

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 282 OF 2014

STATE THROUGH PORVORIM POLICE
STATION.

... Applicant

Versus

VIJAY KARBOTKAR.

... Respondent

Mr. S. R. Rivankar, Public Prosecutor for the applicant.
Mr. Galileo Francisco Teles, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 8th April, 2015

P.C.

Heard Shri Rivankar, the learned Public Prosecutor for the applicant and Shri Teles, the learned Counsel for the respondent.

2. The respondent and one Shailesh Naik are facing prosecution for the offence punishable under Section 302 read with Section 34 of Indian Penal Code (I.P.C., for short) in Sessions Case No.66/2013 before the learned Additional Sessions Judge, Mapusa.

3. It appears that the learned Sessions Judge had passed an order thereby directing framing of charge for the offence punishable under Section 304-II of I.P.C. against the respondent and the other accused. The applicant State had challenged the same in Criminal Revision Application No.10/2015, on the ground that the material prima facie shows that a case for framing of charge under Section 302 of I.P.C. is made out. This Court, by a judgment and order dated 23/03/2015 has allowed the said Criminal Revision Application and the learned Sessions Judge is directed to frame charge under Section 302 read

with Section 34 of I.P.C. against the respondent and the co-accused. It appears that, in the meantime, after the learned Sessions Judge has directed framing of charge under Section 304-II, the learned Sessions Judge has allowed the application for bail filed by the respondent and he has been released on bail. The present application is filed on behalf of the State seeking cancellation of that bail.

4. It is submitted by Shri Rivankar, the learned Public Prosecutor that once this Court has found that a case for framing of charge under Section 302 read with Section 34 of I.P.C. is made out, the bail, which was granted presumably on the ground that charge framed was only under Section 304-II, will have to be cancelled. He, therefore, submitted that the application may be allowed.

5. It is submitted on behalf of the respondent that the bail was granted to the respondent, inter alia, on the ground that a case for framing of charge under Section 304-II is made out. It is submitted that by a subsequent development, now the respondent and the co-accused would be facing trial under Section 302 read with Section 34 of I.P.C. The learned Counsel submitted that the State has not chosen to file a similar application in respect of the co-accused. Even otherwise, there are no allegations that the respondent has misused the liberty. It is submitted that even otherwise, Sessions trial is ripe for hearing and it could be expedited. The learned Public Prosecutor has fairly submitted that appropriate order in the circumstances may be passed.

6. On hearing the learned Counsel for the parties and on

consideration of the rival circumstances and the submissions made, I find that the respondent was released on bail by the learned Sessions judge, inter alia, on the ground that the Sessions Judge was of the opinion that the case made out is only under Section 304-II of I.P.C. It is on account of the fact that the Revision filed by the applicant State has been allowed and now the respondent would be facing trial for the offence punishable under Section 302 of I.P.C., the applicant State is seeking cancellation of bail. Except this, there are no grounds added. It is not the case of the applicant State that the liberty has been misused by the respondent in any manner. In such circumstances, I find that it would be appropriate that the Sessions trial is expedited in the matter.

7. In the circumstances, the present application is dismissed. The learned Sessions Judge shall decide the Sessions case as expeditiously as possible and preferably, within a period of six months from the date of receipt of this order.

C. V. BHADANG, J.

SMA