

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 218 OF 2017**

Sharif Hasan

...Applicant

Versus

STATE

Through Public Prosecutor & anr.

...Respondents

Mr Arun Bras De Sa and Mr. S. Shet, Advocates for the Applicant.

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

CORAM: NUTAN D. SARDESSAI, JJ

DATED: 22nd September 2017

ORDER

1. Heard Shri Arun Bras De Sa, learned Advocate for the Applicant and Shri Pravin Faldessai, learned Addl. Public Prosecutor for the State-Respondent.

2. The Applicant seeks his enlargement on bail on the premise that he has been foisted with a trumped up case against him for the alleged offence under Section 376(2)(f) of the Indian Penal Code, Section 8(2) of the Goa Children's Act 2003 (*Act*, for short) and Sections 4, 6, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 (*POCSO* for short).

3. The Respondents filed not only their say but also in the course of the arguments, the compilation of the chargesheet was placed on record by Shri P. Faldessai, learned Addl. Public Prosecutor on behalf of the State.

4. It was the contention of Shri Arun Bras De Sa, learned Advocate for the Applicant, that a bare perusal of the complaint did not stand corroborated from the medical evidence on the examination of the victim which was inconclusive and did not reveal any external injuries on her person nor injuries to her private part. Although a lot of hue and cry was raised about the act of penetration by the Applicant, it was a clear case of misuse of the victim girl to fix the Applicant on account of his demand for money which he had earlier advanced to the father of the victim girl. The statement of the victim on its bare reading was not corroborated by the witnesses listed in the chargesheet nor corroborated by medical evidence. All the witnesses made no reference to any incident of sexual assault. The Applicant was falsely implicated and was therefore seeking his enlargement on bail. He was in custody since the last more than 60 odd days and that even the chargesheet filed against him was supporting his case through the various witnesses relied upon on behalf of the State. Besides, the victim was in Mumbai and so too the father and mother and moreover the complaint lodged by the Applicant was also the subject matter of investigation in terms of Section 156(3) of the Cr.P.C. It was a clear cut case of sheer abuse of the provisions of the Act and POCSO Act to falsely implicate the Applicant and he was entitled to the benefit of bail. Shri Arun Bras

De Sa, learned Advocate relied upon the Judgment of the Apex Court in *Vineet Kumar & Ors. vs. State of U.P.*¹.

5. Shri Faldessai, learned Addl. Public Prosecutor on behalf of the State submitted and conceded in fairness that all the family members of the victim were supporting the case of the Applicant. The learned Children's Court had rejected the application on the premise that the investigation was at the initial stage and the statement of the victim alone was recorded. The investigation in the case was complete and the chargesheet filed against the Applicant which contained several statements supporting the plea of the Applicant.

6. i have considered their submissions and the Judgment in *Vineet Kuma* (supra) in particular where in the facts at large the Hon'ble Apex Court had observed at paragraph 34 as under :

“There was sufficient material on record to indicate that there were financial transactions between the accused and complainant, her husband and son. On dishonour of cheques issued by the complaint's husband and son proceedings under Section 138 of Negotiable Instruments Act were already initiated by the accused. All family members of the complainant were living in the same house. Brother of husband and his wife, in their statements before the IO have admitted monetary transactions of his brother with the accused. The statements before the IO of both the Nikesh Kumar and Smt. Bina Vishnoi have already been extracted above, which were part of the Case

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Diary and was material which ought to have been looked into which was submitted by the IO in the Final Report. “

7. i have also perused the complaint which does make a reference to the acts alleged against the Applicant whereby he was supposed to have interfered with her person and caused anguish to her. Nonetheless, the report on her medical examination even after recording the history as stated by her and her mother reveals that her private part was intact, there was no evidence of any injuries and more particularly the fourchette was intact and the hymen too was intact thereby completely negating the plea raised against the Applicant that he had caused sexual violation of the person of the minor victim. Besides, it was the case of the victim as per her statement recorded by the Police through the assistance of the NGO that it was her grandmother who had pushed her inside the room and locked the door from outside leaving her inside in the company of her minor sister and the Applicant and that he had tried to violate her person. However, contrary to her statement that her minor sister was sleeping, the said minor sister had revealed that there was a fight in the house and thereupon the victim, her father and mother had left the house on that night and had not spelt out anything about the alleged incident of sexual assault on the person of the victim. There are multiple statements on record all of which point out to the incident when the Applicant had made a demand for the return of his money from the brother which had caused a lot of heartburn to his sister in law Ayesha who had then gone on a verbal tirade against him threatening him of Police action at her end. More interestingly, the complaint was lodged in Mumbai in respect of the

incident which had taken purportedly place in Goa on the night of 04.07.2017. Most of the statements on record indicate that a demand was made for money by the Applicant with his brother which he had earlier taken and thereupon his wife Ayesha, the mother of the victim had got infuriated and had heated arguments and thereafter had abused him with filthy words threatening him to finish his career and to file a police complaint against him and had left the house alongwith her husband and daughter i.e. the victim and her bag and baggage. None of these witnesses make a reference to any incident of sexual violation of the victim and quite on the contrary indicate that the victim was present at the time when the confrontation took place between the Applicant and his sister in law Ayesha.

8. The investigation in the case is complete and a charge sheet has been filed against the Applicant. From the tenor of the statements, it is but apparent than being more prolific that the Applicant appears to have been falsely implicated in a crime of a serious nature as that under Sections 376(2)(f) of the Indian Penal Code, Section 8(2) of the Act and the other provisions of POSCO Act apparently to settle personal scores. Besides, it is also not singularly in dispute that the Applicant himself had lodged a complaint with the Police on the very same night alleging that he was apprehending some action against him on account of the demand for the return of the money by him and the ruckus caused by his sister in law Ayesha. It was also not particularly in dispute that the Applicant has been in custody for the last more than 60 odd days and his continuance in custody would not serve any purpose, the chargesheet having been already filed in the matter. The

apprehension, if any, harboured by the Respondents can be set at rest by putting him to terms. Therefore, i allow the application on the following terms :

(i) The Applicant is enlarged on bail on executing a personal bond of ₹25,000/- and one local surety in co-extensive amount to the satisfaction of the learned Children's Court.

(ii) He shall not interfere with the witnesses and/or the Complainant and otherwise shall co-operate with the course of the proceedings before the learned Children's Court .

(iii) It goes without saying that in the event the Applicant violates any of the conditions of bail, the Respondent shall be at liberty to move for the cancellation of bail.

(iv) In these terms the application stands disposed off.

NUTAN D. SARDESSAI J.