

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 101 OF 2016

SMT. PUSHPA GADEKAR, PRESENTLY IN
JUDICIAL CUSTODY AT SADA SUB-JAIL
VASCO THR. RAJENDRA J. DABHOLKAR ... Applicant

Versus

STATE OF GOA, THR. OFFICER
INCHARGE OLD GOA POLICE STATION
AND ANR. ... Respondents

Shri S. Dessai, Senior Advocate with Shri Anoop
Gaonkar, Advocate for the Applicant.

Shri S.R. Rivankar, Public Prosecutor for the
Respondents.

CORAM:- C.V. BHADANG, J.

DATE:- 16th JUNE, 2016.

ORAL ORDER:

This is an application seeking bail. The applicant is in custody as a co-accused in connection with investigation of Crime No. 28/2016 of Old Goa Police Station, registered under Sections 342, 395, 427 and 120-B of I.P.C. and Section 8 of the Goa Children's Act. The applicant was arrested on 30.04.2016 and is presently in

judicial custody. According to the prosecution, it is the case that on 07.03.2016, a complaint was lodged by Keshvnath Naik to the effect that in the night intervening between 06.03.2016 and 07.03.2016, between 2:30 a.m. to 3:30 a.m., seven unidentified persons wearing black mask, armed with knife and wooden sticks effected entry into his house by breaking open the back door. It was further complained that the complainant and his family members including his minor daughter by name Neeyati Naik were tied with the help of a cloth and the accused persons committed dacoity and took away cash, golden ornaments and some other valuables.

2. The allegation insofar as the present applicant is concerned, is that she had shown the house of the complainant to the co-accused, Vijay Patole for committing the dacoity, with the help of the other co-accused. In short, according to the prosecution, there was a criminal conspiracy hatched between the applicant and the other co-accused for committing the dacoity and theft. It

is not the case of the prosecution that the applicant was present during the incident of dacoity and the only allegation is that, she has shown the house of the complainant and thus, conspired with the other co-accused, in committing the dacoity.

3. The learned Children's Court at Panaji has rejected the application for bail filed by the applicant *inter-alia* on the ground that the offence is serious and there is prima facie material to indicate that there was a criminal conspiracy hatched between the applicant and the other co-accused and also on the ground that the applicant is previously involved in similar crimes and thus, the applicant has criminal antecedent.

4. I have heard the learned Senior Counsel for the applicant and the learned Public Prosecutor for the respondent-State. I have also perused the case diary produced by the learned Public Prosecutor.

5. *Prima facie*, at this stage, it appears that it is not the case of the prosecution that the applicant was present or was involved in the actual incident of dacoity. Insofar as the case of there being a criminal conspiracy, is concerned, the learned Public Prosecutor has pointed out to the statement of Mr. Amit, resident of Nerul, Bardez, Goa, who is the owner of a Mahindra Thar vehicle bearing registration no. GA-03-P-9647, which was used for commission of the offence. It is pointed out that Mr. Amit has stated that the vehicle was made available to Mr. Vijay Patole on the say of the applicant. The statement of the driver of the said vehicle is also referred to. The other material showing the conspiracy is the CDR details from 01.03.2016 to 08.03.2016, which according to the learned Public Prosecutor shows that the applicant was in contact with the co-accused-Vijay Patole. It is pointed out that the incident occurred in the interregnum on 07.03.2016.

6. The learned Public Prosecutor has fairly

submitted that insofar as the previous three offences registered against the applicant are concerned, in two cases, she has since been acquitted and in one of the matter, charge sheet is not filed. He also fairly submits that insofar as the present applicant is concerned, *prima facie* the allegation of involvement of the offence under Section 8 of the Children's Act would not be attracted, in as much as the applicant was not present during the course of the dacoity.

7. The learned Senior Counsel has pointed out that the applicant is in custody for more than 40 days and is presently in the judicial custody and her custody is not required for the purpose of investigation. The learned Senior Counsel has referred to the proviso to Section 437 of Cr.P.C. in order to submit that the applicant being a woman would be entitled to bail.

8. As noticed earlier, the applicant was not actually present during the incident of dacoity.

The prosecution case is about a criminal conspiracy hatched by the applicant and the co-accused for commission of the dacoity. As fairly submitted by the learned Public Prosecutor, *prima facie*, the allegation about the offence under Section 8 of the Children's Act (in which the minor daughter of the complainant was tied down), would not be attracted in respect of the present applicant.

9. The applicant is presently in judicial custody and her continued presence in judicial custody is not required for the purpose of investigation. The applicant is permanent resident of Mapusa. Although, the learned Public Prosecutor stated that the proviso to section 437 of Cr.P.C., would not apply to this case (as according to the learned Public Prosecutor, this proviso applies to the Courts, other than the High Court and the Sessions Court), it was not disputed that considerations based on the proviso and the spirit thereof would apply in this case, the applicant being a lady, aged 67 years. Even insofar as the

ground of criminal antecedents are concerned, in two out of three cases, the applicant is said to have been acquitted and in the third case, charge sheet is not filed. Considering the overall circumstances, I find that discretion can be exercised, subject to strict conditions. Hence, the following order:

O R D E R

(a) The application is allowed.

(b) The applicant be released on bail on execution of a P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.

(c) The applicant shall remain present before the investigating officer as and when called and shall co-operate with the investigating agency.

(d) The applicant shall surrender her passport, if any, before the Children's Court, within a period of one week from today.

(e) The applicant shall not interfere with the investigation and/or tamper with the evidence and the prosecution witnesses, in any manner and shall not maintain any contact with the co-accused, who are said to be absconding.

(f) In the event of breach of any of the conditions, liberty to the prosecution to apply for cancellation of bail.

(g) Bail to be furnished before the Children's Court.

(h) The application is disposed of, in the aforesaid terms.

C.V. BHADANG, J.

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