

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO. 293 OF 2017

Akbar Islam Shaikh

..... Applicant

V e r s u s

1. State of Goa & anr.

..... Respondents

Shri Sanman Keny, Advocate for the Applicant.

Shri S. R. Rivankar, Public Prosecutor for the State-Respondents.

Coram :- NUTAN D. SARDESSAI, J

Date : 23rd November, 2017

ORAL ORDER

Heard Shri S. Keny, learned Advocate for the Applicant and
Shri S. R. Rivankar, learned Public Prosecutor for the State-Respondents.

2. It was the contention of Shri Keny that the Applicant was granted bail in the Crime no.264/2017 of the Margao Town Police Station for the alleged commission of the offences punishable under Section 3 read with Section 25 of the Indian Arms Act on the allegation that he had given the firearm to the accused involved in the Crime no.261/2017 of the Margao Town Police Station. He was secured with the orders of bail passed by the learned JMFC but was still not released and then it was learnt that he had been arrayed as a co-accused in the Crime

no.261/2017 of the Margao Town Police Station for the commission of the offences punishable under Sections 302, 109 and 212 of the Indian Penal Code read with Sections 3 and 25 of the Arms Act. The Applicant was not at all present at the scene of crime when the alleged offence took place nor was he in any way instrumental in the commission of the crime. It was his further contention that the main accused in that crime had disclosed in his statement under Section 27 of the Indian Evidence Act that he had procured the firearm from the Applicant for sale and that the firearm had accidentally fired and the bullet had hit the deceased involved in that crime. There was no nexus of the Applicant with the Crime no.261/2017 nor could he even remotely be held to have abetted the said crime when he had only given the gun on sale to the said accused. He had been arrested on 28.09.2017 and was confined to the judicial lock up from 12.10.2017. He had therefore to be secured with the benefit of bail as no nexus could be shown of the Applicant with the Crime no.261/2017.

3. Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State conceded in fairness that as per the statement of the main accused in the main Crime No.261/2017, the firearm had been sold to him by the Applicant and that it had accidentally fired in the course of the incident. Besides, he also conceded that the Applicant was no where present at the scene of crime when the offence of murder took place.

Nonetheless, his presence was required in custody to see his role in the larger conspiracy of procuring arms from UP and therefore he had not to be secured with the benefit of bail.

4. It is apparent from the tenor of the application and the reply filed on behalf of the State that the Applicant was apparently nowhere in sight when the alleged incident of shooting took place in the Bar at Shantinagar, Aquem-Baixo, Salcete, in the course of which the death of one Abdul Kadar was caused by the co-accused Faiyaz. The Respondent-State has even otherwise failed to remotely show the act of abettment by the Applicant in the commission of the crime when no element of any pre-meeting of the minds of the Applicant and the co-accused have been shown in that context. It is another matter that the Respondents opposed the application on the premise that the Applicant was instrumental in providing funds to the main accused and asking him to run away from the long arms of the police and to evade arrest in the Crime no.261/2017. Even if that be so, it cannot be heard on behalf of the State that the Applicant had abetted the commission of the crime under Section 302 IPC. Since the role of the Applicant in the crime particularly under Section 302 IPC is not spelt out though his role might be pertinent in so far as the offences under Sections 3 and 25 of the Arms Act may assume significance, that is not a ground for his further detention in custody. The apprehension of the Respondent that the

Applicant will not be available if released on bail can be allayed and set at rest by putting him to terms.

5. In the circumstances therefore i order the release of the Applicant on bail on the following terms :

(i) The Applicant shall be released on bail upon executing a personal bond of ₹25,000/- and furnishing one local surety in co-extensive amount to the satisfaction of the learned Sessions Court.

(ii) The Applicant shall furnish his local address to the IO and also produce proof in that regard.

(iii) The Applicant shall report at the Police Station for a week w.e.f. 24.11.2017 between 10.00 am to 12.00 noon.

(iv) The Applicant shall not leave the State of Goa without the prior written permission of the IO.

(v) The Applicant shall otherwise not tamper with the witnesses and/or in any way hamper the course of investigation.

(vi) In these terms, the application stands

disposed off.

Authenticated copy of this order be issued to the parties in accordance with law.

NUTAN D. SARDESSAI, J.

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