

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Civil Writ Petition No. 6922/2023

1. Shri Om Prakash Lakhyani Trustee, Sant Shri Asaram Ji
2. Sant Shri Asaram Ji Babu, Chief Trustee, Sant Shri

-----Petitioners

Versus

1. Union Of India, Through The Secretary, Ministry Of Information And Broadcasting, Sanchar Bhawan, Government Of India, 20 Ashoka Road, New Delhi - 100001.
2. The Chairman, Central Board Of Film Certification (Cbfc), Films Division Complex, Phase-1, Building, 9Th Floor D. G Deshmukh Marg, Mumbai - 400026.
3. The State Of Rajasthan, Through The Ministry Of Home Affairs, Government Of Rajasthan, Jaipur.
4. The Director General Of Police, Police Headquarters, Government Of Rajasthan, Jaipur.
5. Shri Vinod Bhanushali, Bhanushali Studios Limited
6. Shri Manoj Bajpayee, (Bollywood Actor), R/o 902B Wing,
7. Zee5 Studio, At 18Th Floor, A Wing, Marathon, Futurex, N.m. Joshi Marg, Lower Parel, Mumbai - 400013.
8. Shri Apoorv Singh Karki S/o Unknown, (Film Director),

9. Mr. Asif Sheikh S/o Unknown, Address A-1, 304, Mangal
10. Mr. Vishal Gurnani S/o Unknown,
11. Manish Vyas S/o Lt. G V Vyas,
12. Shri Poonam Chand Solanki (P.c. Solanki), Advocate,
Rajasthan High Court, Jhalamand, Jodhpur.

----Respondents

For Petitioner(s)	:	Mr. S.P. Sharma Mr. Vipul Singhvi Mr. Jetharam Lohiya Mr. Lalit Kishore Sen Mr. Yashpal Singh
For Respondent(s)	:	Mr. Mukesh Rajpurohit, Dy.S.G. with Mr. Uttam Singh Rajpurohit Dr. RDSS Kharlia Dr. Harish Kumar Purohit Mr. C.S. Kotwani

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Order

Reserved on 23/05/2023

Pronounced on 26/05/2023

1. Heard learned counsel for the parties on stay application No.7072/2023.
2. By filing the stay application, the applicants/petitioners have claimed the following reliefs:-

*"It, is therefore, most respectfully prayed by the humble petitioners that, pending the final disposal of this writ petition, the **respondents may kindly be directed not to release Film "Sirf Ek Banda Kaafi Hai", in any cinema houses or any other platform including OTT***

platform, across the country and state of Rajasthan, being hit by the provisions of law and which directly infrings fundamental rights of petitioner and of lakhs of devotees and followers of petitioner Asaram Babu and hurts the Hindu Religions sentiments and its trust founded by it.

Any other appropriate relief deemed fit in the facts and circumstances, may kindly be passed in favour of the petitioner."

3. As the averments made in the stay application would reveal, the applicants/petitioners seeking a direction by this Court in the nature of ban/restraint on release of a Film/Movie, namely, "Sirf EK Banda Kaafi Hai" (in short, 'movie in question' produced and directed by the respondents no.7 & 8; the Movie in question, primarily based on a single trial case against the accused-petitioner no.2.

3.1. The petitioner was convicted by the learned Trial Court for the offences under the Indian Penal Code,1860 (IPC) and Protection of Children from Sexual Offences Act, 2012 (POCSO Act); the appeal preferred against such conviction is pending adjudication before this Hon'ble Court.

3.2. The Teaser/ Trailer of the movie in question was released on 08.05.2023 and the movie was released on 23.05.2023 at 12:00 a.m. over the OTT Platform.

4. Learned counsel for the applicants/petitioners submitted that the contents of the movie in question are highly objectionable, as amongst others, obscene language has been used therein against the petitioner no.2 by portraying him as "Ravan", who allegedly has committed heinous crime. Therefore, as per learned counsel,

the movie in question has been produced, directed and released so as to cause irreparable damage to the reputation and dignity of the petitioners.

4.1. Learned counsel also submitted that prior to release of the movie in question, a legal notice was served by the petitioners upon the respondents (producer and director of the movie) as well as the Central Board of Film Certification (CBFC), but the same was never replied by them, instead the movie was released on the OTT Platform on 23.05.2023.

4.2. Learned counsel further submitted that the release of the movie in question is a violation of the Section 228-A of the IPC; and more particularly, Section 23 of the POCSO Act, which, amongst others, provides that, *"No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy."*

4.3. Learned counsel also submitted that various newspapers and other social media platforms have congratulated the respondents in connection with the movie in question, which was produced on the life of the petitioner no.2, and thus, the said fact of the movie being produced on the life of petitioner no.2 cannot be denied by the respondents.

