

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO. 283 OF 2014**

Shri. Nitin Dadaso Bhosale
S/o. Shri. Dadaso V. Bhosale
major of age, goldsmith,
resident of Houses No. E – 988,
Rumdamol, Housing Board,
Davorlim, Margao, Goa.
(presently in custody, through
his next friend, his father
Shri. Dadaso V. Bhosale
s/o. Shri. Vithoba Bhosale,
major of age, goldsmith,
resident of Houses No. E – 988,
Rumdamol, Housing Board,
Davorlim, Margao, Goa.

... Applicant.

Versus

The State of Goa,
Through the Police Inspector,
Maina-Curtorim Police Station,
Maina-Curtorim, Goa.

... Respondent.

Mr. Ryan Menezes, Advocate for the applicant.
Mr. S. R. Rivankar, Public Prosecutor for the respondent.

Coram :- U. V. Bakre, J.

Date : - 29th January, 2015.

ORAL ORDER:

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 07/02/2011 in Crime

No. 4/2011, registered at Maina-Curtorim Police Station, for the offences punishable under sections 302, 364, 201, 120-B read with Section 34 of the Indian Penal Code (I. P. C.) has filed the present application for bail.

3. The investigation in the said Crime No. 4/2011 culminated into Sessions Case No. 8 of 2011, pending before the Additional Sessions Judge (FTC-II), South Goa, Margao (trial Court), wherein various witnesses have already been examined. The applicant, who is accused no. 8 in the said case, is in custody for the last about four years.

4. A perusal of the order dated 9th July, 2014 passed by the trial Court in the said Sessions Case No. 8 of 2011 reveals that there is no specific evidence available against the applicant showing his direct involvement in the commission of crime, but there is circumstantial evidence available in view of the material brought on record by the prosecution. In the circumstances above, let us see if there is any circumstantial evidence sufficient to connect the applicant with the crime.

5. On 05.01.2011, one Rajesh Naik had lodged complaint at Margao Town Police Station, alleging that theft had taken place at his

shop known as “Damodar Super Store” due to which Crime No. 04/2011 was registered for offence punishable under Sections 454, 457 and 380 of I.P.C., against unknown persons, at Margao Town Police Station. On 11.01.2011, on the complaint of PSI Suraj Samant of Maina-Curtorim Police Station, another Crime was registered under No. 04/2011 for offence under Sections 302 and 201 of I.P.C., against unknown persons, for committing murder of a male person and beheading him and throwing his nude and headless dead body about 150 metres away from the main road at Mugali, Ramnagari, St. Jose De Areal, in order to destroy the evidence. It is the case of the prosecution that said Sultan Bellari was kidnapped, wrongfully confined and was murdered by the applicant and other co-accused persons and thereafter his head was separated from the remaining part of the body and was burnt. Charge has been framed against the accused persons for the said offences punishable under Sections 302, 364, 201, 120-B and 34 of I. P. C.

6. The first circumstance as is stated by the trial Court in paragraph 4 of the order dated 9th July, 2014 is that in the reply it was claimed by the prosecution that the Swift Dezire car bearing No. GA-08-F-5056 involved in the crime was traced at Swami Samarth

Temple, Davorlim and that the applicant accused no. 8 is the owner of the said car. However, it is now revealed that admittedly the above is wrong, since as per the case of the prosecution, the said Swift Dezire car bearing No. GA-08-F-5056 does not belong to the applicant but to accused no. 3 Nitin Dicholkar.

7. The second circumstance as against the applicant is recovery panchnama conducted on 11.02.2011 under Section 27 of the Indian Evidence Act, at the instance of the applicant, wherein it is alleged that the applicant disclosed that he, Vino, Sandeep and a boy from Bombay had carried the head of Sultan and a sac of weapons by Swift Car No. GA-08/F-50 and after about 30 to 40 minutes, had stopped the car and had burnt the said sac and head by means of petrol and that he would show the place where the same was done. This recovery panchnama appears to have been proved by PW-21 Shri. Anay Rane. According to PW-21, the applicant took them to one spot at Ram Nagri around 15 kms. away from the tar road. At that place, only ash was found. At a distance of 10 metres from the said place some pieces of jute clothes with stains were found. Admittedly, there is nothing to connect the said ash with the deceased or allegedly with the head of the deceased. Insofar as the jute clothes with stains are concerned, the

examination report of the CFSL, Hyderabad reveals that, blood was detected on stained piece of jute cloth. However, there is absolutely no material on record to establish its group and as to whose blood it is. In such circumstance, mere detection of human blood on the jute cloth will not connect the applicant with the offence of kidnapping and murder of the deceased Sultan Bellari.

8. The third circumstance alleged against the applicant is that, he was in constant touch with accused Nos. 6 and 7 prior to and during the occurrence of the incident from 09/01/2011 to 11/01/2011. However, admittedly the conversation between the persons on said mobile phones is not known. Noone has actually seen the applicant speaking on the mobile phone. Secondly, it appears that, the said accused persons know each other being devotees of Shri Swami Samarath Temple. In such circumstance, merely being in touch with each other that also since prior to the date of offence, will not in any manner connect the applicant with the crime. Be that as it may, the offence as against the applicant at the most may be under section 201 of I.P.C..

9. Mr. Menezes, learned counsel for the applicant has relied upon the Judgment of the Hon'ble Supreme Court in the case of “*Jayendra*

Saraswathi Swamigal vs. State of Tamil Nadu”, [2005 DGLS (Soft.) 583] : [2005 (2) SCC 13]. In this case, the Hon'ble Apex Court has observed that there should first be a prima facie evidence that the person was party to the conspiracy before his acts or statements may be used against his co-conspirators. The Apex Court has reiterated the considerations which weigh with the Court while dealing with the bail applications in non-bailable offences, as stated in the case of “***Gurcharan Singh vs. State (Delhi Admn.)***”, reported in AIR 1978 SC 179. Basically, they are the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.

10. From the above discussion, it can be said that the offence is serious in nature, however the character of the evidence which has been brought on record is such that, the applicant can hardly be connected with the crime. Learned Public Prosecutor could not point out any further evidence against the applicant which can come on record in future. It is further to be noted that, there are no criminal

antecedents insofar as the applicant is concerned. There is no dispute that all the relevant witnesses insofar as the applicant is concerned are already examined and therefore there cannot be any apprehension of relevant witnesses being tampered with. Since only 48 witnesses have been examined and altogether there are 131 witnesses, it is not known as to how much time will be consumed in completion of the trial. The applicant is in custody almost for about four years. In my view, considering all the aspects now the applicant should be granted bail under appropriate conditions.

11. In the result application is allowed. Applicant that is the accused no. 8 in Sessions Case No. 8 of 2011 (Crime No. 04/2011 of Maina-Curtorim P.S.), pending before the Sessions Judge, South Goa, Margao, shall be released on bail upon execution of personal bond of ₹ 50,000/- with one or two solvent sureties in the like amount under the following conditions:

- i) The applicant shall attend the hearing of Sessions Case No. 8 of 2011 on every date of hearing except for genuine reasons under which he will seek exemption.
- ii) The applicant shall not tamper with the

witnesses remaining to be examined.

iii) The applicant shall not leave India without previous permission of the trial Court.

iv) Bonds to be executed before the trial Court.

12. It is made clear that the observations made by this Court above are only for the purpose of the present bail application and the learned Sessions Judge shall in no way be influenced by the said observations.

13. Application is disposed accordingly.

U. V. BAKRE, J.

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