

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 244 OF 2016

Mr. Alex Rony D' Souza,
S/o. Robert D' Souza,
Aged 20 years, Student
R/o. H. No. 284, Tambdi Mati,
Behind J. P. Bar, Madhuban Complex,
Taleigao-Goa.

..... Applicant

V e r s u s

1. STATE
(Through the P. I. Attached to
Panaji Police Station,
Panaji – Goa)

2. Public Prosecutor,
High Court of Bombay at Goa,
Panaji, Goa.

..... Respondents

Mr. Vivek Rodrigues and Ms. Sunita Gupta, Advocates for the Applicant.

Mr. Pravin Faldessai, Addl. Public Prosecutor for the State-Respondents.

Coram :- **SMT. ANUJA PRABHUDESSAI, J.**

Date : **28th December, 2016**

ORAL ORDER

At the outset, the learned Counsel for the Applicant seeks leave to produce the copy of the Application and the Judgment passed by the learned Sessions Judge in anticipatory bail no. 329 of 2016. Leave granted.

2. The Applicant herein has filed this application for anticipatory bail

apprehending his arrest in Crime no. 271/2016 registered at Panaji Police Station for offences punishable under Sections 307, 326, 143, 147, 148 r/w 149 of the Indian Penal Code.

3. The learned Counsel for the Applicant submits that the Applicant herein is a young boy of 20 years and that he is a student of Xth standard and is likely to appear for his examination in the month of January, 2017. He has submitted that the Applicant is not involved in the incident in any manner. He contends that the Applicant had sustained an injury about a month prior to the incident and on the relevant day he was proceeding to Campal Clinic, which is near the place of incident, to get the dressing done of the injury sustained by him. He has further submitted that on seeing the incident, the Applicant had himself informed the Police about the fight between the two groups. He has submitted that the Applicant had absolutely no motive or intention to inflict injuries on Dadapir. He has submitted that the Applicant has been falsely implicated and that he is entitled for bail. He has relied upon the decisions of the Apex Court in the case of **Miss Harsh Sawhney vs. Union of Territory (Chandigarh Admn.)** reported in **(1978) 2 SCC 365**, **Bhadresh Bipinbhai Sheth vs. State of Gujarat & anr.** reported in **(2016) 1 SCC 152** and the decision of the Bombay High Court in the case of **Jagannath vs. State of Maharashtra** reported in **(1982) 84 Bom. L. R. 261**

4. Learned Addl. Public Prosecutor for the State-Respondents has submitted that the Applicant has been named by the Complainant as well as the victim and the other witnesses. He has further submitted that the Applicant was

involved in inflicting serious injuries on Dadapir by means of a chopper on his chest, right hand and stomach which were serious in nature. He has submitted that the injured is undergoing treatment in Goa Medical College and was not in a position to give statement till 27th of this month. He has submitted that the statement of the victim was recorded on 27/12/2016 and that the statement of the victim as well as the statement of the witnesses prima facie indicate that the Applicant was involved in inflicting serious injuries on the victim Dadapir. He has further submitted that the offences are of serious nature and the chopper i.e. weapon of the offence is yet to be recovered. He further submits that the presence of the Applicant is required for the purpose of investigation and interrogation.

5. I have perused the records and considered the submissions advanced by the learned Counsel for the Applicant and the learned Addl. Public Prosecutor for the State-Respondents.

6. The factors to be considered at the time of grant of bail are spelt out in Section 438 of the Code of Criminal Procedure which are as under :

(I) the nature and gravity of the accusation;

(II) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(III) the possibility of the Applicant to flee from justice; and

(IV) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail;

7. The principles for grant of anticipatory bail were also laid down by the Constitution Bench of the Apex Court in the case of **Gurbaksh Singh Sibbia vs. State of Punjab** reported in (1980) 2 SCC 565 and have been reiterated in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra** reported in (2011) 1 SCC 694 and **Bhadresh Bipinbhai Sheth vs. State of Gujarat & anr.** reported in (2016) 1 SCC 152. The factors delineated in the case of **Siddharam Satlingappa case** (supra) are as under :

“(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused’s likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

8. In the instant case, The records prima facie reveal that one Zulekha Shaikh had lodged a FIR dated 02.12.2016 alleging that on 01.12.2016 at about 20.45 hours, one Laiq Motiwala, one of the co-accused, had come to her residence and that there was some altercation between him and her son Abideen Shaikh. Thereafter, Laiq Motiwala left the place of the incidence. About ten minutes thereafter, he returned to the place of the incidence along with other co-accused in a white car. She has further stated that Laiq Motiwala, the Applicant and the other Co-accused got out of the car and they called out to her son Abideen Shaikh.

There were some arguments between Abideen and the occupants of the white car. In the meantime, the victim Dadapir came to the spot and tried to pacify both the parties during which time one of the occupants assaulted Dadapir by means of a chopper and caused injuries to his chest, right hand, stomach, etc.. Based on the said FIR, the aforesaid Crime no. 271/2016 was registered.

9. The statement of the victim prima facie indicate that Applicant herein had inflicted injuries on his chest, right hand and stomach by means of a chopper. The statements of the witnesses also prima facie corroborate the statements of the victim Dadapir. The medical evidence also prima facie indicates that the victim Dadapir was initially admitted in Campal Clinic and was later shifted to Goa Medical College, Bambolim. It is submitted that the medical Certificate of Goa Medical College is not yet made available. Nonetheless, the Medical records of Campal Hospital prima facie indicate that the injured has sustained grievous injuries. The material on record prima facie proves involvement of the Applicant in committing the said crime. Considering the nature of the injuries sustained, the gravity of the offence and also considering the fact that the weapon of offence is yet to be recovered, in my considered view, the Applicant is not entitled for bail.

10. Under such circumstances, the application for anticipatory bail is dismissed.

SMT. ANUJAPRABHUDESSAI, J.

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