4.4. Learned counsel further submitted that production of the movie in question is also an apparent violation of the right to privacy, which is part of the life and dignity, as provided under Article 21 of the Constitution of India.

4.4.1. As per learned counsel, in the present case, the criminal appeal preferred by the petitioner no.2 against the judgment and order of his conviction is pending before this Hon'ble Court, and therefore, till pendency of the said appeal, the respondents (producer and director), ought not to have produced and released the movie in question, that too, despite being prohibited by the aforementioned provisions of law.

4.5. In support of such submission, reliance was placed on the judgments/orders of the Hon'ble Apex Court in the cases of ***Akhtari Bi Vs. State of M.P. (2001) 4 SCC 355; Swatanter Kumar Vs. The Indian Express Ltd. and Ors. (I.A. No. 723/2014 in CS(OS) No. 102/2014 decided on 16.01.2014)*** and; ***Sidhartha Vaishist Vs. State (NCT of Delhi) (2010) 6 SCC 1;*** and the judgment rendered by a Division Bench of this Hon'ble Court in the case of ***Asharam @ Ashumal Vs State (D.B. Criminal Appeal No.123/2018 decided on 25.01.2022).***

4.6. Learned counsel further submitted that the movie in question, which has been released in the morning on 23.05.2023 over the OTT Platform, may be ordered to be deleted by this Court, by passing an order of injunction, as the petitioners have been able to make out a strong *prima facie* case and their case would fall within the parameters for seeking such order. In support of such submission, reliance has been placed on the judgment rendered by the Hon'ble Bombay High Court in the case of ***Mushtaq Moosa Tarani Vs. Government of India & Ors., 2005 SCC Online Bom 385.***

4.7. Reliance has also been placed on the judgment rendered by a Division Bench of the Hon'ble High Court of Delhi in the case of ***Kritika Padode & Anr Vs Union Of India & Anr. (W.P. (C) 2399/2015***, decided on 05.08.2016) whereby the Hon'ble Court refused to lift the ban imposed by a learned Magistrate on airing of the documentary "*India's Daughter*", wherein one of the convicts of the Nirbhaya rape case was remorselessly narrating the events of the incident therein.

4.8. Learned counsel also submitted that respondent no.11 represented the victim as her counsel in the criminal case against the petitioner no.2, and that, the movie in question is showing the story of that criminal trial; the respondent no.11 has also sold his rights to the respondent-movie producer, which is in clear contravention of the professional ethics, as prescribed in the Bar Council of India Rules as well as Advocates Act, 1961.

5. On the other hand, learned counsel appearing on behalf of the respondents, while opposing the aforesaid submissions made on behalf of the petitioners, submitted that the movie in question has been released on 23.05.2023 at 12:00 a.m. and the same does not contain any name, photographs, family details, school, neighborhood, or any other particulars, which may lead to the disclosure of identity of the victim, as alleged by the petitioners. Therefore, as per learned counsel, the provisions of Section 228-A IPC and Section 23 of the POCSO Act have not been violated by the respondents, in any manner whatsoever.

5.1. Learned counsel further submitted that there is a clear disclaimer at the initial portion of the movie in question that the same is a fictional work and was inspired by the real life events, which are available well within the public domain. Therefore, there is nothing related to the petitioner no.2 rights, and thus, the movie in question does not have any adverse affect on the petitioner no.2's reputation and dignity.

5.2. Learned counsel also submitted that in case any claim is made by any individual in regard to the balancing of public interest and the right to privacy, then suit for damages for defamation would be the only appropriate remedy. In support of such submission, reliance has been placed on the judgment rendered by the Hon'ble Delhi High Court in the case of ***Sushil Ansal Vs Endemol India Pvt. Ltd. & Ors. (I.A. 507/2023 in CS(OS) 20/2023 decided on 12.01.2023)***.

5.3. Learned counsel further submitted that the restriction on public viewing of an artistic work should be as per the prescription of law; thus, since the movie in question is completely a fictional work and not going harm the reputation and dignity of anyone, including the petitioner no.2, therefore, the prayer for interim order made by the petitioners herein does not deserve to be accepted.

5.4. Learned counsel also submitted that the writ petition itself, as filed by the petitioners herein, is based only on presumption of the facts that the movie in question was based on criminal trial against the petitioner no.2 and would thus harm the reputation and dignity of the petitioner no.2. It was further submitted that

the respondents have exercised their lawful rights and the same are protected by the Law relating to Intellectual Property Rights (IPR); thus, no right, including the right to privacy qua the petitioner no.2, has been violated by the respondents herein.

