

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION (BAIL) NOS.303 & 304 OF
2017

CRIMINAL MISC. APPLICATION NOS.303 OF 2017

Manjunath Koli ... Applicant

V e r s u s

Officer in Charge & anr. ... Respondents

AND

CRIMINAL MISC. APPLICATION NOS.304 OF 2017

Rajkumar Jaigadi ... Applicant

V e r s u s

Officer in Charge & anr. ... Respondents

Shri Arun Bras De Sa and Shri Aires Rodrigues, Advocates for the Applicants.

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

Coram:- NUTAN D. SARDESSAI, J.

Date: 18 December 2017

P.C.

Heard Shri Arun Bras De Sa learned Advocate on behalf of the Applicants and Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State-Respondents.

2. It has been the contention of Shri De Sa by inviting attention to the complaint and all the statements listed in the chargesheet that no offence under Section 302 of Indian Penal Code has been made out against each of these Applicants. The autopsy report too would indicate that the injuries suffered by the deceased were in the nature of bruises and that apparently no external weapon was used to cause the death of the deceased. He adverted to the various statements on record including the Test Identification Parade held by the Special Judicial Magistrate and wrapped up his arguments that no particular role was assigned to each of them and therefore on the basis of the material on record, they were entitled to the benefit of bail. He placed reliance in *Vasanthi vs State of A.P.* [2005 All MR (Cri) 2560], *Narayan Gangaram Khandekar & Ors vs. State of Maharashtra* [2016 ALL MR (Cri) 4364], *Rajesh Anantram Thakur vs. The State of Maharashtra* [1993 Cri. L. J. 208] and *Mervin Thomas Manezes vs. State of Goa* [CRMAB Nos.106 and 107 of 2009].

3. Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State contended on the basis of the same records that an offence under Section 302 of the Indian Penal Code

was made out even considering the fact that no external weapon was used in the commission of the crime. The autopsy report clearly indicated the violence of the assault and that injuries were caused to the vital organs of the deceased which had ultimately led to his death. No case whatsoever was made out for such release on bail and hence their applications had to be dismissed.

4. i have perused the complaint of Akash Das dated 04.09.2017 which makes a reference to the incident which took place on the intervening night of 3rd/4th September 2017 and that he was informed by some person that the deceased was being assaulted by three unknown persons. However, the supplementary statement recorded of the said Akash a short while later on 04.09.2017, however makes a reference to the assailants being named as Manju, Aniket and Rajkumar without in any manner indicating the source of their identification by him or the manner in which he had procured their names as the assailants when the complaint was totally silent in this regard. i am all the more fortified in this conclusion also considering the say filed by the police on 14.09.2017 before the learned Sessions Judge where there was no mention of any supplementary statement being

recorded of the Complainant and he having divulged the names of these two Applicants amongst others.

5. The Complainant has not ascribed the role played by any of these Applicants in the said crime except to say that they had assaulted the deceased. The other statements on record to which a reference was made by Shri De Sa, learned Advocate for the Applicant too do not assign specific role played by each of the Applicants in the commission of the crime although it has not been disputed by Shri De Sa in fairness that there was an incident of assault on the intervening night on 3/4th September 2017. A reference no doubt has been made to the use of a knife but apparently the same was used to threaten and intimidate the Complainant but it was not used to inflict any injuries on the person of the deceased. The autopsy report in particular reveals that the deceased had suffered injuries in the nature of bruises all over his body numbering eleven except for two of which were lacerations located over the right mandible of the lower lip. The cause of death has been certified to be on account of haemorrhagic shock consequent to blunt abdominal trauma with damage to the underlying vital organs which were ante mortem and fatal in nature. A reference was also made to the

Test Identification Parade conducted by the learned Special Judicial Magistrate in which one of the Applicants i.e. Raj Kumar was identified by the witness Baya. However, a cursory perusal of the previous statement to the police does not give any description even of the assailant or more particularly of the said Raj Kumar as to identify him at the Test Identification Parade at a later point of time. In any view of the matter and looking to the nature of the injuries and the role purportedly played by each of the Applicants, the offence under Section 302 of the Indian Penal Code does not appear to have been made out on a prima face assessment of the material by this Court. The Trial Court will however not be influenced by the observations in this regard which will deal with the case on its own strength and merits on an assessment of the material at large before it.

6. Each of the Judgments relied upon by Shri De Sa was on merits and otherwise in the facts of the given case which have been considered while dealing with the application under consideration.

7. Be that as it may, i am satisfied that a prima facie case is made out at the highest against the Applicants under

Section 304 of the Indian Penal Code and in that view of the matter, i am inclined to order the release of each of the Applicants on bail upon executing a personal bond in the amount of ₹50,000/- each and furnishing a local surety in the like-amount to the satisfaction of the learned Addl. Sessions Judge, North Goa, Panaji. Each of them shall not tamper with the witnesses or otherwise hinder the course of investigation. They shall also furnish the particulars of the local address to the Investigating Officer and shall not leave the jurisdiction of the State of Goa without the prior written permission of the Investigating Officer.

8. In these terms, the application stands disposed off.

NUTAN D. SARDESSAI J.