

IN THE HIGH COURT OF BOMBAY AT GOA.

**CRIMINAL APPLICATION (BAIL) NOS.311 OF 2017 AND 312
OF 2017.**

CRIMINAL APPLICATION (BAIL) NO.311 OF 2017.

Sunny Sundar Naik. Applicant.

Vs.

State of Goa, Thr. Police

Inspector,Ponda Police Station,

Ponda and anr.

.... Respondents.

WITH

CRIMINAL APPLICATION (BAIL) NO.312 OF 2017.

Saish Ulhas Naik. Applicant.

Vs.

State of Goa, Thr. Police

Inspector,Ponda Police Station,

Ponda and anr.

.... Respondents.

Shri Pavithran A. V., Advocate for the applicant in both the applications.

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

Coram:-PRITHVIRAJ K. CHAVAN,J.

Reserved on:30th January, 2018.

Pronounced on:1st February, 2018.

ORDER:

These two applications seeking anticipatory bail can be disposed of by a common order as both the applicants have raised similar grounds who are alleged to be involved in Crime No. 291/2016 under Sections 143, 147,148,341,427, 307, 392 read with Section 149 of IPC alongwith four more accused out of which two

accused have already been released on bail.

2. Incident in question occurred on 16.10.2017 at 17.00 hours near Sahakari Petrol Pump. The applicants alongwith other accused namely Subham, Sohail, Gotya, Sunny and others in furtherance of their common object formed an unlawful assembly, and while riding motorbikes restrained complainant Abhijeet Harmalkar who was proceeding in his Swift Car No.GA-03-R-3921 while returning from Mollem. It is alleged that there were two riders with Duke bikes alongwith two pillion riders which were proceeding ahead of the complainant's car. Riders were riding the bikes parallel to each other. Complainant over took the riders and when the complainant reached 200 metres ahead of Duke bike, one of them came overtaking and dashed the complainant's car on the right side and went ahead. Complainant stopped his car and requested other rider to stop his bike. He asked the rider about the identity of the other bike rider which had dashed the complainant's car. However, said bike rider expressed his inability to identify the bike rider who dashed against the complainant's car. The said bike rider requested the complainant's friend namely Agnelo to sit on his bike and asked the complainant to follow him to catch the rider. The pillion rider who occupied the complainant's car informed his name as Subham and the name of the rider as Sohail and they proceeded further. When they reached near Sahakari Petrol Pump

at Curti Ponda, complainant noticed that the bike rider and the Pillion riders who gave dash to his car and also bike rider on which complainant's friend Agnelo seated were assaulting his friend Agnelo by pinning him on the ground and assaulting with danda in order to kill him. After noticing the complainant all of them suddenly pounced on complainant's car by putting big boulders and stones due to which there was damage to the complainant car. They climbed on the bonnet and started kicking the same. It is also alleged that all of them started attacking the complainant and his friend with stick and danda. Two of them had knife in their hand. After sometime as there was a crowd, all of them fled away from the spot with their bikes. It is also alleged that they had robbed 15000/- and mobile cell phone.

3. I heard Shri Pavithran A. V., the learned Counsel for the applicants. In short it is submitted by the learned Counsel for the applicants that it is a case of road rage; there was no previous enmity between the complainant and the applicants and there is no question of attempting to commit the murder of either complainant or his friend. The incident occurred at the spur of the moment and in a heat of passion. It is also submitted that there is no specific role attributed to the applicants. It is further argued that two of them have already been released on bail and, therefore, the applicants who claimed to be law abiding citizens with no

criminal antecedent who needs to be protected by granting anticipatory bail. It is also submitted that more than one year has passed after the incident and no custodial interrogation is required.

4. On the other hand, learned Public Prosecutor though opposed the release of the applicants submits that if the applicants co-operate with the investigating officer then applications may be considered only after looking to their conduct. In reply filed by the PSI, Ponda Police station, it is stated that anticipatory bail application moved by the applicant Sunny came to be rejected by the Sessions Judge Panaji and since then he is evading arrest. Since the investigation is in progress the investigating officer seeks custodial interrogation of the applicant to recover the weapon of assault used at the time of commission of the offence. It is also stated that identification parade of the applicants are required to be carried out. It is also stated that incase of their release the applicants may threaten the complainant and their witnesses and their family members which may hamper investigation.

5. After hearing respective sides on 22.1.2018, the learned Counsel for the applicants submitted that the applicants would co-operate with the police on the very next date. Today the learned Public Prosecutor made a statement that the applicants have been co-operating with the Investigating Officer.

6. It can be seen that the incident in question had occurred more than one year ago and from the perusal of the statement of the witnesses and the record, it appears that it is a case of road rage as submitted by the learned counsel for the applicants. It is not the case of the complainant that there was some prior enmity between him and the applicants. As such, there is no question of applicants carrying any intention to commit murder of the complainant or his friend. It appears that the incident in question took place in a heat of passion and at the spur of moment due to a dash to a complainant's car by the bike of one of the accused. In the say of respondent no specific role has been attributed to the applicants as to what they did. Offence is not that grave as tried to be suggested by the Investigating Officer. It is even not the case of the prosecution that the applicants have previously undergone any conviction or have any criminal antecedent. It appears that both the applicants are young boys aged about 23 and 25 respectively.

7. It is also submitted by the learned Counsel for the applicants that there was no question of not co-operating or avoiding the arrest as they have not received any notice or summons from the police under Section 41A of the Cr.P.C. which is mandatory. The applicants are now co-operating with the

Investigating Officer and, therefore, there is no question of their custodial interrogation, therefore, there is no question of recovery of weapon as it is not the case of the Investigating Officer that the applicants used knife or any other dangerous weapon at the time of incident. No fruitful purpose would be served by refusing anticipatory bail to the applicants as more than one year has been passed from the date of the incident. There would be no question of causing any prejudice to the free, fair and full investigation as the applicants are now co-operating with the Investigating Agency and, therefore, there is no need of their unjustified detention. Keeping in mind the guidelines framed by the Hon'ble Supreme Court in the case of ***Siddharam Satlingappa Mhete Vs State of Maharashtra, (2011) 1 SCC 694***, the prayer can be granted by imposing certain conditions. Now, to the order:-

ORDER

- i. Criminal Application (Bail) Nos.311 of 2017 and 312 of 2017 are allowed.
- ii. In the event of their arrest each of the applicant shall be released on executing personal recognition bond in the sum of ₹30,000/- with two solvent sureties in the like amount on the following conditions:-
- iii. Each of the applicant shall attend Ponda Police Station on every Sunday, Wednesday and Friday between 11.00 a.m to 1.00 p.m till the completion of the investigation.

- iv. Applicants shall not directly or indirectly make any inducement or threats or promise to complainant or any of the witnesses.
- v. Applicants shall surrender their passports, if they possess, before the Investigating Officer.
- vi. Applicants shall not leave the State of Goa without seeking prior permission of the Investigating Officer.
- vii. Applicants shall furnish their mobile numbers to the Investigating Officer.
- viii. Bail bonds shall be furnished before the learned Magistrate.

9. In view of the above, applications stand disposed of.

PRITHVIRAJ K. CHAVAN,J.

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