

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO. 28 OF 2015**

MR. CHANDRASHEKAR SINGH, IN
JUDICIAL CUSTODY AT SUB-JAIL,
SADA, VASCO DA GAMA, REP. BY C.S.
CHAUHAN.

... Applicant.

Versus

THE STATE OF GOA THROUGH THE
POLICE INSPECTOR, VERNA POLICE
STATION.

... Respondent.

Mr. Ryan Da Piedade Menezes with Mr. Anoop Kudtarkar, Advocates for
the Applicant.

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

Coram :- U. V. BAKRE, J.

Date :- 17th February, 2015.

P.C:

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

2. The applicant, who has been arrested on 13.08.2014 by Verna
Police in Crime No. 114/2014, registered for offences punishable
under Sections 342, 323, 376 and 506(ii) of the Indian Penal Code
(I.P.C., for short), has filed the present application for bail.

3. The investigation in the said crime culminated into Sessions Case No. 42/2014, which is pending before the learned Additional Sessions Judge, South Goa, Margao. Admitted position is that the prosecution evidence in the said Sessions Case No. 42/2014 is complete and the matter is now pending for recording of the statement of the applicant under Section 313 of the Criminal Procedure Code.

4. It is the contention of the learned Counsel for the applicant that the evidence on record would certainly establish that the intercourse, if any, was by consent. He pointed out that the learned Additional Sessions Judge by order dated 29.01.2015 rejected bail mainly on the ground that the applicant is from Uttar Pradesh and his residence in Goa is on rental basis. He submitted that merely because the applicant is from Uttar Pradesh, that cannot be a ground for rejecting the bail to the applicant. Learned Counsel relied upon following judgments:- (i) ***Santosh Ramchandra Nikam Vs. State of Maharashtra***, [2010 ALL MR (Cri) 693]; (ii) ***Shiney Suraj Ahuja Vs. State of Maharashtra***, [2010 ALL MR (Cri) 92]; (iii) ***Anthony Britto Vs. State of Goa***, [2007 (0) BCI 197] and order of this Court

dated 5th August 2014 in Criminal Application (Bail) No. 149 of 2014.

5. On the other hand, Mr. Rivankar, learned Public Prosecutor submitted that the question whether there was free consent would be considered by the trial Court based on evidence on record. The learned Public Prosecutor submitted that the evidence in the case is complete and therefore, the case will be disposed of soon. He further submitted that the applicant, being non Goan, is likely to abscond if released on bail and therefore, bail should not be granted.

6. I have gone through the evidence of the prosecution witnesses in the said Sessions Case. Admittedly the victim girl is major in age. Reading of the evidence prima facie shows that the act of intercourse as stated by the victim girl could be with consent. It is seen from the evidence that only after the pregnancy of the victim girl was noticed, she lodged the complaint. The first incident of alleged rape occurred in September, 2013 and surprisingly, similar incidents were repeated till June 2014 and complaint was ultimately filed in August, 2014. The statements of PW1, the victim girl, PW2, the Manager of the hotel named "Sea Castel" and of PW5, the brother of the applicant reveal

possibility that the incident of intercourse, if at all was there, was by consent.

7. Mr. Menezes, learned Counsel submits that the applicant wants to examine some witnesses on his behalf. Thus, the case will not be finished soon. In the facts and circumstances of the case, I do not feel that the judgments relied upon by the learned Counsel for the applicant should be discussed.

8. The applicant as well as the victim and her family members are from Uttar Pradesh. The applicant has the Aadhar card in Goa and his address is near Fizz Factory, Quellossim, Cortalim. Even otherwise, merely because the applicant is from Uttar Pradesh, bail cannot be rejected to him. The question of tampering with evidence does not now arise since the prosecution evidence is over. Considering the weakness of the prosecution evidence, I am of the view that the applicant should be released on bail by imposing strict conditions for his appearance before the trial Court, till the case is finally disposed of.

9. In the result, the application is allowed.

The applicant shall be released on bail upon execution of the personal bond in the sum of ₹ 25,000/- with one local solvent surety in the like amount under the following conditions:

(i) The applicant shall attend the Verna Police Station on every Monday, Wednesday and Friday, to ensure his presence in Goa and shall also attend the trial Court during all the hearings till the disposal of the case, unless exempted for genuine reasons.

(ii) The bonds to be executed to the satisfaction of and before the trial Court.

10. It is made clear that the learned trial Court shall not be influenced by any of the observations made by this Court above as the same are only for the purpose of deciding the present bail application. The application stands disposed of.

11. Parties to act on an authenticated copy of this order.

U. V. BAKRE, J.