

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 228 OF 2018

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Shri Dhananjay Nilakant Bhave
Age 50 years,
Bhave Nivas, Near Mangueshi
Temple, Mangueshi, Mardol –
Ponda Goa. ...Petitioner /Applicant

Versus

- 1 State of Goa,
Through Police Inspector and
Police Station – in -charge,
Ponda Police Station,
Ponda- Goa.
- 2 Public Prosecutor, Respondents
Office of the Public Prosecutor,
Panaji – Goa.

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Shri Shashikant Narayan Joshi, Advocate for the appellant.

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

CORAM: NUTAN D. SARDESSAI, J.

RESERVED ON : 14th August, 2018.

PRONOUNCED ON : 16th August, 2018.

ORDER :-

1. The applicant seeks the benefit of bail in anticipation of arrest by his applications under Section 438 of Cr.P.C.

2. Heard Shri S.N. Joshi, learned Advocate for the applicant who submitted that he was secured with the order of anticipatory bail interregnum till his application came to be dismissed by the learned Additional Sessions Judge. There were no criminal antecedents of the applicant and besides his detention was sought to humiliate and malign him and his family. The victim in this case had first approached the Management of the temple on 26/06/2018 in respect of the alleged incident which took place on 22/06/2018 and there was no explanation for the delay nor any urgency shown to approach the police and the FIR came to be registered only on 19/07/2018 i.e. about 27 days after the incident. He placed

reliance in **State of Andhra Pradesh v/s. M. Madhusudhan Rao** [(2008) 15 SCC 582]. There was no necessity for the custodial interrogation of the applicant who was otherwise ready to co-operate with the police. He was originally from Goa and there was no scope for abscondance. The police were basically acting on the basis of pressure. He was ready to abide by any terms and conditions as may be imposed by this Hon'ble Court and therefore he had to be secured with the bail. Besides, the Committee had carried out the discreet enquiry based on the complaint lodged on behalf of the victim and there was no overt sexual act applicable to the applicant. The offence under Section 354 IPC was not at all made out and therefore he was entitled to the said relief. He relied in **Siddharam Satlingappa Mhetre v/s. State of Maharashtra and ors** [AIR 2011 SC 312] in support of his case.

3. Shri Arun Bras De Sa, learned Advocate for the intervenor vehemently opposed the application on the premise that there were no reasons to believe that the applicant had not committed any offence alleged against him. There was no reason to disbelieve the victim and there was no animosity too spelt out to implicate him falsely in the case. He placed reliance

in **Rupesh Samant v/s. State and others** [Crmaab No.242 of 2015] and pressed for the dismissal of the bail application particularly considering that the offence committed by the applicant was one of outraging the modesty of a young girl aged barely 21 years and that too within the sanctum sanctorum of the Mangeshi Devasthan.

4. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State too vehemently resisted the relief as prayed for by the applicant on the premise that the incident which had occurred in the temple precincts was absolutely shocking. No action was taken by the Committee on the complaint lodged at the instance of the victim and hence there was a delay in filing the complaint. Besides, the statement of one of the victims was recorded under Section 164 Cr.P.C. duly corroborating the contents of the complaint. He adverted to the ingredients of the offence of outraging the modesty under Section 354 of IPC and placed reliance in **S.P.S. Rathore v/s. Central Bureau of Investigation and another** [(2017 5 SCC 817)]. Despite the notice being issued to the applicant under Section 41A Cr.P.C. he was still absconding which showed his intention to evade the due process of law. The CCTV footage recovered from the

temple duly corroborated the version of the victim.

5. Shri S.R. Rivankar, learned Public Prosecutor further placed reliance in **C.B.I. V/s. Anil Sharma** [1997 0 AIR (SC) 3806] to buttress a plea that the custodial interrogation of the applicant was required in the facts of the case and distinguished the judgment in **Siddharam Mhetre** (supra). On a parting note he placed reliance in the order of the Apex Court in **Rev. Fr. Sony Verghese v/s. The State of Kerala** [Petition for Special Leave to Appeal (Cri) No. 5636/2018] and pressed for the dismissal of the application. Besides, Shri Rivankar, learned Public Prosecutor placed reliance on the FIR alongwith the complaint of the victim in the second offence registered against the applicant, the scene of offence panchanama drawn alongwith the sketch in the crime based on the complaint of the second victim and her statement recorded under Section 164 Cr.P.C. by the learned J.M.F.C.

6. In the connected bail application Shri S.N. Joshi, learned Advocate for the applicant adopted the arguments canvassed in the first bail application and brought out the variation only on the aspect of the date of the incident and the date of filing of the FIR and highlighted that the complaints lodged in both the

cases were by the persons other than the victims themselves. The presence of other similar offences against the applicant was not a ground for the custodial interrogation and therefore he was to be secured with the order of bail in this offence too.

7. Shri S.R. Rivankar, learned Public Prosecutor insofar as the second offence was concerned submitted that the statement of the victim (name withheld) was in the process of being recorded via video conferencing since she was an U.S. National. It was his argument on a parting note that a balance had to struck between the need and interest of the society viz a viz the liberty of the accused as culled out in Siddharam Mhetre's case and pressed for the dismissal of the application.

