The application for bail must take into account -

(a) The fundamental right of the victim not to be trafficked. - All else is subservient.

(b) The antecedents of the accused - The trafficker would be easily seen to have been earlier apprehended and arrested. Such accused are habitual offenders.

(c) The repetitiveness of the offence - since it is a career in crime, it is bound to be repeated upon the accused being released on bail thus trafficking further similar victims which is the State's duty to prevent.

(d) The intimidation and threat that accompanies the relationship between the accused and the victim. - The victim is the helpless chattel of the accused, the accused being in a position to threaten her to lie and coerce her to turn hostile and thus tamper with evidence.

(e) The economic position of the accused, if a trafficker, - This would reflect in the brothel that he or she runs and which is statutorily required to be sealed and closed by the police - this would be the most potent antidote. The crime of trafficking in humans is an organized crime. It is one of the most profitable criminal activities world-wide.

(f) The violence involved in the case - reflected from the statement of the victim and the other witnesses, if any. The violence suffered by the victim would show the strength in the position of the accused.

(g) The subterfuge deployed by the accused in diverting the police machinery from himself or herself - when non traffickers and other docile persons who may be working for the accused in various positions may be kept in the frontline for arrest and who need to be released on bail as harmless co-accused.

27. Keeping in mind these diverse ways to frustrate justice adopted in various modes and after fully appreciating and considering the aforesaid aspects the Magistrate/Judge must give the grounds and the reasons as to why in a transient offence such as trafficking also he/she has deemed it fit to grant bail, more especially to the trafficker and the brothel owner.

28. Upon the aforesaid main aspects being specifically noted, the Court may proceed to consider the application for bail as in other cases. Hence the Court would, as a general principle, refuse bail to an accused who is shown as a trafficker in human beings as such accused pursues a career in such crime, which is prone to reputation, which is expected to have antecedents and which is generally indisposed to intimidation and threats. The Court would certainly release on bail such of the accused or co-accused as are themselves not traffickers but may be shown to have played some minor role in the commission of the offence. The Court would release on bail a brothel owner but only subject to the closure and sealing of his brothel under Section 18 of the ITPA.

29. We have been informed that even if an accused is refused bail, he or she applies for bail on medical ground. We may mention that the provision of medical assistance and medical fees in our prisons have come of age. All facilities as would be usually required by the accused must, therefore, be provided for and allowed to be availed to the accused within jail precincts itself. Experience in the above matters, as contended by the parties, has shown that some of the accused have absconded even upon bail having been granted for medical reasons. The Courts would do well not to allow such slips to happen except in the most dire and emergent cases of medical problems diagnosed by known and registered medical officers and certified under their signatures in which medical aid is not available in jail and that too under strict supervision and upon specific directions in that behalf.

30. Both the petitioner as also the State have submitted before us guidelines for streamlining the prosecution of cases of human trafficking. It would be appropriate to set out some of the most needed guidelines thus:

(i) Bail should be denied to habitual offenders (traffickers) except upon exceptional, special and compelling reasons upon the most stringent conditions.

The Court shall call for and consider the antecedents report of the accused in all trafficking cases before passing any order of bail maintained by the Anti-Human Trafficking Unit and the local police.

(ii) Bail should be refused to brothel owner until the brothel is closed and sealed under Section 18 of the ITPA.

(iii) Bail should also be denied if the victim is a minor except in case of any extraordinary, compelling or special circumstances to be explained in the order itself and upon the most stringent conditions. Hence the bail may be granted only after the victim's age is verified by the birth certificate (and only if it satisfies the Magistrate/Judge that it

is genuine, carries a presumption of its correctness, being a public document) and not a school leaving certificate (which would be required to be proved upon verification of the school records by the signatory and which never carries any legal presumption of its correctness, being a private document.) Such documentary evidence would, therefore, have to be necessarily verified by the competent authority issuing them before embarking upon the final decision of grant of bail if upon a simplicitor look at the victim her age (of adulthood) belies the contents of the documentary evidence produced. Even medical evidence is opportune, and in case of doubt, "re-age verification" for having a second opinion would be required to be directed before the order of grant of bail. When the victim is prima facie ("on the face of it") a minor, the aforesaid medical tests are mandatory before taking the risky option of deciding the application for grant of bail.

(iv) Bail should also be denied its case of violent offence which would be seen from the statements of the victims and witnesses. The Court would do well to take into account the expected intimidation and threat to the victims and/or witnesses.

