

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 175 OF 2016

MR. K. HENRY DANIEL, PRESENTLY
IN JUDICIAL CUSTODY AT SADA JAIL
VASCO, THR. MRS. ANNIE DANIEL ... Applicant

Versus

STATE OF GOA, THR. POLICE
INSPECTOR, ANTI CORRUPTION BUREAU
AND ANR. ... Respondents

Mr. Vivek Rodrigues, Advocate for the Applicant.

Mr. Mahesh Amonkar, Additional Public Prosecutor
for the Respondents.

CORAM:- C.V. BHADANG, J.

DATE:- 29th AUGUST, 2016.

ORAL ORDER:

Heard the learned Counsel for the applicant
and the learned Additional Public Prosecutor for
the respondents.

2. The applicant has been arrested in
connection with investigation of Crime No. 10/2016
under Sections 7, 13(1)(d) and 13(2) of the
Prevention of Corruption Act, 1988 by the Anti

Corruption Bureau (ACB) at Panaji. The prosecution case is that on 05.08.2016, the complainant-Santosh Kittli, filed a complaint with the ACB, complaining about alleged demand of Rs.1,500/- by the applicant, who claimed to be the Principal of the Institute of Technical Instruction (ITI). It was complained that the applicant had demanded the said bribe in order to facilitate the admission of the complainant for the Certificate Course in Fitter Trade.

Eventually, a trap was laid on 05.08.2016, in which according to the prosecution, the applicant was found to have demanded and accepted, the sum of Rs.1,500/-. The applicant was accordingly arrested and was initially in police custody remand. Since 17.08.2016, the applicant is in judicial custody. The investigation is stated to be in progress.

3. The learned Special Judge has rejected the application for bail, mainly on the ground that the offence is serious and that there are previous

offences registered against the applicant. The learned Sessions Judge relying on the provisions of Section 437(3) of Cr.P.C. has found that the applicant has indulged into similar activities in the past, after he was released on bail. The learned Sessions Judge found that the applicant has impersonated himself as the Director/Principal of ITI and had even assured Government jobs to the students and collected amount from them. In that view of the matter, the application for bail has been rejected.

4. It is submitted by the learned Counsel for the applicant that the custody of the applicant is not necessary for the purposes of investigation as the applicant is presently lodged in judicial custody. It is submitted that there is material on record to show that the complainant/student had already secured admission to the Fitter Trade course. As such, there was no occasion for demand or payment of bribe for facilitation of the admission to the said course. The learned Counsel

submits that in one of the previous cases, the applicant has been acquitted and the other case is pending. The learned Counsel submits that the applicant cannot be said to be a habitual offender, unless he has been convicted in any of the previous cases. It is submitted that there is no offence of holding assets disproportionate to the known sources of income registered against the applicant. It is pointed out from the reply filed by the respondent that the police had conducted raid and search of the flat of the applicant situated at Government Quarters at Bambolim, in which, according to the State, certain incriminating documents are recovered. He submits that thus, continued detention of the applicant into prison may not be necessary. It is submitted that the applicant is willing to abide by any conditions that may be imposed by this Court, while releasing the applicant on bail. The learned Counsel states that the applicant is already placed under suspension. The applicant has two more years of his service left. He submits that in any event,

as the applicant is already placed under suspension, there is no possibility of indulging into similar offence and/or tampering with the prosecution witnesses.

5. On the contrary, it is submitted by the learned Additional Public Prosecutor, that the offence is serious in nature and there are several other offences registered against the applicant previously. He submits that there is imminent possibility of the applicant misusing the bail, if granted. The learned Additional Public Prosecutor submits that the investigation is still pending and the applicant is not entitled for bail.

6. I have carefully considered the rival circumstances and the submissions made. The applicant, who is serving as a Senior Instructor in ITI, has since been placed under suspension. For the present purpose, the allegation is that the applicant had demanded and received a bribe of Rs.1,500/- from the complainant for facilitating

admission of the complainant for the Certificate Course of Fitter Trade. *Prima-facie*, there is an assertion that the complainant had already secured admission, before the alleged date of demand and acceptance of the bribe. It is true that there are two other similar offences previously registered against the applicant, out of which, in one of the cases, the applicant is acquitted and the other is still pending. *Prima-facie*, at this stage, it is not brought out that, there was conviction in any of the previous offences. The applicant is presently in judicial custody and in as much as the applicant is already placed under suspension, the apprehension expressed on behalf of the State as to the possibility that the applicant would interfere with the investigation and/or with the prosecution witness or the evidence, would stand alleviated.

7. In the circumstances, I find that discretion can be exercised in favour of the applicant, subject to strict conditions. Hence, the following order is passed:

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 solvent surety in the like amount.

(c) The applicant shall attend the investigating officer on every Monday from 10:00 a.m. to 1:00 p.m. and as and when required by the investigating agency.

(d) The applicant shall co-operate with the investigating agency and shall not interfere and/or tamper with the prosecution witnesses/evidence.

(e) The applicant shall not indulge into similar offence, while on bail.

(f) In the event, the Investigating Officer collects any further material or there is change in material circumstance/s, liberty to the respondents to move for modification/cancellation of bail.

(g) Bail to be furnished before the learned Special Judge.

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

(i) Parties to act on an authenticated copy of this Order.

C.V. BHADANG, J.

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