

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL MISC. APPLICATION (BAIL) NO. 131 OF 2015**

Shri. Rajkumar Kotgi
s/o Sadashiv Kotgi
Age 32 yrs., Occ. Class III Contractor
Panchayat Raj Karnataka Cum agriculturist
r/o – Karoshi, Taluka Chikodi,
Dist – Belgaum, Karnataka.

... Applicant

Versus

The State of Goa (through Sr. P. I.,
Old Goa Police Station)

... Respondent.

Mr. Tejas Hilage, Advocate for the applicant.
Mr. S. R. Rivankar, Public Prosecutor for the respondent.

Coram :- K. L. WADANE, J.

Reserved on :- 10/06/2015.

Pronounced on :- 11/06/2015.

ORDER :

This is an application under Section 438 of the Code of Criminal Procedure. The applicant is apprehending arrest in Crime No. 45/2015 registered at Old Goa Police Station under Sections 342 and 395 of the Indian Penal Code and Section 3 read with Section 25 of the Arms Act. The applicant had approached the Sessions Court. However, the Sessions Court by an order dated 24 April 2015 has rejected the application and refused protection to the applicant.

2. The case of the prosecution is that on 30 March 2015 at 7.00

hours the complainant Rajesh s/o Gajanand Shirodkar lodged a complaint at Old Goa Police Station that on the same day at 1.40 hours the unknown accused persons duly covering their faces with masks armed with guns and swords effected entry into the factory premises of the complainant namely "Real House Distilleries Factory", at Baingunim, Old Goa and they wrongfully confined the security and labourers in labour rest room on the point of gun and swords and also tied their hands with rope at back side and pasted mask tapes on their mouth and latched the door of the room from outside and committed theft of LCD TV worth Rs.40,000/-. During the course of the investigation, a panchnama was conducted in the presence of two panchas and C.C.T.V. footage was obtained wherein it is noticed that 13 accused persons wearing masks and carrying arms/pistol and swords were seen committing the crime between 01.10 hours to 04.00 hours. During the investigation, dump details of Vodafone company at Bainguinim, Tower was obtained and the dump details of mobile cell phone of the applicant along with two other mobile numbers of Karnataka circle were found showing the presence of the accused. During the search of the accused persons at Karochi Chikodi, Karnataka, one Vijaykumar Kumbhar was traced and was arrested. The statement of the said accused was recorded when he was in custody, who has stated in his statement that he had travelled with the applicant to

Bainguinim, Old Goa along with certain other persons who had entered the factory premises with weapons and had committed crime in question. The statement of Mr. Kumbhar is that he does not know the names of the other accused persons who were in the Swift Car and the Indica Car as the applicant and one Ajit had arranged for committing the theft.

3. Mr. Rivankar, the learned Public Prosecutor has opposed this petition by filing say and additional say. Along with say Mr. Rivankar, the learned Public Prosecutor has given details of the mobiles and its location and has argued that the offence committed by the applicant-accused is very serious. Therefore, the custody of the applicant-accused is required for the purpose of investigation.

4. I have heard the argument of Mr. Hilage, the learned counsel for the applicant. He argued that the material available on record at this stage is not sufficient to connect the applicant with the alleged crime. The applicant is falsely implicated in the false case only on the basis of the statements made by the co-accused, which is inadmissible in the evidence. According to the learned counsel for the applicant that, the applicant is from a respectable family having business and he is Class III contractor of the Karnataka Panchyat Raj and he is belonging to respectable family. The learned counsel for the applicant has drawn my

attention to the documents that the father of the applicant is elected member of the Panchayat raj and also his mother for sometime was elected member and President of the Panchayat Raj. It is the case of the applicant that, on account of political rivalry the applicant has been falsely implicated in the present crime. He submits that, at the time of alleged crime the applicant was in Karnataka State about 200 kms. away from the place of alleged offence. As against this, Mr. Rivankar, the learned Public Prosecutor submits that, there is sufficient material in the nature of the statements of co-accused recorded by the Investigating Officer during the investigation. From this statement the involvement of the present applicant in the crime is very much clear. Hence, Mr. Rivankar, the learned Public Prosecutor lastly prayed to reject the petition.

5. The papers of the investigation are made available to this Court and on scrutiny of the same no material is collected by the Investigation Officer to show the involvement of the present applicant in the alleged crime. There are only statements of the other co-accused, who were already arrested. However, their statements are inadmissible as it has been rightly submitted by the learned counsel for the applicant. Except the statements of the co-accused no material is available to show the involvement of the present applicant in the alleged crime. During the

pendency of the present petition interim protection was given to the accused by the order of this Court dated 20 May 2015. From the record it is seen that the present applicant is a contractor by profession and is residing in Karnataka State. Except the statements of the co-accused no evidence is collected by the Investigating Officer. From the papers of the investigation, it appears that, registration number of the vehicles which were used by the accused persons while committing the crime was revealed. On the basis of the registration number of the vehicle it was possible for the Investigating Officer to trace its owner to interrogate to them and to investigate the matter in proper perspective. However, no recovery of such vehicles is made till this date. In such circumstances, I am of the opinion that, the applicant-accused is entitled for anticipatory bail. Hence, the following order.

: Order :

1. The application is allowed.
2. An ad-interim bail granted by this Court by order dated 20 May 2015 is hereby made absolute with direction to the applicant-accused to co-operate with the investigation agency for further investigation and the applicant shall not tamper with the prosecution evidence.

K. L. WADANE, J.