

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 7 of 2015

Mr. Januario Miranda,
41 years of age,
r/o of Dodamarg, Savordem,
presently lodged in Judicial Lock-up
Mapusa Judicial Lock Up
Mapusa, Goa. ... Applicant.

Versus

1. State
(As represented by the officer
Incharge, Mapusa Police
Station, Mapusa Goa)
2. The Public Prosecutor,
High Court Bldg.,
Altinho, Panaji, Goa. ... Respondents.

Ms. Dolorosa Tulkar, Advocate for the applicant.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

Coram :- U. V. BAKRE, J.

Reserved on : - 30th January, 2015

Pronounced on :- 2nd February, 2015

ORDER:-

Heard Ms. Tulkar, learned Counsel for the applicant and Mr. Rivankar, learned Public Prosecutor for the respondents.

2. The applicant, who has been arrested on 16/04/2014 in

Crime No. 155/2014 registered at Mapusa Police Station for offences punishable under Sections 504, 506, 436, 323, 427 and 307 of the Indian Penal Code (I.P.C.) and Section 8 of the Goa Children's Act, has filed the present application for bail.

3. One Mrs. Manuelina Miranda, the sister-in-law of the applicant, has lodged complaint dated 16/04/2014 alleging that on 14/04/2014, the applicant slapped Master Jolan Miranda, the minor son of the complainant and on 16/04/2014, after midnight, the applicant threatened her and her mother-in-law with dire consequences and also abused her with filthy words. She further alleged that she, her mother-in-law and workers were inside the house due to fear and after some time, they noticed smoke and flames inside the storeroom and within short span of time, fire increased, due to which they all moved out and contacted the police and fire brigade, but by that time, the fire spread all over the room and gutted it completely, thereby damaging gold ornaments, valuable documents, cash amount, clothes and other valuable items including roof furniture, fixtures. The complainant stated that police and fire brigade came and doused all the fire and thereafter, she noticed that all electrical valuable items were burnt and even Maruti Vagan R car bearing registration No. GA-03-C-3761 which was parked inside the shed adjacent to the store room was completely burnt. The complainant stated that her brother-in-law i.e. the

applicant intentionally set fire to the Vagan R Car parked inside the shed knowing that the fire will spread and capture the house. She stated that loss of about ₹ 25,00,000/- was caused to her. It is upon this complaint that the said crime was registered.

4. The applicant has stated that chargesheet has been already filed before the Children's Court on 14/07/2014 and hence nothing remains to be investigated. He stated that there is not a single eye witness to establish that the applicant was involved in the incident. He stated that no fire report is there to determine the cause of the fire and to rule out the possibility of accidental fire. The applicant stated that the ingredients of Section 436 of I.P.C are not satisfied. The applicant further stated that he and his family had shifted to Dodamarg, Maharashtra for last over three years and have not been interfering with the complainant or her family in any manner. The applicant, therefore, prayed for bail.

5. By way of reply, the Police Inspector Mapusa Police Station resisted the application for bail. It is stated that threats given by the applicant to the complainant and her family members have left them in trauma. It is further stated that the applicant has crime registered against him at the Mapusa Police Station Crime No. 174/2013 under Sections 504, 452, 325 of I.P.C. and Crime No. 175/2013 under Sections 504, 353 and 506 of I.P.C. which are pending trial before the

Court for assault and threatening police. It is stated that the applicant is also involved in drug matter under Crime No. 08/2013 of N.D.P.S. Act and the case is under trial before the Court at Mapusa. It is stated that considering the violent behaviour of the applicant and his criminal record, the possibility of his further involving in similar acts cannot be ruled out. It is further stated by the police officer that the complainant has filed a request application with a request to strongly object the application for bail filed by the applicant. It is further stated that the crime committed by the applicant is against women and minor children and the trial has not yet started and there are 18 witnesses to be examined and summons has been issued to the complainant and Investigating Officer to appear on 29/01/2015 at 2.30 p.m.

