

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION MAIN NO. 240 OF 2017

Aleixo Arnolfo Pereira,
Son of F.X. Pereira, aged 59
years, Indian National, resident of
House No. 150, Utorda, Salcete –
Goa.

...Applicant

Versus

1. State of Goa,
through the Police Inspector of
Verna Police Station,
Verna- Goa.
2. Sairaj Naik,
son of Badal Naik,
aged 25 years, resident of
House No. 132/1, Luiswaddo,
Calata, Majorda, Salcete- Goa.

...Respondents

Shri D. Zhaveri, Advocate for the Applicant.

Shri S.R. Rivankar, Public Prosecutor for the
Respondent No.1.

CORAM: NUTAN D. SARDESSAI, J.

Reserved on : 10th November 2017

**Pronounced 16th November 2017
on :**

ORDER:-

1. The applicant who is the original complainant, invokes the jurisdiction of this Court under Section 439(2) Cr. P.C. for the cancellation of the bail granted in favour of the Respondent No.2 by the learned Additional Sessions Judge.

2. Shri D. Zaveri, learned Advocate came to be heard on behalf of the applicant who invited attention to the impugned order and submitted that the learned Additional Sessions Judge dwelt on the merits of the case and passed the impugned order which is palpably erroneous and in a matter of fact way. The learned Additional Sessions Judge, F.T.C. II, South Goa, Margao, had rejected the application for anticipatory bail moved by the same respondent No.2 by her order dated 05/07/2017 in which he was alleged to have committed the offence of assaulting the complainant that case with an iron rod and, therefore, an offence was registered against him under Section 324 r/w. Section 34 I.P.C. There were several other cases against the Respondent No.2 which showed that he was involved in a lot of offences and was having a history of criminal record. He next

adverted to the various photographs showing the injuries suffered by the applicant apart from the damages to his Mercedes car and relied in **Puran v/s. Rambilas and another** [AIR 2001 SC 2023] and **Niranjan Singh & Another v/s. Prabhakar Rajaram Kharote and others** [AIR 1980 SC 785] in support of his case. The learned Additional Sessions Judge had rather derailed the investigation by the grant of anticipatory bail and, therefore, this was a fit case for the cancellation of bail.

3. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State spelt out the parameters for the cancellation of bail being a violation of the conditions of bail and/or the order granting bail being perverse.

4. The learned Additional Sessions Judge considered the application for anticipatory bail, in a matter of fact way and did not consider the facts of the case and the opinion of the Doctor attached to the Manipal Hospital who had opined that the injuries suffered by the applicant were of a serious nature. The learned Additional Sessions Judge, therefore

ought not to have granted the anticipatory bail and hence, it was a fit case for the cancellation of the bail. The Respondent No.2 despite the due service of notice had failed to remain present and to participate in the proceedings. Be that as it may, i have considered the submissions of Shri D. Zaveri, learned Advocate for the applicant, the judgment in **Puran** and **Niranjan** (Supra) apart from the contentions of Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State.

5. Section 439 Cr. P.C. deals with the special powers of the High Court or the Court of Sessions to order the release of the person accused of an offence and in custody to be released on bail in terms of Sub-Section (1). Sub-Section (2) in particular empowers the High Court or the Court of Sessions to direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

6. It was the applicant's case that FIR No.58 of 2017 came to be registered by the Verna Police Station based on

his complaint. The Respondent No.2 and his 10 accomplices who had hatched the criminal conspiracy and with a common intention attempted to murder brutally assaulted him and further damaged his Mercedes car on the stated date. The Respondent No.2 had moved an application for anticipatory bail under Section 438 Cr. P.C. before the learned Additional Sessions Judge, Margao and that he opposed the application giving important material details regarding the identity of the four other accomplices alongwith the Respondent No.2, who had committed the said offence and how the Respondent No.2 came to be deliberately allowed to escape in active connivance and collusion with the office of the Respondent No.1 i.e. the Verna Police Station. He had brought to the notice to the learned Additional Sessions Judge that the Respondent No.2 alongwith about 10 unknown persons acting in furtherance of their common object had formed an unlawful assembly armed with deadly weapon and wrongfully restrained the complainant while he was about to proceed to his residence from his property and damaged his vehicle causing loss to him and assaulted him with a metal rod on

his face, hands and other parts of the body, due to which he sustained injuries to his hands and grievous injury over the right ear giving rise to the registration of offence under Sections 143, 144, 147, 148, 341, 427, 326 r/w. 149 IPC.

