

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO.199 OF 2018**

Mr. Vinay Gadekar,
Age 25 years, businessman,
Indian National and permanent
resident of House No.142/2/2,
Kumya Marod, Guirim, Bardez, Goa.
Presently in Judicial Custody,
Central Jail, Colvale, Bardez, Goa.
Through next friend

Mrs. Anita Anil Gadekar,
45 years of age,
Resident of House No.142/2/2,
Kumya Marod, Guirim, Bardez, Goa.

... Applicant

Versus

1. Police Inspector,
Mapusa Police Station,
Mapusa.

2. State, through Public Prosecutor,
High Court of Bombay at Goa.

... Respondents

3. Sandesh Nana Naik,
Son of Nana Naik,
Indian National, Aged 32 years,
Business, Povacao,
Moirá, Bardez, Goa.

4. Ravi Laxman Naik,
Son of Laxman Gopi Naik,
Indian National, 30 years,
business, Povacao,
Moirá, Bardez, Goa.

.... Intervenors

Shri Arun Bras De Sa, Advocate for the Applicant.

Shri S.R. Rivankar, Public Prosecutor for the Respondent No.1.

Shri Preetam Talaulikar, Advocate for the Intervenors.

Coram : NUTAN D. SARDESSAI, J.

Reserved on : 6th AUGUST, 2018

Pronounced on : 7th AUGUST, 2018

ORDER :

The applicant seeks his enlargement on bail by the application coming up for disposal today.

2. Heard Shri Arun Bras De Sa, learned Advocate for the applicant who adverted to the complaint dated 18/12/2017, the medical certificates of the injured to show that the weapons of assault used were blunt weapons and not some sharp objects vis-a-vis the nature of injuries suffered by them being contused lacerated abrasions and simple injuries. The statement of one Sudesh too did not implicate him. There was no recovery at his instance and therefore there was no justification to continue his detention in custody any longer. He had therefore to be enlarged on bail.

3. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State contended that the offences alleged against the applicant under Section 307 amongst others had to be read in the context of Section 149 IPC. He however, conceded that there was no evidence on the direct involvement of the

applicant in the crime unlike the other suspects.

4. Shri P. Talaulikar, learned Advocate for the two intervenors Sudesh and Ravi submitted at the outset that there was no change in circumstance between the dismissal of his bail application by the learned Additional Sessions Judge till the present application. It was evident from the reply filed on behalf of the State that the applicant was a hard core criminal and a history sheeter who would pose danger to the intervenors. He relied upon **Virupakshappa Gouda & Anr. V/s. State of Karnataka & Anr. [(2017) 5 SCC 406]**, and referred to the order passed by the learned Additional Sessions Judge in the Bail Application No.42/2018 of the applicant and Bail Application No.105/2018 and submitted that the learned Additional Sessions Judge had rightly dismissed the bail applications. It was his contention vis-a-vis the Hurt Certificate that the opinion was reserved and therefore the case carved on behalf of the applicant that the injuries suffered by them were simple in nature could not be countenanced. There was every possibility that the witnesses could be threatened and the evidence tampered with. Further reliance was placed by him in **Omar Usman Chamadia V/s. Abdul & Anr. [(2004) 13 SCC**

234] and finally wrapped up his argument placing reliance in **State of Bihar V/s. Rajballav Prasad @ Rajballav Prasad Yadav @ Rajballabh Yadav [(2017) 2 SCC 178]**.

5. Shri Arun Bras De Sa, learned Advocate for the applicant in reply submitted that both the judgments relied upon by Shri Talaulikar were clearly distinguishable one being under TADA Act and the other in an offence under Section 302 IPC and could not substantiate the case of the intervenors. On his part, he placed reliance in **Vasanthi V/s. State of Andhra Pradesh [AIR 2005 SC 2643]** and submitted that the expression "history sheeter" and "a hard core criminal" did not at all apply to the applicant, who also did not have any previous conviction to his discredit thereby entitling him to the orders of bail.

6. i would consider their submissions in the light of the judgments, the reply filed on behalf of the State and a copy of the chargesheet placed on record. **Virupakshappa Gouda** (supra), which was a case of honour killing and involving the offence under Section 302 amongst others restated the principles while considering the application for bail namely; (i) the nature of accusation and severity of punishment in case of

conviction and nature of supporting evidence; (ii) reasonable apprehension of tampering with witness or apprehension of threat to complainant; and (iii) prima facie satisfaction of Court in support of charge. It placed reliance in **Prasanta Kumar Sarkar V/s. Ashis Chatterjee [(2010) 14 SCC 496]** where it was opined that while exercising the power for the grant of bail, the Court has to keep in mind certain circumstances and factors namely; (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence, (ii) nature and gravity of the accusation, (iii) severity of the punishment in the event of conviction, (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail.

