

विजय कुमार,
आई0पी0एस0



डीजी परिपत्र सं0 - **33** /2023

पुलिस महानिदेशक,
उत्तर प्रदेश।

पुलिस मुख्यालय, गोमती नगर विस्तार,
लखनऊ-226002

दिनांक: सितम्बर 4, 2023

विषय: क्रिमिनल अपील संख्या- 135/2010 बुद्धदेव कर्मास्कर बनाम पश्चिम बंगाल राज्य में मा0 सर्वोच्च न्यायालय, नई दिल्ली द्वारा पारित आदेश दिनांकित 19.05.2022 के अनुपालन हेतु दिशा निर्देश।

प्रिय महोदय/महोदया,

कृपया परिपत्र के साथ संलग्न क्रिमिनल अपील संख्या- 135/2010 बुद्धदेव कर्मास्कर बनाम पश्चिम बंगाल राज्य में मा0 सर्वोच्च न्यायालय, नई दिल्ली द्वारा पारित आदेश दिनांकित 19.05.2022 का सन्दर्भ ग्रहण करें, जिसके द्वारा मा0 सर्वोच्च न्यायालय में सेक्स वर्करों के पुर्नवास तथा कल्याण हेतु कतिपय निर्देश निर्गत किये गये है तथा उनके अनुपालन हेतु देश के समस्त राज्यों एवं केन्द्रशासित प्रदेशों को निर्देशित किया गया है।

मा0 सर्वोच्च न्यायालय द्वारा पारित आदेश दिनांकित 19.05.2022 में दिये गये निर्देश निम्नवत् हैं-

The directions that are issued today relate only to the rehabilitation measures in respect of sex workers and other connected issues. The panel has recommended in respect of the third term of reference in the following terms:

(i) Sex workers are entitled to equal protection of the law. Criminal law must apply equally in all cases, on the basis of 'age' and 'consent'. When it is clear that the sex worker is an adult and is participating with consent, the police must refrain from interfering or taking any criminal action.

There have been concerns that police view sex workers differently from others. When a sex worker makes a complaint of criminal/sexual/any other type of offence, the police must take it seriously and act in accordance with law.

ii) Any sex worker who is a victim of sexual assault should be provided with all facilities available to a survivor of sexual assault, including immediate medical assistance, in accordance with Section 357C of the Code of Criminal Procedure, 1973 read with "Guidelines and Protocols: Medico-legal care for survivor/victims of sexual violence", Ministry of Health and Family Welfare (March, 2014).

iii) Whenever there is a raid on any brothel, since voluntary sex work is not illegal and only running the brothel is unlawful, the sex workers concerned should not be arrested or penalised or harassed or victimised.

iv) The State Governments may be directed to do a survey of all ITPA Protective Homes so that cases of adult women, who are detained against their will can be reviewed and processed for release in a time-bound manner.

v) It has been noticed that the attitude of the police to sex workers is often brutal and violent. It is as if they are a class whose rights are not recognised. The police and other law enforcement agencies should be sensitised to the rights of sex workers who also enjoy all basic human rights and other rights guaranteed in the Constitution to all citizens. Police should treat all sex workers with dignity and should not abuse them, both verbally and physically, subject them to violence or coerce them into any sexual activity.

vi) The Press Council of India should be urged to issue appropriate guidelines for the media to take utmost care not to reveal the identities of sex workers, during arrest, raid and rescue operations, whether as victims or accused and not to publish or telecast any photos that would result in disclosure of such identities. Besides, the newly introduced Section 354C, IPC which makes voyeurism a criminal offence, should be strictly enforced against

electronic media, in order to prohibit telecasting photos of sex workers with their clients in the garb of capturing the rescue operation.

Vii) Measures that sex workers employ for their health and safety (e.g., use of condoms, etc.) must neither be construed as offences nor seen as evidence of commission of an offence.

Viii) The Central Government and the State Governments must involve the sex workers and/or their representatives in all decision-making processes, including planning, designing and implementing any policy or programme for the sex workers or formulating any change/reform in the laws relating to sex work. This can be done, either by including them in the decision-making authorities/panel and/or by taking their views on any decision affecting them.

ix) The Central Government and the State Governments, through National Legal Services Authority, State Legal Services Authority and District Legal Services Authority, should carry out workshops for educating the sex workers about their rights vis-a-vis the legality of sex work, rights and obligations of the police and what is permitted/prohibited under the law. Sex workers can also be informed as to how they can get access to the judicial system to enforce their rights and prevent unnecessary harassment at the hands of traffickers or police.

x) As already recommended in the 6th interim Report dated 22.03.2012, no child of a sex worker should be separated from the mother merely on the ground that she is in the sex trade. Further, if a minor is found living in a brothel or with sex workers, it should not be presumed that he/she has been trafficked. In case the sex worker claims that he/she is her son/daughter, tests can be done to determine if the claim is correct and if so, the minor should not be forcibly separated."

मा० सर्वोच्च न्यायालय द्वारा पारित उपरोक्त निर्देशों में से निर्देश संख्या-i, निर्देश संख्या-ii, निर्देश संख्या-iii एवं निर्देश संख्या-V पुलिस द्वारा की जाने वाली कार्यवाहियों से संबंधित है। मा० सर्वोच्च न्यायालय द्वारा दिये गये निर्देश संविधान के अनुच्छेद-142 के अन्तर्गत विधि के रूप में प्रवर्तनीय एवं आज्ञापक हैं।

अतः आप सभी को निर्देशित किया जाता है कि सेक्स वर्करों के संबंध में की जाने वाली कार्यवाहियों के दौरान मा० सर्वोच्च न्यायालय द्वारा निर्गत उपरोक्त निर्देशों का कड़ाई से अनुपालन सुनिश्चित किया जाये। यदि किसी अधिकारी/कर्मचारी द्वारा उपरोक्त निर्देशों का अनुपालन करने में शिथिलता बरती जाती है तो उसके विरुद्ध नियमानुसार दण्डात्मक कार्यवाही की जाये।

संलग्नक:यथोपरि।

भवदीय,


(विजय कुमार)

1. पुलिस आयुक्त,

कमिश्नरेट-लखनऊ/कानपुर/वाराणसी/गौतमबुद्धनगर/आगरा/गाजियाबाद/प्रयागराज।

2. समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,

प्रभारी जनपद/रेलवेज, उत्तर प्रदेश।

प्रतिलिपि: निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु :-

1. विशेष पुलिस महानिदेशक (कानून एवं व्यवस्था/अपराध), उ०प्र० लखनऊ।
2. अपर पुलिस महानिदेशक (रेलवेज), उ०प्र० लखनऊ।
3. अपर पुलिस महानिदेशक (अभियोजन), उ०प्र० लखनऊ।
4. अपर पुलिस महानिदेशक (तकनीकी सेवाएँ), उ०प्र० लखनऊ।
5. समस्त जोनल अपर पुलिस महानिदेशक, उ०प्र०।
6. समस्त परिक्षेत्रीय पुलिस महानिरीक्षक / पुलिस उपमहानिरीक्षक, उ०प्र०।