

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 274 OF 2017

ROY ROSARIO FERNANDES., ... Applicant

Versus

STATE OF GOA, THR. PUBLIC
PROSECUTOR AND ANR., ... Respondents

Shri Nitin Sardessai, Senior Advocate with Shri Vibhav Rajiv Amonkar, Advocate for the applicant.

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

Shri A. R. Kantak and Ms. Rajas Kantak, Advocates for the intervenor.

Coram:- C. V. BHADANG, J.

Date:- 12th March 2018

P.C.

This is an application for grant of pre-arrest bail.

2. The applicant is apprehending arrest in connection with the investigation of Crime No.316/2015, registered with Police Station, Panaji under Sections 196, 201, 417, 420, 406, 424, 463, 464, 465, 467, 468 and 470 read with Section 34 of Indian Penal Code (IPC, for short).

3. The applicant happened to be the Director of a Company by name M/s. Dolce Vita Private Limited. The applicant resigned

as a Director on 15/03/2001. Admittedly, the complainant Robert Capone is one of the Directors of the said Company. The father of the applicant also happens to be the Director of the said Company.

4. Mr. Robert Capone had lodged a complaint on 24/02/2012, alleging that the applicant had fabricated a document styled as a Power of Attorney dated 23/08/2005, purportedly executed by the complainant in favour of the applicant. It was further alleged that on the basis of the said Power of Attorney, the applicant had given certain property belonging to the Company on Leave and Licence to Mr. M/s. Crystal Clear Entertainment Pvt Ltd on 15/02/2011, which was for a period of 3 years and misappropriated the amount received in the said transaction. It is also alleged that the applicant fraudulently represented himself as the Director of the Company while executing the Leave and Licence Agreement.

5. Indisputably, the applicant has since deposited an amount of Rs.15 Lakhs with the Company. Not only that Leave and Licence Agreement has come to an end. The learned Senior Counsel for the applicant, on instructions, submitted that the property, which was subject matter of Leave and Licence Agreement is presently not in the possession of the applicant or his wife.

6. I have heard Shri Sardessai, the learned Senior Counsel for the applicant, Shri Rivankar, the learned Public Prosecutor for the respondents and Shri Kantak, the learned Counsel for the complainant/intervenor. With the assistance of the learned Counsel for the parties, I have gone through the record.

7. Prima facie, at this stage, it appears that the amount of Rs.15 Lakhs is shown as having been received by the Company in the balance sheet for the year ending 31/03/2011. That balance sheet is signed by the complainant as one of the signatories. The respondent State, in its reply, has claimed that the custody of the applicant is required for purposes of obtaining his specimen handwriting and to obtain possession of the Power of Attorney dated 23/08/2005. In so far as the specimen signature is concerned, this Court while granting ad interim relief on 17/10/2017, had ordered the applicant to furnish specimen handwriting. A specific statement is made on behalf of the applicant that he has furnished his specimen handwriting to the Investigating Officer.

8. In so far as the Power of Attorney is concerned, prima faice, at this stage, it appears that the Investigating Officer had recorded a statement of the concerned Notary Advocate Mr. D. S. Petkar and it transpires that according to Mr. Petkar, the

complainant along with the applicant, had approached the Notary and the Power of Attorney was executed. Not only that it has transpired during the course of investigation that the Notary Public had handed over the original Power of Attorney to the executant i.e. the complainant.

9. On behalf of the applicant, reliance is placed on the decision of the Supreme Court in the case of HARSH SAWHNEY VS. UNION TERRITORY (1978)2 SCC 365, in order to submit that merely for purposes of taking search or recovery of document, the custody of the accused is not necessary.

10. In my considered view, that the custodial interrogation or the custody of the applicant would not be necessary for obtaining the possession of the Power of Attorney, particularly when prima facie, it is shown that the concerned Notary had handed over the Power of Attorney to the executant, which would mean the complainant.

11. Considering the overall circumstances, I do find that this a case where the custodial interrogation of the applicant would not be necessary.

12. In such circumstances, the application is allowed in the following terms :

- (i) In the event of his arrest in connection with investigation in Crime No.316/2015 of Police Station, Panaji, the applicant shall be released on bail on executing a P. R. Bond in the sum of Rs.25,000 with one or two solvent sureties in the like amount.
- (ii) The applicant shall co-operate with the Investigating Agency as and when required and shall not tamper with the prosecution evidence or witnesses.
- (iii) The applicant shall surrender his passport before Investigating Officer, if not already surrendered.
- (iv) In the event of breach of any of the conditions, the order is liable to be cancelled.

C. V. BHADANG, J.

SMA