8. i have considered their submissions, perused the records and the judgements relied upon by them.

9. In **M. Madhusudhan Rao** (supra), there was delay in filing an FIR, nonetheless the Trial Court found the accused guilty of the offence punishable under Section 498A IPC and sentenced him to undergo simple imprisonment for one year. In appeal the High Court set aside the conviction. The question which arose in the appeal before the Hon'ble Apex Court was

whether the High Court was justified in acquitting the respondent on the count of delay and held that the delay in lodging the FIR, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained. The Apex Court found that there was no need for interference in the judgment of the High court and dismissed the appeal. This was held on the merits of the case upon a full dress trial and not at an interlocutory stage. It is always open to the applicant to canvass the point of delay to resist the proceedings against him as and when the charge-sheet is filed against him but at this stage, it is not a ground to be looked into while considering the propriety of deciding the application for bail, either way, hence the respectful departure.

10. In **Siddharam Mhetre** (supra), a plea was taken on his behalf that personal liberty is the most important fundamental

right guaranteed by the Constitution and that it was the fundamental principle of criminal jurisprudence that every individual is presumed to be innocent till he or she is found guilty. It was also submitted on his behalf that on a proper analysis of Section 438 Cr.P.C. the legislative wisdom became quite evident that the legislature wanted to preserve and protect personal liberty and give impetus to the age-old principle that every person is presumed to be innocent till he is found guilty by the court. However the Hon'ble Apex Court while dealing with the parameters for the exercise of the power under Section 438 Cr.P.C. observed that there were no inflexible guidelines or straitjacket formula provided for the grant or refusal of anticipatory bail and that no attempt should be made to provide rigid and inflexible guidelines in that respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail.

11. Siddharam Mhetre (supra), however laid down certain factors and parameters which were to be taken into consideration while dealing with the anticipatory bail namely (i) The nature and gravity of the accusation and the exact role of the accused being comprehended before arrest is made; (ii)

The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment or conviction; (iii) The possibility of the accused fleeing from justice; (iv) The possibility of the accused's likelihood to repeat similar or the other offences; (v) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people; (vi) evaluation of the entire available material very carefully and comprehending the exact role of the accused in the case; (vii) a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused; (viii) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; and (ix) frivolity in prosecution.

12. In **Rupesh Samant** (supra), the applicant had committed a series of offences and that too assault on women with intent to outrage their modesty. A learned Single Judge of this Court found from a reading of the contents of the FIR that each of the woman in clear terms had stated what the applicant/accused had done with them and found that the delay

in lodging the FIR was explained which appeared to be probable because the victims were unmarried girls at the time of incident. The learned Judge further observed that the acts of the applicant/accused were a serious crime against women and it could not be expected from the women to lodge the complaint immediately because the very reputation or honour of the women was at stake. Besides it was common knowledge that whenever such incident had taken place with the girls/women before filing the complaint or matter being public, they would think 100 times and then decide, whether a complaint is to be lodged or not. The learned Judge had considered the judgment in Siddharam Mhetre (supra) and ultimately found that no case was made out and dismissed the application for anticipatory bail.

13. In **S.P.S. Rathore** (supra), the Apex Court observed at paragraph Nos.42, 43 and 46 as below:

“42) In order to constitute the offence under Section 354 of the IPC, mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be

adopted by the court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under Section 354 IPC are as under:

- (i) that the person assaulted must be a woman;
- (ii) that the accused must have used criminal force on her; and
- (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

43) This Court, in Vidyadharan vs. State of Kerala [(2004) 1 SCC 215], held as under “10. Intention is not the sole criterion of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight”

46) With regard to the delay of about 6 days in presenting the complaint to the SHO, this Court is of the view that the same has been duly explained. In a tradition-bound non-permissive society in India, it

would be extremely reluctant to admit that any incident which is likely to reflect upon chastity of a woman had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. In the instant case, the victim(name withheld) not informing about the incident to the parents under the circumstances that the appellant- accused, who being a very senior police officer of the State, was reasonable and it would not have been an easy decision for her to speak out. In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she has undergone and felt terribly embarrassed in relation to the incident to narrate it to her parents and others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to anyone, lest the family name and honour is brought into controversy. After informing the incident to her parents, the follow up action was immediately taken by the residents and the fellow players and a Memorandum containing allegations against the appellant-accused was prepared and submitted before the then Secretary (Home). Therefore, giving a due consideration to the appellant- accused, once the victim and her family members got assurance of justice from the superior authorities, they lodged a formal complaint against the appellant-accused.

