

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 25 OF 2015

DOMNIC NAZARETH.

... Applicant

Versus

STATE THROUGH PP, HIGH COURT OF
BOMBAY AT PANAJI.,

... Respondent

Mr. S. Shet, Advocate for the applicant.

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

Coram:- U. V. BAKRE, J.

Date:- 30th January, 2015

P.C.:

Heard Mr. Shet, learned Counsel for the applicant and Mr. Rivankar, learned Public Prosecutor for the respondent.

2. By this application, the applicant has prayed for grant of bail in Sessions Case No. 41 of 2009 pending before the learned Additional Sessions Judge, Mapusa, Goa.

3. The said Sessions Case no. 41 of 2009 has been filed against the applicant and two others for offence punishable under Sections 302, 307 and 326 r/w. Section 34 of I.P.C.

4. The applicant was on bail. It appears that on 08/01/2015, the applicant was absent in the said Sessions Case due to which a

non-bailable warrant was issued by the learned Sessions Judge. It is the contention of the applicant that he was under a bonafide belief that the matter was fixed at 2.30 p.m. on that day and he actually appeared on 08/01/2015 at 2.30 p.m. but was informed by the Court staff that the matter was already taken up in the morning session. The applicant therefore filed an application for cancellation of non-bailable warrant in which he mentioned all the said facts. However, by the impugned order dated 22/01/2015 the learned Additional Sessions Judge, Mapusa has rejected the application. The learned Additional Sessions Judge has observed that the case is of the year 2009 and therefore an old case and direction has been given by the High Court to dispose of the said case expeditiously and that the applicant has been remaining absent even earlier and therefore is not fit to be released on bail since on account of the absence of the accused trial is not proceeding.

5. In my view, since the non-bailable warrant issued by the learned trial Judge was not yet executed and since the applicant had filed an application for cancellation of non-bailable warrant, the learned Additional Sessions Judge could not have observed that the case is not fit for releasing the applicant on bail. The applicant had not filed any application for bail before the learned Additional Sessions Judge, Mapusa. The question of release on bail would arise only after the accused is arrested and produced before the trial Judge or after he surrenders. In such circumstances, the question of this Court

releasing the applicant on bail does not arise.

6. In the circumstances above, the applicant should surrender before the learned Additional Sessions Judge and file an application for bail making out a case for absence on the date of hearing. If such an application is made on surrender by the applicant, the learned Additional Sessions Judge shall consider the same and decide the same without being influenced with the observations made by her in order dated 22/01/2015 to the effect that the applicant is not to be released on bail. The application, if filed, shall be decided on its own merits, in accordance with law.

7. With the above observations the application stands disposed of.

U. V. BAKRE, J.

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