

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 88 OF 2019

George Jacob Tharagan ... Applicant

Versus

State of Goa & Anr. ... Respondents

Shri Vibhav Amonkar, Advocate for the Applicant.
Shri S.R. Rivankar, Public Prosecutor for the Respondents-State.

Coram:-NUTAN D. SARDESSAI, J.

Date:-22nd April, 2019

P.C.:

Heard Shri Vibhav Amonkar, learned Advocate for the applicant and Shri S.R. Rivankar, learned Public Prosecutor for the respondents-State.

2. It was the contention of Shri Vibhav Amonkar, learned Advocate for the applicant that the applicant was neither the owner nor exercised control over the garage. As such, the ingredients of the offence of criminal breach of trust as defined under Section 406 IPC were not made out. The applicant had otherwise a tanker business with his wife and in that regard he placed on record a copy of the Partnership Deed dated 03/02/2017. It was his further contention that it was also not the case of the complainant that the truck was entrusted to the

applicant. It was a fit case therefore to secure the applicant with the benefit of bail in anticipation of arrest. Moreover, the recovery of the truck was not a ground for justifying the detention of the applicant in custody and hence the application had to be allowed. He placed reliance in **Miss Harsh Sawhney V/s. Union Territory (Chandigarh Admn.) [(1978) 2 SCC 365]** and in **Siddharam Satlingappa Mhetre V/s. State of Maharashtra & Ors. [(2011) 1 SCC 694]** to substantiate his case.

3. Shri S.R. Rivankar, learned Public Prosecutor for the respondents on the contrary submitted that the statements on record indicated the involvement of the applicant in the crime and therefore the application had not to be granted and had to be dismissed.

4. i have considered their submissions and besides perused the say filed on behalf of the State opposing the application for bail in anticipation of arrest. i have also considered the Deed of Partnership alongwith the annexures which clearly reveal that the applicant was in partnership business with his wife in the matter of supply of water by tankers and that he was himself

the registered owner of four tankers. i have considered the judgment in **Miss Harsh Sawhney** (supra), where it was held that the presence of the applicant was not necessary for making a search and recovery of the document and that custody was not necessary for that purpose. Besides, i have also considered the predicates of grant of bail in anticipation of arrest as spelt out in the case of **Siddharam S. Mhetre** (supra).

5. Last but not the least, i have considered the statements relied upon by the learned Public Prosecutor making reference to the statement of one of such persons indicating that the applicant was the partner of the main accused in the crime which by itself is not a ground to deny the benefit of bail in anticipation of arrest. Even from the statements it is not apparent that the applicant had dominion over the property in question as to be liable prima facie for the offence of the criminal breach of trust. The recovery of the truck to my mind is also not a ground for justifying the detention of the applicant in custody. Having thus considered the judgments relied upon (supra) and the statements recorded on behalf of the State, i do not find it a fit case to deny the applicant the benefit of bail in anticipation of arrest.

6. In the result, the application is allowed on the following terms and conditions:

(i) In the event of arrest, the applicant shall be enlarged on bail on executing a Bail Bond in the amount of ₹15,000/- with one surety in the like amount to the satisfaction of the learned JMFC, Margao.

(ii) The applicant shall cooperate with the course of investigation.

(iii) He shall report at the Police Station whenever called upon or as and when required by the Investigating Officer.

(iv) He shall not intimidate or tamper with the witnesses.

7. In these terms, the application stands disposed off.

NUTAN D. SARDESSAI, J.

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