(v) If bail is applied on the ground of death of a family member the Court should ensure that clear documentation is produced to prove the genuineness of the ground.

(vi) Bail, upon stringent conditions, (if at all), be granted to the trafficker or the brothel owners only after the statement of the victim is recorded under Section 164 of the Code of Criminal Procedure and only if all other aforesaid conditions are met.

This would include a victim impact statement which may be considered with regard to the violence, if any, suffered by the victim or the other psychological and mental trauma having been faced by her whilst granting bail and fixing the conditions of such bail.

(vii) Anticipatory bail should be denied in ITPA cases.

(viii) The Court shall specify the condition of at least weekly attendance of the accused pending the trial with a further rider that failure of the accused to attend the Police Station shall be a ground for cancellation of bail. A condition be imposed on the Investigating Officer to submit a detailed report with regard to attendance of the accused.

(ix) The accused must never be allowed to gain access to the victim as the safety of the victim is of prime concern when the accused is released on bail. The Court shall give directions and make special conditions and provisions for supervision to ensure that there would be no contact between the accused and the victim.

(x) The Court may also consider the condition of externment in the bail order.

(xi) The victim shall not be allowed to sign any Vakalatnama without the permission of the Court.

(xii) No Advocate shall be allowed to appear in ITPA cases on behalf of the accused as well as the victim.

(xiii) The victim deserves to have legal representation and emotional support. It may be mentioned that in the case of **Prerna** (supra) this Court held that the victims of ITPA offences are "victims of crime" and should not be treated as criminals or as a source of evidence. The stage of bail is the most important as also the most fragile when the victims' rights begin and should not be lost.

Hence the Court shall permit any of the known NGOs and legal officers to work for assisting victims and prosecution and to represent the victims.

(xiv) The Court shall provide a lawyer from the Legal Services Authority or from any organization of service providers to represent the victims from the stage of the first remand of the accused and the application of bail itself or whenever an order of detention is passed against the victim under Section 17 of the ITPA as such an order is

appealable.

(xv) The police shall appoint specially trained and sensitized police officer as special police officer for dealing with offence under the ITPA as mandated under Section 13 of the ITPA.

(xvi) Upon the first remand, the victims shall be sent to the relevant statutory authorities being the Child Welfare Committee (CWC) in case of child victims and the National/State Commission for women in case of adult victims. The accused shall be taken for interrogation.

(xvii) No victim shall be released to any person who claims her custody except upon verification of the identification of the claimant along with Post Card size photograph and details of name, age, local address, native address and contact details of such claimant and after consent of the victim is obtained.

(xviii) Women accused who may be trafficker, brothel keeper or pimp have the benefit of not being arrested after sunset. Hence if she has to be arrested the next day or has to be directed to report to the police station the next day, it should NOT be stated to be a reason for granting bail; she should be arrested during the legally permissible hours and her application for bail must be considered on the aforesaid parameters the next day.

(xix) It is common knowledge that in a case involving more than 1 accused, if an accused is released on bail, another applies on the principle of parity. It is pertinent to appreciate what parity is. The dictionary meaning of parity in the **New pocket Oxford English Dictionary, Indian Edition at page 652** is :

*“the state of being equal or equivalent”.*

Hence the facts of each case must be appreciated to consider “parity”. If a manager, a sweeper, who has been charged or “framed upon a raid being conducted is released on bail, which would be justifiably granted, the main accused who is the trafficker or brothel owner, cannot claim or be granted “parity”. He/She is not on par.

(xx) The Magistrates and Judges shall use the following bail check-list proforma while deciding the application for bail :

- (i) Whether antecedents of the bail applicant have been checked.
- (ii) Whether antecedent report has been submitted before the Court.
- (iii) Whether the address of the bail applicant and the local surety has been verified by the Police and whether a report has been submitted before the Court.
- (iv) Whether bail applicant has had bail cancelled in the past.
- (v) If bail is applied for on medical grounds, whether treatment within the jail is possible.
- (vi) Whether accused is likely to have contact with the victim and intimidate or threaten her.
- (vii) Whether the accused is likely to repeat the offence; i.e. whether he/she would be able to return to and run the brothel.
- (viii) Whether the brothel is already sealed (and if not to undergo the process of sealing before any order of bail is passed).

Such proforma check list shall be duly completed and kept in the record & proceedings of the cases along with the order of bail.