14. In **Anil Sharma** (supra), the Hon'ble Apex Court found

force in the submissions of the appellant CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated. Very often interrogation in such a condition would be reduced to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

15. In **Rev. Fr. Sony Verghese** (supra), Their Lordships of the Apex Court on going through the entire records as well as the impugned order of the High Court by which their application

for anticipatory bail had been rejected, found that in order to take a final view in the matter it was necessary to find out the status of investigation carried out by the Investigating Officer and directed a status report to be filed before the next date of hearing i.e. 06/08/2018. Subsequently, on 06/08/2018 Their Lordships on going through the report submitted by the Deputy Superintendent of Police and hearing the counsel of the parties as well as the complainant were of the view that no case for anticipatory bail was made out and the petitioners were directed to surrender and apply for regular bail. It kept open to the petitioner to raise all the grounds which were raised in this application for bail including the ground that the other two accused persons had been granted bail.

16. i have also perused the complaint of the victim girl in the FIR No.149 of 2018 lodged in respect of the offence which took place on 14/06/2018 in which she had given a clear narration of what had transpired while she was in the sanctum sanctorum of the Mangeshi Temple and how the accused had outraged her modesty while she was in the sanctum sanctorum. By no stretch of imagination can it be heard on behalf of the applicant that the applicant had given a mere pat on the shoulders of the

victim on account of their long association as Mahajans of the temple and frequent visitors to the temple. The victim has narrated at length the trauma which she had undergone on account of the misconduct and misdemeanour the accused / applicant and ultimately pressing for action to be taken against the applicant. The statement of the same victim recorded under Section 164 Cr.P.C. corroborates her version in the complaint in material particulars which gives a fair indication of what transpired in the sanctum sanctorum of Mangeshi temple and which is quite unlike what is sought to be contended on the applicant's behalf by Shri Joshi, learned Advocate to the contrary. From the material on record it is apparent that as of now there are two complaints against the applicant which reveal his involvement in the commission of the offence punishable under Section 354 IPC involving two young and unmarried girls and which had taken place in the sanctum sanctorum of the temple. The applicant was otherwise a priest and was expected to conduct himself with dignity and restraint in his conduct as a priest in the temple and him acting contrary thereto in violation thereof and that too to the extent of outraging the modesty of the victim girls cannot at all be countenanced. There is also no reason to disbelieve the victim's version when no animosity too

had been shown at their instance towards the applicant to implicate him in the crime but for its commission by him. The applicant to all intents and purposes is like a wolf in sheep's clothing preying on young, innocent, nubile girls to satisfy his sexual urges which cannot be at all condoned for any reasons whatsoever. There is a clear breach of trust which a devotee reposes in such a person who is treated as an intermediary between the divine and the devotee.

17. The applicant had not at all made himself available for interrogation which is necessary to find out the actual role played by him, what transpired within the precincts of the sanctum sanctorum of the temple and the particulars of similar crimes committed by him while preying on innocent young girls under the garb of discharging his divine functions. To make the matter worse, the applicant was ensconced with an interim relief of bail pursuant to the order of the learned Additional Sessions Judge, Ponda which protective shield continued till the application for anticipatory bail came to be rejected thereby further delaying the course of investigation. The contention of Shri Joshi, learned Advocate that there was a delay in lodging the complaint at the instance of both the victims are matters

which the applicant is at liberty to canvass at the trial of the matter and when it is heard on merits and i am not influenced by his submissions in that regard that the delay in lodging of the complaint should enure to his benefit.

18. The other submission of Shri S.N. Joshi, learned Advocate for the applicant that the applicant is originally from Goa and there is no scope for abscondence is negated by his very conduct to keep himself at large from the long arm of law when he is reportedly not traceable despite due efforts of the police and inspite of the notice under Section 41A CrPC being served at his address. A reasonable balance is required to be struck between the liberty of the applicant on the one hand and the need of the society and considering the same, the need of the society looking to the nature of the offence alleged against him needs to outweigh the liberty of the applicant. The impact on the community and society at large due to such brazen acts of the applicant also cannot be wished away for the mere asking and which has shaken the confidence of the general public in the priest community at large.

19. i also do not find any merit in the contention of Shri Joshi, learned Advocate for the applicant that his detention is

sought only to humiliate and malign him when no animosity is shown of any of the victim and/or their family qua the applicant or any personal score to be settled in that regard. Rather the laidback attitude of the Management of the temple has contributed to the delay in lodging the complaint at the instance of each of the victims and who had not chosen to proceed against the applicant for reasons best within their knowledge. The statement of the other victim who is an US citizen is admittedly in the process of being recorded via video conferencing though that of the other victim has been recorded by the Magistrate under Section 164 CrPC. Looking to the nature of the offence, the impact on the victims at large apart from their families, it cannot at all be heard on the applicant's behalf that the victims were trying to make a mountain out of a molehill when the trauma experienced by one of the victim is palpable on a bare reading of her complaint and also her statement recorded under Section 164 CrPC. The possibility of the applicant tampering with the witnesses cannot be ruled out as remote. The custodial interrogation of the applicant is necessitated in the factual matrix to unearth the other similar offences against him apart from the details of these two crimes against him under Section 354 IPC. The custodial interrogation

is elicitation oriented and therefore keeping him cushioned with an order of bail in anticipation of arrest would very much frustrate the cause of investigation. No case whatsoever is made out for ordering his release on bail in anticipation of arrest.

20. In view thereof i do not find any merit in these applications which are dismissed.

NUTAN D. SARDESSAI J.

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