

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NOS. 20 & 24 OF 2019
CRIMINAL APPLICATION (BAIL) NO. 20 OF 2019

Ashvek Yeshwant Valvalkar Applicant

Versus

State & Another Respondents

Mr. S.D. Lotlikar, Senior Advocate with Mr. Jayant Umesh Karn,
Advocate for the Applicant.

Shri Mahesh Amonkar, Additional Public Prosecutor for the
Respondents.

CRIMINAL APPLICATION (BAIL) NO. 24 OF 2019

Suryesh Pandurang Arolkar Applicant

Versus

State & Another Respondents

Mr. S.D. Lotlikar, Senior Advocate with Mr. Nilesh Amonkar,
Advocate for the Applicant.

Shri Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

CORAM : C.V. BHADANG, J.

DATE : 2nd February, 2019.

ORAL ORDER:

The applicants in these applications are the original accused nos. 2 and 3, who alongwith others, have been chargesheeted for the offence punishable under Sections 143, 147, 148, 324, 326, 307 read with Section 149 of IPC and Section 25 and Section 27 of the Arms Act. Both the accused were arrested on 01.02.2018.

2. The prosecution case is that on 18.12.2017 at about 13:45 hours at Popular Bar and Restaurant at Moira, Bardez, Goa, the present applicants alongwith four others had allegedly formed an unlawful assembly with deadly weapons and assaulted the complainant, Mr. Sandesh Naik and his friends, namely, Mr. Ravi Naik and Mr. Mahadev @ Sunny Morajkar with sword, knife, baseball sticks, causing injuries to the complainant and Mr. Morajkar and severe injuries to Mr. Ravi Naik.

3. On the basis of the complaint lodged by Mr. Sandesh Naik, an offence at Crime No. 409/2017 with P.S. Mapusa came to be registered and after investigation, a chargesheet is filed against the applicants and four others. The matter has been committed to the Court of Sessions and is fixed for hearing on framing of charge.

4. It is a matter of record that accused no. 4, Mr. Vinay Gadekar was released on bail by this Court as per order dated 07.08.2018 in Criminal Application (Bail) No. 199/2018, *inter alia* on the ground that there were no statements of witnesses, implicating the accused no. 4, Mr. Vinay Gadekar and on the ground that there was no recovery at his instance and *prima facie*, there was no direct involvement of the said accused found in the offence.

5. Yet another accused no. 5, Mr. Sunny Mithapara was released on bail on 10.09.2018 in Criminal Application (Bail) No. 267/2018 as it was not disputed on behalf of the State that the said accused is similarly situated with accused no. 4, Mr. Vinay Gadekar. The accused no. 6, Mr. Vijay Karbotkar, is also released on bail by the learned Sessions Judge, on the ground of parity. It transpired during the course of the arguments at bar that the intervenors, Mr. Sandesh Naik and Mr. Ravi Naik did not object to the release of the said accused on bail.

6. I have heard Mr. Lotlikar, the learned Senior Counsel for the applicants, the learned Additional Public Prosecutors for the respondents and Mr. Talaulikar, the learned Counsel for the intervenors.

7. The applicant-Suryesh had earlier approached this Court in Criminal Application (Bail) No. 236/2018, which application was withdrawn on 10.09.2018, with liberty to move the learned Sessions Judge for bail, after examination of material witnesses, namely, Sandesh Naik, Sunil Mulgaonkar, Sudesh Kamurlekar, Shiva Rathod and Mahadeo Morajkar. However, it is pointed out that the trial has not moved further and even the charge is yet to be framed.

8. The applicant, Ashvek had also earlier filed an application for bail (Stamp No. 3893/2018), which was withdrawn on 17.01.2019.

9. Mr. Lotlikar, the learned Senior Counsel for the applicants submitted that the name of the applicant, Ashvek does not figure in the FIR and therefore, parity may be extended to him. Even insofar as the accused, Suryesh is concerned, it is submitted that he is in custody for more than a year and the investigation is complete and his continued incarceration may not be necessary.

10. The learned Additional Public Prosecutor has opposed the application. It is contented that the accused, Suryesh is named in the FIR and also by the witnesses. Even insofar as the accused, Ashvek is concerned, he is also named by the witness, Ravi Naik in his statement recorded on 20.12.2017. The learned Additional Public Prosecutor also pointed out certain instances in order to claim that there is likelihood of interference with the prosecution witnesses, as there is dispute between the parties on account of a sluice gate at Moira.

11. I have given my anxious consideration to the rival circumstances and the submissions made and I find that

discretion cannot be exercised in favour of the applicants, at this stage. As noticed earlier, this Court while permitting the withdrawal of the bail application of the applicant, Suryesh had granted liberty to move afresh after examination of the aforesaid material five witnesses. It is true that trial has not proceeded and the witnesses are not yet examined. However, that itself may not be sufficient to grant bail to the applicants, looking to the nature of the offence and the apprehension expressed on behalf of the State.

12. In such circumstances, the applications are dismissed with liberty to the applicants to renew the request after a period of three months or after examination of the witnesses, namely, Sandesh Naik, Sunil Mulgaonkar, Sudesh Kamurlekar, Shiva Rathod and Mahadeo Morajkar, whichever is earlier. The learned Sessions Judge shall proceed to conduct the trial as expeditiously as possible.

C.V. BHADANG, J.

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