(xxi) The State shall create a database of offenders, who are human traffickers under the ITPA in the entire State of Maharashtra together with their Post Card size photograph name, age, local address, native address, names of their parents or guardian, contact details etc. as also details of their antecedents maintained by the Police Department more specially the Social Security Branch of the office of the Commissioner of Police in each city which shall be made known and available to all the police officers, prosecutors as also the NGOs who run services pro bono or otherwise in support of the victims so that they are in turn made known to Court.

(xxii) The State shall prepare a database of all the absconding offenders under the ITPA in the entire State of Maharashtra.

The police shall thus maintain an active centralized database storing antecedents of human trafficking offenders. Whenever an application for bail is preferred by the accused in such cases, it would be the duty of the Investigating Officer, the Public Prosecutor and the Judicial Officer to verify from the centralized database, whether accused is having any criminal antecedents, as noted in the said database. The list of the updated database also be sent from time to time to the Registrar of all the Courts so that whenever such application for bail is filed, the Registrar of the Court will also verify whether the name of the accused appears in such database.

31. We may also reiterate the functions of police officers, prosecutors and judicial officers, oft stated, in the conduct of trafficking cases for conducive Court climate thus:

While deciding the applications for bail filed by the trafficker in cases under the ITPA, the Court should consider, without fail, the factors laid down by the Supreme Court, namely, the nature of the accusation, the nature of the evidence in existence, the severity of punishment, the character, behaviour, means and standing of the accused, circumstances peculiar to the accused, the reasonable possibility of securing the presence of the accused at the time of trial and the reasonable possibility of his interference with the witnesses and tampering of evidence.

In addition to these factors, the Court should also invariably in such cases, call for the report of antecedents of the accused and his past involvement, if any, in similar offences.

The Court should also obtain a report from the Police about verification of the address of the accused; whether it is authentic or not, whether the place of residence given is a rented accommodation, then the details of the movable and immovable property, his permanent address etc.

32. Needless to mention that once an accused has absconded or jumped bail, his or her bail must be cancelled and treated as cancelled. He or she would be taken in custody upon being arrested under the bailable and non bailable warrant issued for his or her arrest. Such accused cannot be released on bail pending the trial upon the facts of the case merely on account of delay in trial except under the legal and the most exceptional and grave circumstances which may be shown to Court in a given case. The fact that the petitioner has been constrained to file this petition shows that the prosecution, who has the legitimate weapon of cancellation of bail, has failed to use it in all the cases even upon being reinforced of its position by issue of NBWs in dozens of matters. Such is the sordid state of the criminal justice machinery which cries out for reforms in thought and action.

33. Hence in conclusion, we may clarify that an accused who is a trafficker in humans who has criminal antecedents, has been violent as seen from the statements of the victims of witnesses, who has no permanent local address, who is an illegal migrant or non-local resident or a foreign national on a lapsed tourist visa, who has trafficked a minor or who has absconded and is arrested upon NBW issued, or a brothel owner whose brothel has not been sealed after due procedure cannot be granted the privilege of being released on bail.

34. If, upon the aforesaid guidelines and directions being followed, an accused is released on bail, the requirements of the sureties and the conditions for their acceptance become important to consider thus :

(a) Legal sureties must be provided; Cash bail shall be as far as possible not to be allowed.

(b) There shall be 2 sureties to be provided. At least 1 surety shall be a permanent resident and having at least 1 property within the jurisdiction of the Court.

(c) No surety shall be accepted except upon proof of record of birth, residence, education, identity, property, contact details amongst other requirements.

(d) The permanent address including the native address of the accused as also the surety along with copies of their original identification documents such as Voter's Card, Ration Card, Aadhar Card, Passport and Post Card size photographs of the accused and the surety etc. along with their identification features in detail be collected and maintained by the police and verified before the accused is released from custody. Passport and type of visa of foreign nationals e.g. Nepalese, Bangladeshis etc. must also be verified. It must be realized and appreciated that accused, who are illegal migrants, foreign nationals on lapsed tourist visa, non-local residents etc. are good candidates for absconding if released on bail and are difficult to trace.

(e) The details of their immovable property, if any, be collected and the relevant entry be made in the Revenue Record.

(f) The verification report of the sureties must have the permanent address of the sureties shown in their Aadhar Card, etc verified with their current residence by the local police and attested and approved by the Anti Human Trafficking Unit (AHTU) / Social Service Branch (SSB) / Crime Branch.

