

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO.134 OF 2015

Mr. Santosh Narayan Naik
S/O Narayan Naik,
Aged 49 years, married, business,
R/O H. No.156/C,
Khorlim, Mapusa, Bardez, Goa. Applicant

V e r s u s

State of Goa
Through Police Inspector,
Mapusa Police Station,
Mapusa, Goa
(represented through Public Prosecutor) Respondent

Mr. Agha Iftikhar, Advocate for the Applicants.
Mr. S. R. Rivankar, Public Prosecutor for the Respondent/State.

CORAM: C. V. BHADANG, J.
DATE: 23RD JUNE, 2015.

ORAL ORDER:

Heard Mr. I. Agha, learned counsel for the applicant and
Mr. S. R. Rivankar, learned Public Prosecutor for the
Respondent/State.

2. The applicant, who is the accused no.1 in Criminal Case

No. 142/2015 of Police Station Mapusa registered under sections 365, 342, 504, 506, 341, 324 r/w 34 of I.P.C. is apprehending arrest in connection with the said offence. The applicant had approached the learned Sessions Judge for grant of anticipatory bail which application has been rejected on 16/5/2015. That is how the applicant has approached this Court.

3. It is submitted by the learned counsel for the applicant that the daughter of the applicant had lodged report on 27/4/2015 against the complainant in respect of which a N.C Case no.637/15 is registered with the Police Station Mapusa. It is submitted that the complaint against the applicant is by way of a counter blast. The learned counsel has taken me through the complaint lodged by Yogita Naik, in order to submit that on account of the said dispute and being annoyed by filing of the complaint that the applicant and others have been falsely implicated. The learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of "*Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others*" reported in (2011) 1 SCC 694, in order to submit that unless and until the investigating officer is able to show that the arrest of the accused is necessary, anticipatory bail cannot be refused. The learned counsel

has in particular placed reliance on para 117 of the decision of *Siddharam Mhetre* (supra) in order to show the principle laid down by the Hon'ble Supreme Court in respect of the curtailment of personal liberty of the accused. It is submitted that although the investigating officer registered the offence inter alia, under section 365 of I.P.C., the learned Sessions Judge while rejecting the application for bail, has observed that the offence would fall under section 367 of I.P.C. It is submitted that there is no warrant for such an observation, while rejecting anticipatory bail. The learned counsel submitted that the applicant is ready and willing to abide by any conditions as may be imposed by this Court and shall co-operate with the investigating agency.

4. On the contrary, it is submitted by the learned Public Prosecutor that there is prima facie case of the applicant being involved in the offence as alleged. It is submitted that the medical report of the complainant would also prime facie corroborate the contents of the complaint. The learned Public Prosecutor has also submitted that the applicant has criminal antecedents including one conviction to his discredit and thus the possibility of tampering with the evidence of the prosecution and witnesses cannot be ruled out. He

submitted that the application be rejected.

5. I have considered the rival circumstances and the submissions made. I have also perused the complaint dated 4/5/2014 lodged by the complainant as also the medical report of the examination/hurt certificate. On consideration of the nature of the allegations in the complaint and the hurt certificate no exception can be taken, prima facie at this stage, to the conclusion reached by the learned Sessions Judge, about the offence to be one under section 367 of I.P.C.

6. The decision in the case of *Siddharam Mhetre* (supra) has also been considered by the learned Sessions Judge while rejecting the application. In the case of “*Arnesh Kumar*”, the Hon'ble Supreme Court was basically concerned with the phenomenal increase in the matrimonial disputes, in recent years and the possible misuse of the provisions contained in Section 498-A of I.P.C. In such circumstances, the Hon'ble Apex Court has given certain directions as contained in para 41 of the judgment. It is true that the Hon'ble Supreme Court has also said that the said directions will also apply to other offences under the I.P.C., which are punishable with

imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine. As noticed earlier in the present case the learned Sessions Judge has prima facie found that the offence would fall under section 367 of I.P.C., which is punishable with imprisonment in excess of seven years.

7. Having regard to the overall circumstances, I do not find this to be a fit case to exercise discretion for grant of anticipatory bail.

8. For the reasons aforesaid the criminal application is hereby dismissed. It is made clear that the observations made herein are essentially of a prima facie nature and shall not be binding at the trial.

C. V. BHADANG, J.

Ap/-