6. Ms. Tulkar, learned Counsel for the applicant submitted that the crime was initially registered only for the offences under I.P.C. and that Section 8 of Children's Act was added subsequently. She submitted that the cause of fire to the car and to the house is not known and there is no eye witness to the said incident of fire. She alleged that in all cases referred to in the reply, the applicant is on bail and that the N.D.P.S. case is regarding small quantity pending before the J.M.F.C.. She urged that the applicant has been in custody for the last 9 and half months and is not required to be detained for any purpose. She, therefore, urged that the applicant be released on

bail.

7. On the other hand, Mr. Rivankar, learned Public Prosecutor submitted that there is strong circumstantial evidence against the applicant since voice of the accused giving threats to the complainant and her mother-in-law to kill them was heard by various witnesses and soon thereafter, there was fire to the car and to the residential house. He submitted that huge loss has been caused to the complainant and offence under Section 436 of I.P.C. is punishable with imprisonment for life. He further submitted that there are three criminal cases already pending against the applicant, out of which one is under N.D.P.S. Act. He invited my attention to the application filed by the complainant before the Police officer, Mapusa Police Station requesting to oppose the application for bail. He further submitted that charge has been already framed. Main witnesses are yet to be examined and if the applicant is released on bail, he is likely to threaten the witnesses. He, therefore submitted that bail may not be granted to the applicant at this stage.

8. I have gone through the chargesheet and annexures. I have considered the arguments advanced by the learned Counsel for the parties.

9. The applicant was arrested on 16/04/2014 which means that

he has been in custody for last about 9 and half months. Chargesheet has already been filed and the case has been registered as Special Case No. 65/2014. Even charge has been framed and the matter is fixed for trial on 29/01/2015 at 2.30 p.m.

10. It should be kept in mind that this is a matter between the relatives. The complainant is the widow of the elder brother of the applicant. The mother-in-law of the complainant, who is alleged to have been threatened, is the mother of the applicant. It appears that there is dispute between the applicant and the complainant regarding the house and bakery. No doubt, the statements of witnesses reveal that they heard the applicant giving threats of dire consequences to the complainant and her mother-in-law and thereafter, fire broke out resulting in extensive damage to the house, furniture, fixtures and car, etc. It cannot be said at this stage that the ingredients of Section 436 of I.P.C. are not fulfilled. But nobody has seen the applicant putting fire.

11. Be that as it may, charge has been already framed, *inter alia*, for the offence punishable under Sections 436 and 307 of I.P.C. Section 436 of I.P.C. provides for punishment of imprisonment for life or with imprisonment of either description for a term which may extend to 10 years and fine. Thus, the punishment can be either of few days or of 10 years or of life imprisonment. No minimum

punishment is prescribed. Admittedly, in all the three cases pending against the applicant, he is on bail. The case under the N.D.P.S. Act pertains to small quantity and is pending before the J.M.F.C.. The complainant has filed an application dated 29/04/2014 before the Police Inspector, Mapusa Police Station, *inter alia*, showing fear that the applicant may stab her and kill children, if released on bail and stating that the wife of the applicant has issued a threat to her to the effect that as soon as her husband comes out from jail, he would cut her and her children with knife. However, no fresh Crime is registered nor any action is taken.

12. Since charge has been already framed, no purpose will be served by keeping the applicant in custody as that amounts to punishment before conviction. Appropriate conditions can be put on the applicant to take care of the complainant and her family members.

13. In the result, the application is allowed.

The applicant shall be released on bail in Crime No. 155/2014 registered at Mapusa Police Station (Special Case No. 65/2014) upon execution of Personal Bail Bond in the sum of ₹ 25,000/- with one solvent surety in the like amount under the following conditions, namely:

(a) The applicant shall attend all the hearings in the said

Special Case No. 65/2014 except for genuine reasons, in which case, he may apply for exemption.

(b) The applicant shall not enter the village Guirim, Bardez, Goa until further orders.

(c) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

(d) The applicant shall not leave India without previous permission of the Children's Court.

(e) Bail bond shall be executed before the Children's Court to its satisfaction.

14. The application stands disposed of.

SMA

U. V. BAKRE, J.