

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL APPLICATION (MAIN) NO.178 OF 2015**

Mr. Delroy Gomes,  
s/o Agnelo Gomes,  
25 years of age,  
R/o H.No.391/1, La Marcela Housing Colony,  
Near Govt. College,  
Marcel Goa.

.... Petitioner

**V e r s u s**

1. State  
Through P. P.  
High Court of Bombay at Panaji Goa,

2. Police Inspector,  
Old Goa Police Station,

3. Mr. Anthony Xavier Julian Viegas,  
@ Juliao @ Pakhlo  
42 years of age,  
R/o Sebastian Building,  
Opp. KTC Bus Stand,  
Marcel Goa.

.... Respondents

Mr. Arun De Sa, Advocate for the petitioner.

Mr. S. R. Rivankar, Public Prosecutor for respondent nos. 1 and 2.

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar, Advocate for respondent no.3.

**CORAM : K. L. WADANE, J**

**ORDER RESERVED ON : 28.10.2015**

**ORDER PRONOUNCED ON : 30.10.2015**

**O R D E R :**

The present petition is filed by the original complainant for

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cancellation of bail granted to the respondent no.3/accused by the learned Additional Sessions Judge, Panaji.

2. The brief facts of the case may be stated as follows :

On the basis of the complaint lodged by the petitioner, the Old Goa Police have registered an offence under FIR No. 136/2012 on 10.11.2012 against the respondent no.3 and two others for the offence punishable under Section 302 read with 34 of the Indian Penal Code. During the pendency of the trial, respondent no.3 moved an application for discharge however, the said application was dismissed on 12.09.2013 and the charge came to be framed on 04.10.2013. In the meantime, the respondent no.3 moved an application for bail which came to be rejected. Being aggrieved with the same, respondent no.3 preferred Criminal Application (Bail) No. 214/2013 before this Court. On 27.11.2013 the said application came to be withdrawn with liberty to renew the prayer for bail after examination of three alleged eye witnesses. Subsequently, during the period from 01.12.2013 to 12.06.2015, the evidence of PW1 to PW7, PW17 and PW21 were recorded and after recording of the material witnesses PW17 and PW21, respondent no.3 moved bail application once again. On 02.07.2015, the learned Additional Sessions Judge, was pleased to grant bail to the respondent no.3/accused subject to the condition that he will be regular in attending all the hearings of the Court and would not directly or indirectly influence the eye witnesses. Being aggrieved

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with the same, the original complainant has filed this petition for cancellation of bail.

3. I have heard the arguments of Mr. Arun De sa, learned counsel appearing for the petitioner, Mr. S. R. Rivankar, learned Public Prosecutor appearing for respondent nos. 1 and 2 and Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondent no.3/accused.

4. During the course of the arguments, Mr. Arun De sa, learned counsel appearing for the petitioner has argued that the learned Additional Sessions Judge, has not recorded the reason for granting bail to the respondent no.3/accused. It is obligatory on the part of the learned Additional Sessions Judge to record some reasons due to which he came to the conclusion to enlarge the accused on bail. The learned counsel has also drawn my attention to the impugned order. On perusal of the same, it appears that the said order was passed after examination of the material witnesses. On perusal of the reasons recorded by the learned Additional Sessions Judge, it appear that no reasons are recorded by the learned Additional Sessions Judge to grant bail to the respondent no.3. However, one cannot lose sight. The learned Additional Sessions Judge has released the respondent no.3/accused after examining the so called eye witnesses and the eye witnesses have not supported the case of the prosecution. From the

record, it is seen that the respondent no.3/accused was behind the bar since his arrest on 10.11.2011 till 02.07.2015 for a considerable period of time. Further more, the other accused persons are enlarged on bail. Anyhow, the respondent no.3/accused prepared to face the trial and nowhere it is reported by any authorities that the respondent no.3/accused is not abiding any conditions of bail imposed by the learned Additional Sessions Judge.

5. The learned counsel appearing for the petitioner has relied upon the judgment in the case of **Puran V/s Rambilas and another**, reported in **(2001) 6 SCC 338** and the judgment in the case of **Neeru Yadav V/s State of Uttar Pradesh and another**, reported in **(2014) 16 SCC 508**.

6. Mr. Lotlikar, learned Senior Counsel appearing for the respondent no.3/accused has argued that the two bail applications of the respondent no.3/accused were rejected as according to the prosecution there are eye witnesses to the incident and after examination of the so called eye witnesses, they turned hostile. Hence, the respondent on.3 moved an application before the learned Additional Sessions Judge on the ground that the so called eye witnesses have not supported the case of the prosecution. Therefore, the learned Additional Sessions Judge, has rightly granted bail to the respondent no.3. The learned Senior Counsel further argued that the bail granted

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to the respondent no.3 cannot be cancelled on the technical ground unless the prosecution is able to show that the respondent no.3/accused has misused his liberty.

7. Considering the facts and circumstances of the case and the fact that the respondent no.3 was behind the bar for a considerable period of time and now the alleged so called eye witnesses have not supported the case, I think that the impugned order passed by the learned Additional Sessions Judge do not require interference. As such, the petition stands rejected.

**K. L. WADANE, J**

**at\***