

IN THE HIGH COURT OF BOMBAY AT GOA.**CRIMINAL APPLICATION (BAIL) NO. 31 OF 2018.**

Mr. Sainath Harmalkar Applicant.

Vs.

State, Through Public
Prosecutor, High Court
of Bombay, Panaji
Goa and anr. Respondents.

Mr. Kapil Kerkar, Advocate for the applicant.
Mr. P. Faldessai, Additional Public Prosecutor for the respondents.

Coram:-PRITHVIRAJ K. CHAVAN,J.

Reserved on:-7th February, 2018.

Pronounced on:-9th February, 2018.

ORDER:

Applicant, who is an owner and a driver of taxi bearing registration No. GA-03-N-1293 is apprehending his arrest by the Anjuna Police Station for the offences punishable under Sections 143, 147, 323, 326, 336 read with Section 149 of IPC and hence filed an application under Section 438 of Cr.P.C.

2. Facts are as follows:-

The informant is a resident of State of Uttarakhand who had been to Goa alongwith his foreign friends namely Mr. Jose Torres, Ms.Laura Burke and Mr. Daniel Burke on the eve of 31.12.2017. On 1.1.2018 around one hours they went to a new

year party at Shiva Valley Bar and Restaurant at Anjuna Beach. Around 6.15 hours in the morning they left the said restaurant and were looking for a taxi to drop them at their hotels. The taxi drivers present at the parking lot were asking for huge fair i.e ₹2000/- ₹1500/- etc, to drop them just at a distance of 3 kms and, therefore, the informant and his friend decided to walk. However, at some distance a taxi driver who was standing by the side of the road agreed to drop the informant and others, first at Jungle hostel, Vagator where one of the tourist had stayed and thereafter to drop them at Maximum Holiday Inn, Anjuna by charging ₹700/-. It was a dark green coloured Maruti Omni van. When the tourists were seated in the car, the driver received three phone calls. When the taxi reached at Jungle Hostel, the driver got down and opened the door of the taxi by asking all the tourists to alight from it and then informed that he would not go further as he had received a call from his boss to drop some other guest. Hearing the same, the informant, who was able to converse in Hindi said that either he should drop them at their destination or they would pay only half rent.

3. It reveals from the First Information Report that upon hearing the same the taxi driver said in Hindi "*Ruk Tuje Dikata Hu*" and then immediately called someone on phone. The driver removed one wooden stick which he had hidden underneath the

driver's seat and within five minutes three taxis arrived at the spot. Registration number of one of the taxi was GA-03-N-1293 which admittedly belong to the applicant. The FIR further revealed that all those five persons including taxi driver started assaulting the informant and his friends by means of wooden dandas in their hands. They had also pelted stones towards them. The taxi driver of the car who was hired by the informant and his friends hit the informant with the wooden danda but it landed on his hand due to which he sustained fracture injuries.

4. Learned Counsel for the applicant argued that the FIR does not disclose either the description of the applicant or any link with the alleged incident. He submits that one month has passed but there is no proper investigation by the police officer. Only in order to arrest the applicant his application for anticipatory bail is being opposed when, in fact, the applicant had already informed the head constable of the concerned police station on 2.1.2018 itself that he was not aware of the alleged assailants. It is also submitted that the ingredients of Section 326 of IPC are not attracted and, therefore, even on that count, the applicant needs to be protected as he has been falsely implicated in this case.

5. According to the learned Counsel, the applicant was passing by the road when the alleged incident occurred as he

noticed some altercations between the tourists and some locals, whom he does not know. As there was traffic jam he had to go slowly and, thereafter he had to drop the passengers from his taxi at Panaji.

6. On the other hand, learned Addl. Public Prosecutor objected the application by stating that the applicant was involved in the incident who has been absconding and has not been co-operating with the Investigating Agency. The learned Addl. Public Prosecutor further states that the FIR specifically indicates registration number of the applicant's car and, therefore, unless custodial interrogation is made, the involvement of other assailants could not be ascertained. It is also submitted by the learned Addl. Public Prosecutor that in the recent past such offences are in increase within the jurisdiction of said police station where the taxi drivers assault the tourist over petty reasons thereby tarnishing the image of the State of Goa worldwide as a tourist destination. It is also submitted that if the applicant's prayer is granted it would give a wrong message that despite indulging in serious offences such elements get protection of law.

7. It is a well settled principle of law that while entertaining an application under Section 438 Cr.P.C. discretion is to be exercised with due caution and prudence on the facts and

circumstances of the case. No straight jacket formula can be provided in that regard. By keeping in mind parameters laid down by the Hon'ble Supreme Court in the case of ***Siddharam Satlingappa Mhetre Vs State of Maharashtra and others, (2011)1 SCC 694***, I shall have to go through the material on record.

8. There is no dispute that the informant and his foreign friends have been assaulted by some taxi drivers/locals on 1.1.2018 when they had been to the State of Goa who would not have thought that they would face such a situation on the very first day of the new year. The informant had sustained grievous fracture of his arm which required stitches. His foreign friends Jose Torres and Laura Burke had also sustained injuries which indicate that there was an indiscriminate assault upon them, by the assailants by means of sticks and dandas. It cannot be said that the nature of the offence is not grave and serious. If the applicant had witnessed the altercations, he could have immediately reported the matter to the police. Instead, it appears that he tried to remain away for about a month and did not co-operate with the Investigating officer despite receiving a phone call from Head Constable as has been stated by the applicant himself in paragraph 10 of his application. This conduct of the applicant speaks volume.

9. Second important aspect is that there was no reason for the first informant to specifically state the registration number of the applicant's car to the police in the FIR which prima facie falsifies the contention of the applicant that he was passing by the said road. No sane man would give number of a passing car to the police. Prima facie, his involvement in the offence appears to be true. It appears that the investigation is still in progress and this is the only clue with the respondents through which the rest of the assailants could be nabbed and, therefore, the arguments of the learned Additional Public Prosecutor needs to be accepted. It also cannot be lost sight of the fact that though, the applicant has roots in the society the impact of grant of anticipatory bail particularly in a case of this kind would have magnitude of affecting inflow of tourist especially foreign tourists in the State of Goa. In order to allow the Investigating Agency to conduct a free, fair and full investigation, it would not be just and proper at this stage to grant the prayer of the applicant.

10. I am conscious of the fact that personal liberty is a precious fundamental right and it can only be curtailed when it becomes imperative according to the peculiar facts and circumstances of the case.

11. As already discussed herein above and after carefully

examining the entire available record as well as nature of the allegations, I do not deem it fit to grant the prayer. Consequently, application stands rejected.

PRITHVIRAJ K. CHAVAN,J.

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