7. In **Omar Usman Chamadia** (supra), a two Judge Bench of the Apex Court was considering a case of cancellation of bail granted by the High Court where several cases involving serious offences were already pending against the accused, some of them committed while on bail in other cases and the

offences in question being also committed while on bail. It was in those facts that the Apex Court held that it was a fit case to cancel the bail granted in his favour and when there were offences against the first respondent involving those under Sections 3 & 4 of TADA, Sections 25 and 27 of the Arms Act and Sections 506(2), 325, 324, 307, 147, 326, 504, etc. of IPC apart from offences under the Prohibition Act. Both these cases are clearly distinguishable on facts.

8. In **Vasanthi** (supra), the Apex Court while dealing with the Special Leave Petition against the order of rejection of bail observed that what was required to be seen under Section 21(4) of the Andhra Pradesh Control of Organized Crime Act, 2001 was that the Court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence of committing organized crime and that he/she is not likely to commit any offence while on bail and relied in **Ranjitsing Brahmajeetsing Sharma V/s. State of Maharashtra and Anr. [2005 (4) JT (SC) 123]** of a three Judge Bench where it was observed that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court having regard to the materials brought on record is

satisfied that in all probability he may not be ultimately convicted, an order granting bail be passed. This judgment too was in the facts of that case and strictly speaking would not apply to the case at hand.

9. In **Rajballav Prasad** (supra), a two Judge Bench of the Apex Court while dealing with the application for bail found that the accused had extended threats to the prosecutrix as well as her family members and material witnesses, including the father and sister of the prosecutrix, who were yet to be examined and held that the High Court should not have granted bail to the respondent ignoring all the material and substantial aspects which were the relevant considerations and thus cancelled the bail of the respondent. It was observed at para 24 that prime consideration before us is to protect the fair trial and ensure that justice is done. This may happen only if the witnesses are able to depose without fear, freely and truthfully and this Court is convinced that in the present case, that can be ensured only if the respondent is not enlarged on bail.

“We are conscious of the fact that the respondent is only an undertrial and his liberty is also a relevant consideration. However, equally important consideration is the interest of the society and fair trial of the case. Thus, undoubtedly the courts have to adopt a liberal approach while considering

bail applications of accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice-delivery system. It is this need for larger public interest to ensure that criminal justice-delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations. After all, if there is a threat to fair trial because of intimidation of witnesses, etc., that would happen because of wrongdoing of the accused himself, and the consequences thereof, he has to suffer.”

10. In the backdrop of these judgments and the contentions of each of the advocates and the learned Public Prosecutor, it is to be seen whether the circumstances of the case are such that liberty of the applicant is primary when weighed with the interest of the society at large considering also the contentions on behalf of the intervenors that they have been subjected to threat and intimidation at the instance of the applicant. At the outset and unlike the contention of Shri Talaulikar, the State in its reply had referred to the other accused as history sheeter and not to the present applicant

which is the first distinguishing feature in the applicant's favour. The medical certificates relied upon in the chargesheet reveal that the injured were inflicted injuries with blunt weapons and the outcome of such injuries were in the nature of contused lacerated abrasions and simple injuries. There is no statement on record which implicates the applicant in the commission of the crime and besides as rightly submitted by Shri De Sa there is no recovery at his instance when purportedly beer bottles, baseball sticks, swords, knives and such other instruments were used in the commission of the crime. Moreover, another factor which weighs in the applicant's favour is the submission on behalf of the learned Public Prosecutor that there is no evidence on record to show the direct involvement of the applicant in the crime and therefore his continued detention in custody would be at the peril of his liberty. No doubt the learned Additional Sessions Judge has made observations while dismissing the bail applications but the same were within the understanding of the Additional Sessions Judge while deciding the applications for bail.

11. Shri Talaulikar, learned Advocate for the intervenors, no doubt in all his anxiety had canvassed that the applicant

could prove a threat to the intervenors and the other witnesses, nonetheless in the absence of any prima facie material to connect him with the crime his detention in custody would not be conducive to a fair trial and otherwise be an undue hardship to the applicant for his continued detention in custody in a crime in which purportedly his role is not defined. In any event, the apprehension expressed by the intervenors can be laid to rest by imposing conditions on the applicant and materially being one of the cancellation of bail in the event it is brought to the notice of this Court that he is violating any of the conditions of bail including tampering with the witnesses or threatening or intimidating any of the witnesses.

12. In the result therefore i allow the application on the following terms and conditions:

- (i) The applicant shall be enlarged on bail on executing a Bail Bond in the amount of ₹50,000/- and one local surety in the coextensive amount to the satisfaction of the learned Additional Sessions Judge, Mapusa, Goa.
- (ii) He shall not intimidate or threaten the witnesses or otherwise thwart the course of justice.
- (iii) He shall not visit the village of Moira till

further orders and/or be near anywhere in the vicinity of the scene of crime.

(iv) In the event it is brought to the notice of this Court that there is a violation of any of the terms of bail, including intimidating or threatening the witnesses, the State shall seek with despatch the cancellation of his bail.

(v) The application accordingly stands disposed off.

NUTAN D. SARDESSAI, J.

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