

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 185 OF 2016

SHRI. NAZIRBABA ADAMJI SAINIULLA,
PRESENTLY IN POLICE CUSTODY AT
MAINA P.S. THR. INAMUL H. SHAIKH.,

... Applicant

Versus

STATE OF GOA, THR. POLICE
INSPECTOR ATTACHED TO MAINA
CURTORIM POLICE STATION AND ANR.,

... Respondents

Shri S.G. Desai, Senior Advocate with Shri Pavithran A.V.,
Advocate for the Applicant.

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

Coram:- C. V. BHADANG, J.

Date:- 14th September, 2016

P.C.:

Heard Shri S.G. Desai, the learned Senior Counsel for the applicant and Shri S.R. Rivankar, the learned Public Prosecutor for the respondents/State. Perused the impugned order and the case diary.

2. The applicant has been arrested in connection with investigation of Crime No.99/2016 of PS Maina Curtorim for the offences punishable under section 354 of Indian Penal Code read with Section 8 of the Goa Children's Act, 2003 and Section 8 of the Protection of Children from Sexual Offences Act, 2012.

3. The case of the prosecution is that on 19/08/2016, the

applicant/accused posing as a spiritual preacher (Baba) and under the pretext of conducting bhajans/prayers, secured the presence of complainant's minor daughter at the residence of Mr. Vikas Shirodkar. It is further the prosecution case that the applicant inappropriately touched the minor victim girl, said to be aged 14 years, and kissed her on her lips. On the basis of the complaint lodged, an offence came to be registered at 00.45 hours on 20/08/2016 and the applicant was arrested on the same day at around 5.00 hours. The applicant was initially in police custody remand for 5 days and, thereafter, the applicant has been in judicial custody.

4. It is submitted by the learned Senior Counsel for the applicant that the applicant usually visits Goa during the period of Guru Poornima and conducts spiritual sessions. It is submitted that the applicant has been falsely implicated as he was trying to mend the minor girl. It is submitted that the custody of the applicant is not required for the purposes of investigation. The applicant is ready and willing to abide by any conditions that may be imposed. It is submitted that none of the offences alleged against the applicant are punishable in excess of 5 years of imprisonment. It is also submitted that the applicant is aged 70 years and is ailing.

5. The learned Public Prosecutor has fairly submitted that voice sample of the applicant has already been obtained and the investigation is almost complete. He, therefore, submits that in the

event this Court is inclined to grant bail, the same may be subject to appropriate conditions.

6. I have carefully considered the circumstances and the submissions made. While considering the prayer for bail, the Court has to weigh the conflicting considerations of personal liberty of the applicant/accused on one hand and the larger public interest in administration of criminal justice. The nature of the offence and the punishment it invites, the age and antecedents of the accused, the stage of the investigation and the possible misuse of the liberty are some of the aspects which fall for consideration.

7. In the present case, the offence is not punishable with imprisonment in excess of 5 years. The applicant is in judicial custody and his further custody is not required for the purposes of investigation, which is stated to be almost complete. Considering the overall circumstances, including the age of the applicant, I find that discretion can be exercised subject to appropriate conditions. In the result, the following order is passed:

O R D E R

(i) The application is allowed.

(ii) The applicant shall be released on bail on executing a PR

bond in the sum of Rs.50,000/- with two solvent sureties in the sum of Rs.25,000/- each, of which at least one surety shall be a local surety.

(iii) The applicant shall furnish his permanent address on affidavit before the Children's Court and shall not visit Goa till filing of the charge sheet, except when called by the Investigating Officer for purposes of investigation.

(iv) The applicant shall not otherwise influence or contact the victim or the prosecution witnesses and shall not otherwise tamper with the prosecution evidence.

(v) The applicant shall surrender his passport before the Children's Court.

(vi) Liberty to the prosecution to move for cancellation in the event of breach of any of the conditions.

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

C. V. BHADANG, J.

NH