

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO.174 OF 2017**

Mr. Sai Kundaikar
s/o. Tulsidas Kundaikar,
Aged 26 years, unmarried,
Occ. Service, R/o. H.No.348,
Merces, Tiswadi, Goa.
Presently in Judicial custody,
Colvale, Through his father
Tulsidas Kundaikar,
Aged 56 years, married,
Off. Self-employed,
R/o H.No.348, Merces,
Tiswadi, Goa.

... Applicant

Versus

1. State,
Through Officer in charge,
Old Goa Police Station, Old Goa.

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

... Respondents

Shri A. Palekar, Advocate for the Applicant.
Shri P. Faldessai, Additional Public Prosecutor for the
Respondents.

Coram:- NUTAN D. SARDESSAI, J.**Reserved on :- 14th July, 2017****Pronounced on:-20th July, 2017****ORDER :**

Heard Shri A. Palekar, learned Advocate for the applicant
and Shri P. Faldessai, learned Additional Public Prosecutor for
the respondents.

2. The applicant has been placed under arrest in connection with the investigation in the Crime No.87/2017 of the Old Goa Police Station for the offences punishable under Section 341, 336, 324, 326, 427, 307, 356, 504 and 506 of IPC. The case of the prosecution against the applicant is that on the noon of 14/06/2017, the applicant alongwith three other persons acting in furtherance of their common intention and armed with deadly weapons restrained the bus bearing registration no.MH-04-G-9450 which was proceeding in the Panaji direction. One amongst them snatched the keys from the driver and the others pelted stones on the front glass and side window glasses of the bus and broke the same causing extensive damage not only to the bus but also to some of the passengers/occupants of the bus who were seriously injured. These persons then pulled out the driver of the bus and four of them assaulted him with a wooden danda, slaps and kicks over his body with the intention to kill him and thus attempted to commit his murder. One of these persons was caught by the occupants of the bus and the public and the three others went away and returned with deadly weapons like koita, knife, sword and started assaulting the occupants of the bus. Two of the assailants were also apprehended by

the people and the fourth namely the applicant managed to escape with a sword from the spot. It was learnt that the applicant in particular had come armed with koita and not a sword and the same was recovered at his instance under Section 27 of the Evidence Act, 1872. The occupants of the bus apart from the driver had sustained injuries and some of them had suffered serious grievous injuries on their body and were treated at the GMC hospital.

3. The learned Additional Sessions Judge on hearing the applicant and the Public Prosecutor on behalf of the State rejected the bail application vide the order dated 1/07/2017 on the premise that there was a clear reference to the involvement of the applicant in the Crime and besides the motorcycle used by him too was recovered from the scene of the Crime. There was no basis in his case that he was a passerby who had seen the scuffle and had run away from the spot apprehending public backlash and by abandoning his motorcycle at the spot. Besides, the learned Additional Sessions Judge was of the view that he was involved in a serious offence alongwith the others who were antisocial elements with a previous criminal record and on that premise

held that he was not entitled to the benefit of bail and rejected the bail application.

4. It was contended by Shri A. Palekar, learned Advocate on behalf of the applicant that he was not present at the scene of Crime. He did not have any criminal antecedents and besides even though he had filed an application for bail in anticipation of arrest nonetheless, he had withdrawn the said application and surrendered before the Police. Assuming at the highest that he was involved in the Crime and was required to face trial, there was no need for his custodial interrogation and as otherwise the injured were discharged on the same day. The injuries suffered by them were not serious to infer knowledge or intention to cause death. There was no ground to deny bail to him and therefore he was entitled to the benefit of bail.

5. Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the State contended that there was an altercation at site in which the occupants of the bus including the driver were assaulted for no rhyme or reason and that the applicant was very much involved in the Crime unlike his contention to

the contrary. The koita too was recovered at his instance under Section 27 of the Evidence Act and besides his motorcycle was attached from the scene of Crime. The pouch of the chopper used in the Crime was also found in the motorcycle of the applicant who had no fear of law. There were eye witnesses to the incident and besides the victims of the assault. The crime committed by him was heinous and in broad daylight showing scant respect for law and order. The application had therefore to be dismissed. Shri A. Palekar, learned Advocate for the applicant in reply sought to raise an issue as to what was the purpose sought to be achieved by his detention and once again reiterating his entitlement to the benefit of bail.

6. i have carefully considered the rival contentions of the learned Advocate and the learned Additional Public Prosecutor on behalf of the State. The case against the applicant is that he has been involved in a serious crime committed in broad daylight of assaulting the driver and the occupants of the bus without any justifiable reason. The presence of the applicant at the scene of crime is borne out from the records and which is unlike the submission of Shri Palekar, learned Advocate to

the contrary. There is no justification for the alleged acts committed by the applicant of assaulting the driver of the bus and the occupants armed with deadly weapons such as koita, swords, etc. and there is no justification for the incident assuming for a moment that there was some issue earlier in the restaurant over breakfast. The conduct of the applicant with the others has been quite brazen in indulging in such acts and that too in broad daylight causing grievous injuries to some of the occupants of the bus including the driver and their discharge from the hospital after treatment is no justification to concur with the contention of Shri Palekar that the injuries were not serious and/or not inflicted with the knowledge or intention to cause death.

7. No doubt the applicant is in judicial custody after his initial remand to the police custody but that by itself is not a ground to confer the benefit of bail on him more so, looking to the nature and the extent of the injuries suffered by the occupants of the bus. The conduct of the applicant alongwith the others to come to the spot again armed with deadly weapons and mounting assault on the occupants of the bus cannot be justified on any count whatsoever. Therefore his

contention that he has no criminal antecedents or that he had surrendered before the Police would not confer any benefit or leverage to shield him with an order of bail. Moreover, the chargesheet is yet to be filed in the case and the statements of many witnesses are forthcoming who have been dissuaded on account of the conduct of the applicant and the others from divulging the details of the incident. In any view of the matter and at this stage of the investigation, i do not find any merit in the application nor am i persuaded by the contention of Shri Palekar as to the purpose sought to be achieved by his detention.

8. The possibility of the witness being tampered with or more particularly intimidated in case the applicant is set at liberty is not too remote. Last but not the least, the conduct of the applicant in indulging in such activities with three others has caused a public outcry on account of the deadly assault on the tourists who had come to this State merely for sightseeing. Moreover, Shri Palekar learned Advocate for the applicant submitted that the applicant is anxious to get back to his job overseas and for which he must be set at liberty. This factor rather works to his disadvantage inasmuch as

there is every possibility that the applicant would keep himself away from the proceedings by going overseas and initiated upon the filing of the chargesheet against him and the three others involved in the said Crime which is quite heinous in nature. On all these grounds therefore, i do not find it appropriate to grant him the benefit of bail at this stage and therefore reject the application.

NUTAN D. SARDESSAI, J.

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