

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 231 OF 2018

STATE, THR. CURCHOREM POLICE
STATION, CURCHOREM.,

... Applicant

Versus

HEMANT @ SARVESH DESSAI.,

... Respondent

Shri S.R. Rivankar, Public Prosecutor for the Applicant.

Shri Arun Bras De Sa with Shri Sidhesh Shet, Advocates for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 26th November 2018

P.C.

This is an application for cancellation of bail granted to the respondent. The respondent (accused no. 2) alongwith his mother (accused no. 1) were chargesheeted for the offence punishable under Section 302 read with Section 34 of IPC. The learned Sessions Judge by an order dated 19.06.2018 found that there is no prima facie case made out for framing of charge under Section 302 of IPC and instead has directed framing of charge for the offence punishable under Section 304 read with Section 34 of IPC. The learned Sessions Judge, by a separate order of the even date, has directed release of the respondent on bail. This application is filed by the applicant-State for cancellation of the said order.

2. I have heard Shri Rivankar, the learned Public Prosecutor for the applicant and Shri De Sa, the learned Counsel for the respondent. Perused record.

3. It may be mentioned that the applicant had filed Criminal Revision Application No. 48/2018, challenging the order dated 19.06.2018, by which, the learned Sessions Judge had refused to frame charge under Section 302 of IPC. That revision application has been allowed, directing framing of charge under Section 302 of IPC. That, however, in my considered view, would not be sufficient to cancel the bail. This Court has set aside the order refusing to frame charge under Section 302 of IPC, on the ground that normally, at the stage of prima facie consideration of the prosecution evidence, for the limited purpose of framing charge, the Court could not have come to the conclusion that there is no prima facie case for framing of charge under Section 302 of IPC. This Court also found that in such a case, it would be advisable that the Court frames charge under Section 302 of IPC.

4. In the result, the application is dismissed, subject however, to the condition that the applicant shall not influence or interfere with the prosecution witnesses in any manner. In the event, there is any attempt to influence or interfere with the prosecution

witnesses, the bail granted is liable to be cancelled.

C. V. BHADANG, J.

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