

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO.170 OF 2017

Avdhesh Kumar Ram @ Gautam ... Applicant

Versus

State of Goa & Anr. ... Respondents

Shri Pavithran A.V., Advocate for the Applicant.
Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on :- 13th July, 2017
Pronounced on:-14th July, 2017

ORDER :

Heard Shri Pavithran A.V., learned Advocate for the applicant and Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the respondents.

2. The applicant has been arrested for the alleged commission of the offence punishable under Section 376 and 506 IPC in the Crime No.134/2016 of the Pernem Police Station. The prosecution case briefly against the applicant is that the applicant who was known to the victim had taken her on his motorcycle on the pretext of dropping her at her residence and along the way, he had started touching her

body. She had resisted and asked to be dropped at that point but he had not stopped his motorcycle and took his vehicle on the side of the road before the Colvale bridge and thereafter took her in the bushes on the right side of the internal road and stopped his motorcycle. He had caught hold of her hands, forcefully took her in the bushes, pushed her on the ground, forcefully undressed her and had forceful sexual intercourse with her. She had tried to rescue herself from the applicant but he had obstructed her by holding her tight. Thereafter he had dropped her to her rented room at Colvale and threatened her with dire consequences. She had thus lodged the complaint after bringing it to the attention of her employer two days later and when the offence came to be registered against the applicant.

3. The learned Additional Sessions Judge on hearing him and the Public Prosecutor on behalf of the State came to a finding that he was involved in a serious offence under Section 376 IPC and that the medical examination report too revealed that she had been subjected to sexual intercourse. Primarily, the learned Additional Sessions Judge rejected the bail application on the premise that there was every possibility

that he would jump bail or threaten the witnesses including the complainant and hamper the investigation and in that view of the matter denied the benefit of bail to him.

4. It has been the contention of Shri Pavithran A.V., learned Advocate for the applicant that the applicant has been in custody from the time of his arrest in the said Crime from 15/11/2016 till date and that even a chargesheet has been filed by the respondents before the Court of the learned Judicial Magistrate First Class, Pernem for the offence punishable under Section 376 and 506 IPC. The applicant is confined in judicial custody and no purpose would be attained by his continuance in custody when the investigation is over and the chargesheet too has been filed on behalf of the respondents. Furthermore, the medical examination report of the victim would clearly reveal that during her medical examination just two days after the alleged incident, she was found having old tears on the hymen and there were no indication of any bruises or marks of injury on her person considering her case that she was thrown to the ground and her person violated by the applicant. It revealed that the complaint was motivated and therefore he had to be enlarged

on bail. He assured that he would abide by all the terms and conditions as may be imposed by this Hon'ble Court and the only apprehension expressed by the respondents to oppose the application was on the premise that he was a non-Goan and that ensuring his presence during the trial would be difficult.

5. Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the State fairly conceded that the investigation in the case was over and a chargesheet was filed against the applicant before the learned JMFC, Pernem. There was also no dispute at his instance that the applicant was in judicial custody since long and that his presence was otherwise not required for the purpose of investigation. Nonetheless, he expressed reservation and apprehension on the availability of the applicant being a non-Goan and the likelihood of him jumping bail if set at liberty in this Crime. Last but not least Shri P. Faldessai, learned Additional Public Prosecutor conceded on the medical report and relented that the medical report prima facie did not support the prosecution case about the alleged sexual intercourse two days prior to her medical examination.

6. i have examined the chargesheet alongwith the accompanying documents produced for my perusal by Shri Pavithran A.V., learned Counsel for the applicant and from which it is borne out that the alleged incident took place on the night of 13/11/2016. It is otherwise apparent from the complaint of the victim that the applicant was known to her and that she herself was instrumental in calling him to a place on the road where she found no means of public transport and having asked him to drop her at her residence. Be that as it may, i would hasten to add that it should not be construed by any stretch of the imagination that she had offered herself to the applicant to breach the trust reposed by her in him to drop her to her residence and/or to convey that she was a willing party to the act of sexual intercourse. That apart, the investigation in the matter is concluded, the chargesheet has been filed in the matter and the applicant is otherwise confined to the judicial custody. The medical report too prima facie does not substantiate the case of the victim that there was any incident of forceful sexual intercourse on the night of 13/11/2016 when it reveals that there were traces of old hymenal tears without any reflection on any fresh injuries either on her private part or any part of her body. Thus

considering all these aspects of the matter, the apprehension/reservation which the respondents have on the non-availability of the applicant if enlarged on bail can be allayed by putting him to terms when otherwise it is apparent from the gamut of facts that he would be entitled to the benefit of bail. Therefore i pass the following Order:

O R D E R

(i) The application is allowed whereby the applicant is ordered to be released on bail on executing a personal bond in the amount of ₹25,000/- with one solvent surety in the like amount.

(ii) The applicant shall furnish the necessary bail bond to the satisfaction of the learned Additional Sessions Judge, FTC, Mapusa.

(iii) He shall co-operate with the Investigating Agency, if need be and materially shall not interfere and/or tamper with the prosecution witnesses/evidence.

(iv) He shall not intimidate the complainant and/or indulge in a similar offence or any offence while on bail.

(v) The applicant shall furnish his detailed local

address and particulars of his mobile/landline contact number and shall not leave the State of Goa without the prior written permission of the learned Additional Sessions Judge, FTC, Mapusa.

(vi) In the event there is any material forthcoming to the Investigating Officer to reveal any change in the material circumstances, the respondents are at liberty to move for the modification/cancellation of the bail.

(vii) The application is disposed off in the aforesaid terms. The parties to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J.

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