

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPLICATION (BAIL) NO. 5 OF 2018.

K. Annie Daniel and Anr. Applicant.

Vs.

State of Goa, (Officer in charge,
Mapusa Police Station,
Mapusa and anr. Respondents.

Mr. Bhupesh Prabhu Dessai, Advocate for the applicants.
Mr. M. Amonkar, Addl. Public Prosecutor for the respondents.

Coram:-PRITHVIRAJ K. CHAVAN,J.
Reserved on:23rd January, 2018.
Pronounced on:-5th February,2018.

ORDER:

Apprehending their arrest, applicants who are husband and wife have prayed for a direction to release them under Section 438 of Cr.P.C. in the event of their arrest in Crime No.367/2017 by Mapusa Police Station.

2. The applicant no.2 claims to be a vocational instructor at ITI Altinho, Panaji. As such, he claims to be a government servant for more than 35 years and, therefore, according to them, both husband and wife belong to a very respectable family. Apart from Crime No.367/2017 under Sections 465, 467,471, 420 read with Section 324 of the IPC registered with Mapusa Police Station, the applicants are also being prosecuted by the Anti Corruption

Bureau Police Station in Crime No.10/2016 under Sections 7, 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 alleging that the applicant no.2 demanded a bribe of ₹1500/-. It is submitted on behalf of the applicants that they have received notice under Section 41-A of Cr.P.C. on 29.12.2017 by which they were directed to remain present at Mapusa Police Station for the purpose of investigation on 2.1.2018 whereas, infact offences came to be registered on 3.11.2017. An application for seeking anticipatory bail moved before the learned Sessions Judge, Panaji came to be rejected. It is submitted that custodial interrogation of the applicants is not required as it would be detrimental to their fundamental rights enshrined under Articles 19 and 21 of the Constitution of India. They have been falsely implicated in this case out of personal vindictiveness in the department of the applicant no.2.

3. It is also submitted on behalf of the applicants that an amount of ₹1,50,000/- obtained as a loan by the applicant no.1 in the year 2007 from the State Bank of India, Mapusa branch has been fully repaid by instalments, however, despite the said fact, a complaint came to be filed by the Manager of the SBI against the applicants.

4. Applicants claim to be a permanent residents of

Mapusa, Goa wherein they have mentioned two addresses, namely, AIF-4, Nirvana Apartments Shetyewado, Duler Mapusa, Goa and Goa Medical College Campus, Flat No.8, Block A, type E Bambolim, Goa. As the applicants do not have criminal antecedents nor have undergone any conviction by any competent Court, they have prayed for their release on anticipatory bail as it was a false accusation against them. The applicant no.2 has also taken a plea of ailment such as severe depression, adjustment disorder with predominant anxiety features, hypertension and Bronchial Asthma and has taken treatment at Campal Health Services and at Institute of Psychiatry and Human Behaviour, Bambolim.

5. Application is strongly opposed by the respondents. The learned Addl. Public Prosecutor Shri Amonkar, submits that this is the fifth offence against the applicants who are habitual offenders. They have not been co-operating with the Investigating Officer. Earlier also they were detained and charged in different crimes and, therefore, their custodial interrogation is essential. It is brought to my notice that the applicants, in furtherance of their common intention, forged salary certificate in the name of the applicant no.1 under the pretext that it was issued by EICS College of Paramedical Science and Technology Vancio Waddo Guirim, Bardez, Goa and have also forged form no. 16 for the year 2006-2007 of the office of Principal, Goa College of Engineering,

Farmagudi, Ponda Goa which they submitted in SBI Mapusa and thereby obtained loan of ₹1,50,000/-. During the course of investigation it is revealed that Form no.16 submitted by the applicant no.2 for obtaining loan was, in fact, not issued by Goa Engineering College, in favour of the applicant no.2. It is also brought to my notice that the applicant no.2 is being prosecuted by Anti Corruption Bureau Police Station under sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 for demanding bribe of ₹1500/-. The prosecution has an apprehension that in case the applicants are granted bail, there is every chance of their abscondance as they are evading arrest by changing their residence. According to the Investigating Officer, the image of the Educational institution has been tarnished due to the criminal acts of the applicant no.2.

6. It is apparent from the record and submissions that applicants are habitual offenders. Their modus operandi, prima facie, appears to be knowingly and intentionally forging documents and committing acts of cheating. It is submitted that even RBI had intervened in the matter and directed the authorities to initiate action against the applicants.

In view of the aforesaid fact, it is difficult to accept the arguments of the learned Counsel for the applicants that they are from respectable family and their custodial interrogation is not

required.

On the other hand, the Investigating Officer stressed that without custodial interrogation of the applicants it would be difficult to unearth the source as to how the applicants procured Form no.16 and to interrogate them to find out the source of salary certificate produced by the applicant no.1 alleged to have been issued by office of Para Medical Science and Technology, Vancio Waddo, Guirim. Investigating Agency also seeks interrogation of the applicants to recover the rubber stamps and other materials used for forging aforesaid documents. Looking to the criminal history of the applicants, it would not be just and proper to grant the prayer for, their abscondance cannot be totally ruled out in view of their past conduct.

7. Certain prescription and medical certificate are tendered on record on behalf of the applicants indicating that the applicant no.2 is under treatment for severe depression and required period of rest for three months. A certificate issued by one Dr. Charles Ajoy Estibeiro dated 6.3.2017 is tendered on record. Certificate issued by Institute of Psychiatry indicates that applicant no.2 suffers from adjustment disorder with predominant anxiety features. These certificates are not sufficient to seek relief of anticipatory bail as of right, in the light of the fact that sufficient medical facilities can be provided to the applicant no.2 by the

Investigating Agency, if required during interrogation. Apart from that there are serious allegations that the applicants are not co-operating with the Investigating Agency, and, therefore, chances of their abscondee cannot be totally ruled out. This is important in the light of the fact that the investigation is still in progress.

8. By taking into consideration the parametres in the case of ***Siddharam Satlingappa Mhete Vs State of Maharashtra, (2011) 1 SCC 694***, offence against the applicants are indeed grave and defines the role of each of the applicants. Antecedent of the applicant as regards registration of earlier crimes is also an important factor to refuse anticipatory bail. Prima facie it appears that the applicants may repeat similar offence. It cannot be said that the object of arresting applicants is only to injure or humiliate them by the Investigating Agency. Thus, after considering the over all facts and circumstances of the case and the material brought forth by the respondents, it would not be just and proper to allow the application.

9. For the reasons stated above, application stands rejected.

PRITHVIRAJ K. CHAVAN,J.

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