

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC APPLICATION (BAIL) NO.238 OF 2017

Shirish Laximan Gaonkar
son of Laximan Gaonkar,
32 years, unmarried,
r/o Madhala Wada, Sirigao,
Bicholim- Goa.

...Applicant

Versus

1. State of Goa
Through Public Prosecutor,
High Court
2. The Police Inspector,
Bicholim Police Station
Bicholim- Goa.

...Respondents

Shri Damodar Dhond with Shri Vibhav Amonkar, Advocates
for the Applicant.

Shri S. R. Rivankar, Public Prosecutor for the respondents.

CORAM: NUTAN D. SARDESSAI, J.

DATE 22nd SEPTEMBER, 2017.

ORDER :-

1. Shri D. Dhond, learned Advocate for the applicant came to be heard on behalf of the applicant and Shri S.R. Rivankar, learned Public Prosecutor on behalf of the respondents.

2. It was the contention of Shri Dhond, learned Advocate for the applicant that the offences alleged against the applicant were those under Sections 323, 504, 506(ii) IPC and Section 8(2) of the Goa Children's Act, 2003 ('the Act', for short). The offences under Section 506(ii) IPC and Section 8 of the Act were non-bailable and the other two offences were bailable in nature. He adverted to the Medical Certificate and contended that if the case of the State was to be believed, the victim boy ought to have sustained multiple injuries including bleeding, fractures, contusions etc.etc. However, the Hurt Certificate revealed that he had not sustained any external injuries, but there was only tenderness over the left angle of the jaw and over the sternal region. The complaint as lodged was exaggerated and so too the statement by the victim. The ground sought for the custodial interrogation of the applicant was that the investigation was at the initial stage and besides there was a further possibility that the applicant would threaten the complainant, her minor son and family members and tamper with the witnesses.

3. It was the contention of Shri D. Dhond, learned Advocate for the applicant in the alternative that the apprehension of the State could be allayed by putting him to terms and considering

the nature of the offence alleged against him, there was no basis for his custodial interrogation. He further contended that such a demand for custodial interrogation could be understood in case any weapon of assault was required to be recovered or the clothes of the victim were blood stained and the same were needed for examination. The applicant was a Government servant who was recently employed in the Electricity Department as a helper and therefore there was all the very reason for securing him with bail in anticipation of bail. He was a Goan and residing with his family and therefore, necessary conditions could be imposed while granting the said bail.

4. Shri S.R. Rivankar, learned Public Prosecutor revealed that the statement on record clearly implicated the applicant and in the face of direct evidence which showed that the minor 15years old was badly treated by the applicant, there was no basis to secure him with any favourable order. The applicant being a public servant had to act with all restraint and quite on the contrary his conduct was inhuman against the child. Though the medical report revealed that there were no injuries, the opinion was reserved. The statement on record revealed the complicity of the applicant and his custodial interrogation was

required to ascertain the motive of the crime. He relied in **Siddharam Satlingappa Mhetre v State of Maharashtra and Others** [(2011) 1 SCC 694] to bring forth what were the parameters laid down by the Hon'ble Apex Court in the matter of dealing with the anticipatory bail and pressed for the custody of the applicant. Apart from the reply, Shri S.R. Rivankar, learned Public Prosecutor for the respondents placed on record the complaint and submitted that apart from the Medical Certificate for the perusal of this Court.

5. Apparently, the offences alleged against the applicant under Sections 323 and 504 IPC are both bailable and non-cognizable in nature while those under Section 506(ii) IPC and Section 8(2) of the Act are both non-bailable in nature. Accepting the version of the State that the applicant had for no particular reason brutally assaulted the minor boy as alleged in the reply, he ought to have sustained multiple injuries on his person but which is not the case currently and what is evident from the Hurt Certificate is that there were no external injuries on his person and opinion on the nature of the injuries was reserved. This Certificate dated is 05/09/2017 and despite the passage of more than 15days, no final Certificate is forthcoming

and which was otherwise confirmed by the learned Public Prosecutor. Be that as it may, there appears force in the contention of Shri Dhond, learned Advocate for the applicant that there has been a material exaggeration both in the version of the complainant and the victim boy to narrate the nature of the injuries on his person as there would be manifestation of multiple injuries all over his body including some injuries showing the violence of the impact if the statements as they stand are to be believed.

6. It was the contention of Shri Rivankar, learned Public Prosecutor that the applicant was absconding after the commission of the crime and which was another factor against him to deny him the benefit of bail in anticipation of arrest. Shri Dhond, learned Advocate for the applicant submitted in reply that though the notice was served to the applicant on 08/09/2017, he had immediately moved the Children's Court for anticipatory bail on 09/09/2017 and orders were passed by the learned Children's Court on 12/09/2017. Thereafter, he had collected the Certified Copy of the impugned order and moved this Court on 18/09/2017 and hence, there was no basis in the case of the respondents that he was absconding from arrest.

7. In any event, it is not singularly in dispute that the applicant is a Government Servant and whose service would come under threat in case he is placed under arrest. However, that is not the only basis on which his case is considered by this Court but the fact that there is no visible manifestation of the injuries suffered by the minor boy viz-a-viz the statements on record which would magnify multi-fold violence if there was assault on his person. Moreover, there is no weapon of assault required to be recovered which may justify his custodial interrogation nor is it the case of the State that any clothes of the minor boy were stained with blood and that those are required to be recovered and attached under the Panchanama. At this prima facie stage, the case of the State as it were and borne out from the various statements from the record indicates that the whole incident was blown out of proportion and that the applicant is sought to be implicated in the crime particularly under the Act to justify his detention in custody. It is not to say that the act of the applicant is sought to be condoned but all the same, the nature of the offences alleged against him would not justify his custodial interrogation.

8. i have otherwise considered the parameters laid down in the grant of bail in anticipation of arrest in **Siddharam Mhetre** (supra) namely the nature and gravity of the accusation, the antecedent of the applicant, the possibility of the applicant fleeing from justice, the possibility of the accused's likelihood to repeat similar or other offences and so on. Rather, it emphasises that 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused. In the circumstances, therefore, even the determination of the motive of the crime cannot be a basis to deny him the benefit of bail in anticipation of arrest. In the circumstances, i pass the following

ORDER

1. In the event of arrest he shall be enlarged on bail on executing bail bond in the amount of ₹10,000/- (Rupees Ten Thousand Only) with one local surety in the like amount to the satisfaction of the Investigating Officer.

2. He shall report at the Police Station for 7 days w.e.f. 23rd September, 2017 between 10.00 hrs till 12.00 noon and whenever called upon and co-operate with the course of investigation.
3. He shall not intimidate the victim or the complainant or any of her family members and otherwise not interfere with the course of investigation.
4. He shall not visit the locality where the victim resides till further orders.
5. In these terms the application stands disposed off.

NUTAN D. SARDESSAI J.

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