

IN THE HIGH COURT OF BOMBAY AT GOA

Criminal Application (Bail) NO.330/2017

Deepak @ Vishnu Shashikant Naik Applicant.
Thr.His Next Friend, Mila Mithun Sawant

Versus

State of Goa and another.	Respondents
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Mr. Damodhar Dhond with Mr.Vibha Rajiv Amonkar,
Advocates for the applicant.
Mr. S.R.Rivankar, Public Prosecutor for the respondents.

**CORAM : PRITHVIRAJ K.CHAVAN, J.
ORDER RESERVEDE ON : 16/1/2018
ORDER PRONOUNCED ON :29/1/2018.**

ORDER:

1. By this application, under Section 439 of the Code of Criminal Procedure, the applicant has prayed for his release on bail, who is being prosecuted in Crime No.131/2017 under Sections 342, 354, 324, 306 and 506 read with Sections 34 and 511 of Indian Penal Code and Section 8 (2) of the Goa Children's Act, 2003.

2. Earlier application for bail moved by the applicant before the Children's Court came to be rejected by an order dated 14th December, 2017 on the ground that there was possibility of the applicant threatening the

victim boy.

3. Heard Mr. Dhond, the learned counsel for the applicant.

4. It is submitted that the applicant was arrested on 5.9.2017 and is in custody for more than three months. After filing the charge-sheet, three accused have already been released on bail except the applicant and, therefore, his release is sought on the ground of parity. Secondly, it is submitted that the trial Court has deleted Section 354 of IPC from the Charge and, therefore, except Section 506 of IPC, other offences being bailable, the applicant is entitled to be released on bail. It is also submitted by the learned counsel that despite attaching mobile of the applicant, there was no clip found and none of the witnesses have stated about the assault by the applicant on the victim boy. The applicant has no criminal background. He is a permanent resident of Goa and, therefore, the learned counsel has prayed for his release on bail.

5. On the other hand, the learned Public

Prosecutor has strongly objected the release of the applicant on bail by contending that he is a habitual child abuser against whom there are already two Crimes registered bearing Crime No.133/2017 under Sections 354, 376, 506 of IPC read with Section 8 (2) of the Goa Children's Act, 2003 and Section 4 of POSCO Act and Crime No. 134/2017 under Sections 363, 376 and 506 of IPC read with Section 8 (2) of the Goa Children's Act, 2003 and Section 4 of POCSO Act.

6. The copies of the charge-sheet in CR No.133/2017 reveal that the applicant is being prosecuted under Sections 354, 376 and 506 of IPC read with Section 8 (2) of the Goa Children's Act, 2003 and Section 4 of POSCO Act. It appears from the said charge-sheet that the applicant had outraged the modesty of the victim girl when she was studying in VIII standard by removing her skirt and underwear and taking a video clip. On the second occasion, he had a sexual intercourse with the said victim girl without her consent at Deulwada Palyem Pernem Goa by putting her into a fear of uploading the said video clip on internet.

7. In CR No.134/2017, the applicant is being prosecuted under Sections 363, 376 and 506 of IPC read with Section 8 (2) of the Goa Children's Act, 2003 and Section 4 of POSCO Act. In the said case, the applicant along with other accused kidnapped the victim girl who was then aged 16 years from her lawful custody, took her at a lonely place at Manos (Fish Pond) at Kiranpani Keri Pernem and abused her sexually on two occasions by inserting finger into her private part and also threatened her to upload her picture on the internet. Even though, these are two different offences but, it is a relevant fact which indicates the tendency and propensity of the applicant in committing such offences, which are quite serious in nature and hazardous to the society at large.

8. Coming back to the case at hand, the statement of the victim boy indicates that as back as when he was studying in VI standard (now, he is studying in IX standard) the applicant along with other accused took him in a room when he had gone to the Fish Pond, removed his clothes, took his video and threatened him to upload the same. They also took the video of the victim boy by forcing him to smoke cigarette. Because of such

repeated acts, the victim boy was mentally disturbed to such an extent that he appears to have written a suicide note, which reveals the name of the applicant, who used to force the victim boy to commit theft else, he would upload the video on the U-tube. The note, which appears to be in the handwriting of victim boy, also reveals that he was so fed-up with his life that he wanted to commit suicide.

9. The complaint in this case lodged by the father of the victim boy dated 5.9.2017 also indicates that one Akshay Sawant had informed him that the applicant had taken a naked video of the complainant's daughter and that he had seen the said video on the applicant's mobile phone. It appears that said Akshay Sawant is a friend of complainant's daughter, with whom, perhaps, he wants to marry. It also reveals that the victim boy had attempted to commit suicide by consuming phenyl on 1.9.2017. As regards the truthfulness of the contents of the complaint, it can be ascertained during the course of trial.

10. Even the statement of the victim boy clearly shows that the applicant had also taken his sister's video

on his mobile.

11. The statement of sister of the victim boy reveals that she used to call the applicant as "Kaka" (uncle). When she was in VIII standard, the applicant called him near a spring. He removed her skirt and underwear. He thereafter took a video wherein he was touching her and thereafter, he threatened that he would upload the video on internet. The girl got scared. Thereafter, the applicant appears to have sent a message to the said girl through one neighbouring girl that if she does not meet him he would put the video on internet. The victim's sister was scared and, therefore, she went to meet the applicant with her neighbouring girl. The applicant took her inside a temple and told her that he would delete the video, if she allows him to have sex. Thereafter, the applicant removed her clothes, made her lie on the floor and had sex with her in front of her neighbouring girl. Thereafter, whenever the applicant used to be in a group and pass by the said girl he would tell them that he has a video. The statement of victim's sister finds support from the statement of neighbouring girl also in material particulars. The statement of neighbouring girl speaks

volume, which itself, sufficient along with other material on record, to refuse bail to the applicant. In fact, the neighbouring girl also was victim of the applicant.

12. The victim boy and his sister have also given statements under Section 164 of the Code of Criminal Procedure before the learned JMFC.

13. Medical report of sister of the victim boy indicates that the hymen was not intact and there was evidence of prior sexual intercourse. Similar is the medical evidence of another victim girl (neighbouring girl). The date of birth of victim's sister is 19.8.1999 as per the birth certificate issued by the Municipal Council and that of victim boy is 8.8.2002.

14. While rejecting the application for bail, the learned President of the Children's Court has rightly taken into account the age of the victim boy, the suicide note and the other material on record by observing that there is every possibility of threatening the boy and other material witnesses and, therefore, rightly rejected the application.

15. There is no question of parity as the role of the applicant is distinct than the rest of the accused. It is clear that the applicant is directly involved in the act of molesting the victims. On the ground of parity, the learned counsel for the applicant, has placed reliance on the case law of this Court, reported in **2016 SCC OnLine Bom 12615 : Rajendra Mangal Pawar Vs. The State of Maharashtra**. In the said case, the role attributed to the applicant was same and similar to that of the other accused and, therefore, on the ground of parity he was enlarged on bail.

16. As already stated above, the role of the applicant in this case is distinct and is not similar to that of the other accused, who have been released on bail and, therefore, this ratio would not be of any help to the applicant.

17. Having taken into consideration the material on record more particularly, the propensity of the applicant, it would be unsafe to release the applicant on bail, as the chances of committing similar offences by him, cannot be ruled out. There is also possibility of influencing the

prosecution witnesses.

18. Thus, the application is devoid of merits and, therefore, its stand rejected.

PRITHVIRAJ K.CHAVAN, J.

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