

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 104 OF 2019

SAHED JAVED KHAN, PRESENTLY IN JUDICIAL CUSTODY AT CENTRAL JAIL COLVALE, THR. RIHANA SAHED KHAN.	... Applicant
Versus	
STATE OF GOA, THR. PUBLIC PROSECUTOR AND ANR.	... Respondents

Shri Vibhav Rajiv Amonkar, Advocate for the applicant.

Shri Mahesh Amonkar, Additional Public Prosecutor for the respondent No.1.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 22nd April 2019

ORDER:

Heard Shri Vibhav Rajiv Amonkar, learned Advocate for the applicant and Shri Mahesh Amonkar, learned Additional Public Prosecutor for the respondent No.1.

2. It was the contention of Shri V. Amonkar, learned Advocate for the applicant that the investigation in the case was substantially over and the chargesheet was filed in June, 2018. The applicant was placed under arrest on 02/04/2018 and has been in custody till date i.e. for more than 12 months. The applicant has

not been named in the FIR nor was there any reference to the applicant in the complaint lodged by the complainant. Besides the applicant has been released on bail in a subsequent offence. He placed reliance in **Ramesh v/s. State of Haryana** [Crma No.M1203 of 2014], **Poornima and others v/s. State of UP** [MANU/UP/0568/2006] and **Rihana Sahed Khan v/s. State** [Crma No.179 of 2017] in support of his case and prayed for the grant of bail. Last but not the least, it was his contention that the main accused was released on bail by this Court in August,2017 and therefore on the ground of parity too, he was entitled to the benefit of bail.

3. Shri M. Amonkar, learned Additional Public Prosecutor invited attention to the number of offences registered against the applicant and otherwise fairly conceded that he could be enlarged on bail subject to stringent conditions being imposed.

4. In **Ramesh** (supra), the Punjab and Haryana High Court observed at paragraph 9 that mere registration of an FIR and conducting of investigation pursuant thereto ipso facto would

not be a circumstance to be construed against the petitioner in the matter of grant of bail. Even the fact of registration of multiple FIRs earlier to the alleged commission of the present offence by itself would not be an impediment in the grant of regular bail. The considerations for the grant or refusal of bail are entirely different. Rather, it is to be evaluated by the Court as to whether the accused, if granted bail:- (i) would abide by the conditions imposed for his release; (ii) would remain within or flee from the jurisdiction of the Court; and (iii) would tamper with the evidence or unduly influence the witnesses thereby polluting the administration of justice.

5. **Ramesh** (supra), also considered the judgment of the Apex Court in **Maulana Mohd. Amir Rashadi v/s. State of UP and another** [2012 (1) RCR (cr.) 286] where it was observed that "It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal

antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as the possibility of fleeing away from the jurisdiction of the Court etc.”

6. **Poornima** (supra) alongwith several others were involved in offences under Sections 3, 4, 5, 6, 8, 9 of The Immoral Traffic (Prevention) Act 1956 and Sections 323, 504, 506, 109, 117, 366A, 373 IPC. The case against them of the prosecution was that an information was received from the wife of Ajit Singh, Chairman of Swayam Sevi Sanstha Guria that in the red light area of Shivdaspur some minor girls were detained by Rahmat, Tulsi and Lalloo who induced the minor girls for the purpose of prostitution and used them for illicit intercourse and to earn their livelihood. They recovered 31 girls from the house of Rahmat and Tulsi and got an FIR registered against them amongst others. The names of the applicants and some other persons also came to light during the course of the investigation as being involved in compelling to induce and seduce to illegal intercourse with some

other person for prostitution under the management of the brothel carried by the applicants. It was contended on behalf of the applicants that the applicants were neither named in the FIR nor arrested on the spot nor was there any evidence against them and the names of the applicants came in the statements of Raj Kumar, Rahisa Khatun, Manju and Chandra. It was found that though the names of some of the applicants emerged in the statement of the witnesses, no specific role had been assigned to them nor was any description of their activities reflected in the statement of the witnesses recorded under Section 161 Cr.P.C. In those circumstances, they were given the benefit of bail.

7. The judgment in **Ramesh** (supra), supports the contention of Shri V. Amonkar, learned Advocate for the applicant that mere registration of an FIR would not be a circumstance to be construed against the applicant in the matter of grant of bail, while that in **Poornima** (supra), would substantiate his contention that even assuming the name did emerge, no role had been assigned to the applicant in the commission of the crime. The case of the applicant stands on a better footing inasmuch as the name of the

applicant was not reflected in the FIR nor was he found at the scene of crime and that the FIR made reference to the two suspects Lima Sharma @ Rihana and another person named Raju being involved in the said crime. Moreover, in **Rihana Khan** (supra), this Court vide its order dated 31/08/2017 had ordered her release i.e. of the prime accused in the crime by putting her to certain terms and conditions. Hence, considering the same, the applicant would be entitled to the benefit of bail also on the ground of parity.

8. Having considered the judgments in **Ramesh** and **Poornima** (supra) and besides that passed by this Court in connection with the bail of the main accused, i am inclined to secure the applicant with the order of bail in the following terms:

O R D E R

(1) The Applicant shall be enlarged on bail upon executing a personal bond in the amount of ₹20,000/- (Rupees Twenty Thousand only) and furnishing a local surety in coextensive amount to the satisfaction of the learned JMFC, Panaji.

(2) The Applicant shall furnish his detailed address in Goa and shall not leave the territorial limits of the State of Goa without the prior written permission of the learned Addl. Sessions Judge, Panaji.

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

NUTAN D. SARDESSAI, J.

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