

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 309 OF 2017

STATE OF GOA, THR. OFFICER
INCHARGE, PANAJI POLICE STATION,
PANAJI.,

... Applicant

Versus

ANIKET ANAND NAIK.,

... Respondent

Shri Arun Bras De Sa and Shri Aires Rodrigues, Advocates for
the Applicant.
Shri S R Rivankar, Public Prosecutor for the State-Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 18th December 2017

P.C.

Heard Shri S. R. Rivankar, learned Public Prosecutor on
behalf of the Applicant and Shri Arun Bras De Sa learned
Advocate on behalf of the Respondent.

2. The State seeks the cancellation of bail of the Respondent
under Section 439(2) of the Cr.P.C. on the basic premise that the
learned Sessions Judge did not consider the aspect that the Test
Identification Parade was held and the report thereon was
awaited and yet proceeded to secure him with the benefit of bail.
Quite on the contrary, the learned Sessions Judge held that the
Respondent was not identified in the course of the Test
Identification Parade which was contrary to the records. Shri

Rivankar, learned Public Prosecutor relied upon an order of this Court in *Aleixo Arnolfo Pereira vs State of Goa & anr.* [CRMAM No.240/2017] where this Court was inclined to cancel the bail granted in favour of the Respondent and pressing for the rejection of the bail granted in favour of the Respondent.

3. Shri De Sa, learned Advocate for the Respondent adverted to the records and otherwise submitted that the learned Sessions Judge did make a reference to the Test Identification Parade held unlike the submission of the learned Public Prosecutor. A very strong case had to be made out for the cancellation of bail which was different from the parameters in the grant of bail.

4. i have examined the chargesheet which has been filed in this case and besides perused the order passed by the learned Sessions Judge. He has duly considered the contentions raised on behalf of the State and the Respondent and thereupon on an assessment of the material on record come to a finding that the complaint did not indicate the name of the Applicant nor the Complainant had seen the incident which took place on the intervening night of 3rd/4th September 2017. The learned Sessions Judge had also made a pertinent reference to the fact that it had been brought to his notice that the identification parade had been carried out but nothing had been placed on record in that regard.

5. The learned Sessions Judge for that matter had also examined the autopsy report indicating that death was caused by haemorrhage but in any event the Respondent herein could not be connected with the injuries resulting in the death of the deceased or more particularly that he had the intention to kill the deceased as to attract the offence under Section 302 of the Indian Penal Code. The learned Sessions Judge for that matter had duly considered the case of the State that the Respondent was a history sheeter and that several cases were registered against him. To that, Shri De Sa, learned Advocate submitted that the Respondent has been acquitted in most of the cases and currently only one case was pending against him which had occurred on the eve of Diwali involving some assault.

6. The learned Judge considered the parameters in the grant of bail and in that regard held that he was entitled to the benefit of bail in the peculiar facts and circumstances at large before him. The discretion exercised by the learned Sessions Judge does not justify any interference when it is not shown from any material on record by the learned Public Prosecutor that the learned Sessions Judge had committed a jurisdictional error in securing the Respondent with the orders of bail and on the premise that he had acted hastily without awaiting the report of the Test Identification Parade.

7. Be that as it may and without opining on whether an offence under Section 302 of the Indian Penal Code is made out against the Respondent or otherwise, no case whatsoever is made out for the cancellation of bail by invoking the jurisdiction of this Court under Section 439 of the Cr.P.C.

8. The Judgment in *Aleixo Pereira* (supra) was in a different set of circumstances and besides the Respondent therein who had been secured with the benefit of bail too had not contested the same. This order is clearly distinguishable and cannot find applicability in the case.

9. In that view of the matter no case is made out for the cancellation of bail and hence the application stands dismissed.

NUTAN D. SARDESSAI, J.

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