(g) The Registrar of District Courts shall prepare a computerised alphabetical register maintaining the details of the accused and the sureties of all ITPA cases. These details can be fruitfully shared with the NGOs who render services to the victims, the lawyers who represent the victims as also the Centralised Database, showing the antecedents of the accused as and when established.

(h) The Court shall appreciate that the prices of all the commodities only increase and escalate. So shall be the

amounts for bail i.e. for sureties, (as would also be for imposing fines and compensation) which should be commensurate with the deterrence required not to jump bail. Hence the amount of surety should not be meager and be such as to ensure the presence of the accused at all times during the trial.

(i) A person shall stand surety only for 1 accused at a time i.e. till the end of his / her trial. Such surety cannot be allowed to be a surety for any other accused.

This direction would rule out the menace of “professional surety”. The database/ computerised register of the sureties which would show if the applicant has been a surety before in any other ITPA case.

(j) The sureties shall not have any prior criminal antecedents (which goes without saying also.)

35. We would do well to remember the words of Victor Hugo -  
*Liberation is not Deliverance.*

36. We are shown that as many as 20 absconding accused are from Nepal and have gone back to Nepal. Under Article I of The Treaty of Extradition between the Government of India and the Government of Nepal dated 2<sup>nd</sup> October, 1953 both the countries have agreed to deliver up the persons accused of crime in the territory of one government to the territory of another on the basis of strict reciprocity. Hence in all the cases of such accused the CBI as the Nodal Agency and as the Trafficking Police Officer under Section 13 of the ITPA would be required to be called on for obtaining the presence of such Nepalese accused since the local police fails in such endeavour despite serious efforts.

37. We have been informed that an office memorandum dated 30.04.2014 has been issued as an advisory of human trafficking as organized

crime. The Central Bureau of Investigation (CBI), Government of India has been appointed the Nodal Authority in respect of Inter-State and cross border assistance as a single point of contact to act as liaison between the Ministry of External Affairs and the State parties in these cases. Hence all cases in which victims or accused from neighbouring countries such as Nepal, Bangladesh or any other country are involved and more specially when an accused from such a country has absconded upon being granted bail, may be referred to the CBI for assistance to identify them and to arrest them in execution of the NBW issued for procuring their presence. The cases shown by the petitioner in which the accused have not be traced by the local police must be thus referred.

38. We may appreciate that India and Nepal are amongst the SAARC nations who are committed to cooperating in preventing trafficking for prostitution and for punishing those who are offenders of the crime of trafficking in humans. (See SAARC convention on Preventing and Combating Trafficking in women and children for Prostitution, 2002). Hence if even the CBI cannot procure the presence of the accused from Nepal, the State shall have to undertake extradition proceedings to extradite the accused located in Nepal to face the trials against them.

39. We are informed that the accused who are traffickers from Nepal have absconded without a trace and have not been found despite serious efforts by the local police and despite the "special drive" initiated. We have noted the deplorable situation of nadir in as many as 42 cases before us relating to the most fundamental of human rights of life and liberty which is the right not to be trafficked and hence we direct the Commissioner of Police, Pune to himself set up - a team under a Special Police Officer to continue the vigil against the accused in the 42 cases reported in this PIL and continue the drive in the future cases and make written reports of the work done in that behalf in this petition with a copy to the petitioner with whom

we expect the Commissioner of Police and his (staff) to work in unison to combat the evil of trafficking and free the most vulnerable section of our society from such evil and failing which to hand over the task of obtaining the presence of the accused who are traffickers from the neighbouring countries to the CBI.

40. A copy of this judgment shall be forwarded to all the Magistrates, Special Court of ITPA, Sessions Judges, Additional Sessions Judges dealing with the cases of ITPA by way of appeal or revisions, the Director General of Police for circulation to all the police stations, the Directorate of Public Prosecutors for circulation to all Additional Public Prosecutors as also the Maharashtra Judicial Academy (MJA), Uttan, District Thane, Maharashtra and the District Legal Services Authority (DLSA), to be used in the periodical training of Police Officers, Prosecutors and Judicial Officers. The Registrar General of the Bombay High Court shall take the necessary steps to the above effect.

41. The Public Interest Litigation is disposed of in terms of the aforesaid directions. However the Public Interest Litigation is stood over to 14.12.2015 to obtain the report of the work done until then and failing which to call upon and direct the CBI to search and produce the absconding accused before the relevant trial Courts with a report to this Court.

**(ROSHAN DALVI, J.)**

**(MRS. SHALINI PHANSALKAR-JOSHI, J.)**