

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC APPLICATION (BAIL) NO. 305 OF 2017

Mr. Zakir Hussain
Son of Abdul Wahab,
R/o. House No.67, Indiranagar,
Chimbel, Tiswadioa.
Presently lodged in
Judicial custody Central Jail, Colvale,
Bardez, Goa.
Through next friend
Mr. Jakeer A. Chitradurg
31 years of age,
r/o House No. 638/1.
Forgotten, Goa Velha, Iihas,
Tiswadi, Goa.

...Applicant

Versus

State of Goa
Through the Public Prosecutor

...Respondent

Shri Arun De Sa, Advocate for the Applicant.

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

CORAM: NUTAN D. SARDESSAI, J.

Dated : 15th December 2017

ORDER :-

Heard Arun De Sa, learned Advocate for the Applicant
and Shri S. R. Rivankar, learned Public Prosecutor for the
Respondent.

2. Shri Arun De Sa, learned counsel took me through the formal complaint lodged by the son of the deceased named Ramnath Naik. He had acted on the basis of the information divulged by his sister who had found his mother i.e. the deceased lying on the bed in an unconscious state in prone position on the morning of 20/03/2016. He adverted to the recovery panchanama dated 25/03/2016 drawn at the instance of one of the accused Rajesh Kumar in which it was revealed that the present applicant was told to remain outside, near the S.T. Bus stand to keep watch while he alongwith the two other suspects had effected entry into the house of the deceased by removing the roof tiles for committing the offence.

3. He relied in **Vasanthi v/s. State of A.P.** [2005 ALLMR (Cri) 2560(S.C.)], **Najabhai Desurbhai Wagh v/s. Valerabhai Deganbhai Vagh and others** [(2017) 3 SCC 261] and **Abdul Aziz v/s. State of Rajasthan** [2007 STPL 10191 SC] to contend that he could not be even remotely connected to the crime particularly Section 302 I.P.C. since his role was to keep watch from some distance from the scene of crime and he was nowhere connected with the crime under Section 302 and 392 IPC even by applying Section 34 IPC.

4. The learned Public Prosecutor contended that by virtue of Section 34 I.P.C. applied against the accused, the applicant was clearly liable for the offence particularly under Section 392 IPC and therefore he was not entitled to the benefit of bail.

5. I have considered the Judgments relied upon by Shri De Sa, learned Counsel for the Applicant and the other contentions and the contention of Shri Rivankar, learned Public Prosecutor that the trial is in progress and as of now about 5 witnesses have been examined and the State would examine another 15 or so to conclude the trial against the Applicant. It has otherwise been brought to my notice by Shri De Sa, learned Counsel for the Applicant that the Applicant is in custody since last March, 2016 i.e. more than 18 months.

6. Considering the records placed before me in the nature of the Chargesheet and the disclosure statement of Rajesh Kumar in particular indicating the role played by the Applicant, even by the application of Section 34 IPC, the offence under Section 302 apparently would not be directed to the case against the applicant accepting the version of the learned Public Prosecutor that Section 392 IPC would still apply by virtue of Section 34

IPC. In any event the Trial Court would not be influenced by the observations made by this Court in that regard. i am inclined to order the release of the Applicant on bail and pass the following:

O R D E R

- (i) The applicant shall be released on bail on execution of a Bail Bond in the sum of ₹50,000/- (Rupees Fifty Thousand Only) with one local surety in the like amount to the satisfaction of the learned Sessions Judge, North Goa.
- (ii) He shall not tamper with the witnesses in any manner or otherwise hinder the course of trial.
- (iii) He shall furnish his local address and contact number, both landline and mobile upon release on bail and shall furnish his local residential address to the Investigating Officer.
- (iv) He shall not leave the State of Goa without the written permission of the Court.

(v) The application stands disposed off in the aforesaid terms.

mv

NUTAN D. SARDESSAI J.