7. It was his further case that on account of his serious condition he was shifted to a private hospital from Hospicio Hospital, Margao and thereafter he was admitted in the Manipal Hospital, Dona Paula, Panaji where his detailed statement came to be recorded by PSI Kamat. The Police Officer attached to the Verna Police Station had also collected his Medical Certificate from the Manipal Hospital certifying the nature of injuries as grievous. The Respondent No.2 was involved in various other crimes of the Verna Police Station and the Colva Police Station under Section 326 I.P.C. amongst others despite which the learned Additional Sessions Judge secured him with the orders of bail in anticipation of arrest. The learned Additional Sessions Judge, while deciding the anticipatory bail application appeared to have been carried away by the submissions on behalf of the Respondent No.2 that except the offence under Section 326

I.P.C. all other offences were bailable in nature and they could not be termed as serious in nature.

8. Moreover, the learned Single Judge was swayed by the Hurt Certificate issued by the Hospicio Hospital, Margao and clearly ignored the Certificate issued by Manipal Hospital which certified the injuries found on the person of the applicant as grievous in nature. Despite the offence under Section 326 IPC being punishable with imprisonment for life or 10 years, yet, secured the respondent No.2 with the order of bail in anticipation of arrest. This was despite the fact that not much time had lapsed between the registration of the offence and the order under challenge and ignoring an important aspect that a valuable opportunity was lost to the Investigating Agency to carry out a thorough investigation of the case and to book the accomplices of the Respondent No.2 involved in the crime alongwith him for having waited for the applicant and mounted the assault on him with iron rods etc. and ignored the grievous injuries to him.

9. It is also apparent from another order adverted to by Shri Zaveri, learned Advocate for the Applicant dated 26/05/2014 where another learned Additional Sessions Judge had ordered the release of the Respondent No.2 on bail in anticipation of arrest despite being booked for an offence under Section 326 I.P.C. and after having assaulted the complainant therein with beer bottles on his head and causing grave injuries. The learned Additional Sessions Judge also lost track of the facts that there were several cases registered against the Respondent No.2 and should have been rather slow in exercising the discretion in favour of the respondent No.2 who had a history of criminal record and that too all serious offences under Section 326 I.P.C.

10. In **Niranjan Singh** (supra), it was contended on his behalf that the respondents could not be released on bail as they were not in custody and being on bail they were abusing their freedom by threatening the petitioners. The Apex Court held amongst other that a responsible Government, responsive to appearances of justice, would

have placed the Police Officers against whom serious charges had been framed by a Criminal Court, under suspension unless exceptional circumstances suggesting a contrary course exist. A gesture of justice to Courts of justice is the least that a Government owes to the governed. The detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself. Grant of bail was within the jurisdiction of the Sessions Judge but the Court must not, in grave cases, gullibly dismiss the possibility of police-accused intimidating the witnesses with cavalier ease. The intimidation by policemen, when they are themselves accused of offences, is not an unknown phenomenon.

11. In **Puran** (supra), the Hon'ble Apex Court held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already

granted. It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring the material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against the principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation.

12. i have also examined the case papers and noted the Hurt Certificate issued by the Hospicio Hospital, Margao which had noticed the presence of contused lacerated wound below the right ear, an abrasion on the left neck region, and an abrasion on the right forearm and reserved the opinion on all these injuries. Besides, the Doctor examining the applicant had found a haematoma on the right ear and on the right forearm, x-ray taken and opinion reserved. It was not as if the Doctor examining at the Hospicio Hospital had certified injuries as simple for the learned Additional Sessions Judge to hastily hold so and in favour of the Respondent No.2 apart from ignoring the wound Certificate issued by the Manipal Hospital that the wound was grievous. The impugned order clearly reveals that the learned Additional Sessions Judge was carried away by the arguments canvassed on behalf of the respondent No.2 and without looking into these material documents, the extent and stage of investigation secured the Respondent No.2 with the order of bail in anticipation of arrest. The order so passed is, therefore, perverse and cannot be allowed to

stand. Last but not the least, the respondent no.2, who had due notice of this application had also not contested the application.

13. Thus, taking the totality of the circumstances into account that the learned Additional Sessions Judge had ignored vital material and passed the order which is patently illegal, i deem it appropriate in the circumstances to set aside the same in exercise of the powers conferred under Section 439(2) Cr. P.C. Having cancelled the bail granted in favour of the Respondent No.2, it follows as a matter of course that the respondent no.1 shall be at liberty to take him in custody forthwith.

NUTAN D. SARDESSAI, J.

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