5.5. Leaned counsel also submitted that the petitioners have no *prima facie* case in their favour, as amongst others, a huge amount has already been invested by the respondent-producer of the film; therefore, in case the relief prayed for in the stay application is granted to the petitioners, the same would cause an unwarranted irreparable loss to the respondent-producer.

5.6. Learned counsel further submitted that the judgment relied upon by the petitioners in case of **Asharam @ Ashumal (Supra)** has been reversed by the Hon'ble Apex Court in case of **State of Rajasthan Vs Asharam @ Ashumal (Arising Out of Special Leave Petition (Criminal) No. 2044 of 2022, decided 17.04.2023)**. Furthermore, as per learned counsel, a Book titled "Gunning for the Godman: The True Story Behind Asaram Babu's Conviction" is already in circulation since August 2013, and therefore, everything related to the petitioner no.2 is already within the public domain, and that, the prescriptions of Articles 19 and 21 have also not been violated in any manner whatsoever in the present case.

6. Heard learned counsel for the parties as well as perused the record of the case alongwith the judgments cited at the Bar.

7. This Court observes that the petitioner no.2 was convicted under the provisions of IPC and the POCSO Act by the Trial Court and appeal preferred against the same is pending adjudication

before this Hon'ble Court. This Court further observe that the allegation of the petitioners are that the movie in question is based on the criminal trial against the petitioner no.2, and thus, the same is a clear violation of the right to privacy and fair trial of the petitioner no.2.

8. This Court also observes that the trailer of the movie in question was aired on 08.05.2023 and the movie has been released on 23.05.2023 in the morning over the OTT Platform. This Court further observes that for grant of any interim injunction order on the movie in question, it is necessary that the case falls within the parameters for grant of injunction.

9. This Court has firstly seen as to whether any *prime facie* case is made out by the petitioner to seek any interim injunction in regard to the movie in question; the trailer of the movie in question was aired on 08.05.2023, and after watching the trailer of the movie in question, it is revealed that nothing in the same is related to the petitioner no.2. Therefore, the petitioners have not been able to make out a *prima facie* so as to persuade this Court to pass any interim injunction order in regard to the movie in question.

10. Secondly, this Court has seen as to whether there is balance of convenience in favour of the petitioners in the present case; the news related to the movie in question was started long time back, while the present petition was preferred just few days prior to release of the movie in question, more particularly, even when the trailer of the movie was aired on 08.05.2023. The movie in question has already been released over the OTT Platform on

23.05.2023 in the morning. Therefore, at this juncture, if any interim order, as prayed by the petitioners herein, is passed against the movie in question, the same would result into unwarranted and huge financial loss to the respondent-producer of the film. Thus, in the given factual matrix, on that count also, this Court does not find any case to be made out for passing any interim order as prayed by the petitioners herein.

11. Thirdly, this Court has seen as to whether any case of irreparable loss was made out by the petitioners in the present case; the petitioners can seek compensation against damages and defamation, if there is any violation of the reputation and dignity of the petitioners, on the part of the respondents; however, this Court does not find that in the given factual matrix, any irreparable loss is being caused to the petitioners herein.

12. This Court further observes that as per the trailer of the movie in question, there is nothing directly found related to the petitioner no.2, which could persuade this Court to grant the relief prayed for in the stay application filed by the petitioners; however, in the opinion of this Court, all the issues involved in the present case, can be decided by this Court only at the time of final hearing of the writ petition, after having proper assistance from the Union of India.

13. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case, this Court does not find it a fit case so as to grant any relief to the petitioners in the present stay application.

14. Consequently, ***the present stay application is dismissed.***

However, the dismissal of the stay application shall not preclude either of the parties to raise their legal issues, which they wish to, at the time of final disposal of the writ petition, on merits. The learned counsel for the parties are requested to file a detailed reply, rejoinder and other relevant documents, if necessary, before listing of the writ petition for final adjudication.

15. Mr. Mukesh Rajpurohit, learned Deputy Solicitor General is directed to file a proper response regarding crucial issues of certification, issue of breach of privacy, role of a lawyer in an ongoing case if he wants to get the story being published in media or cinema or OTT Platforms etc., any rigours over media in a POCSO case and all other issues raised.

16. List the writ petition in the second week of July, 2023.

(DR.PUSHPENDRA SINGH BHATI),J

SKant/-