

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL)NO. 139 OF 2019

Ashvek Yeshwant Valvalkar,
H.No.180, Bhatti, Parra,
Bardez,Goa,
Presently lodged at Central Jail,
Colvale, Bardez, Goa,
Through his next friend
Mrs. Hemlata Valvalkar,
H.No.189, Bhatti,
Parra, Bardez, Goa.

... Applicant.

Versus

1. State,
Through Public Prosecutor,
Office of Advocate General,
Panaji, Goa.

2. Police Inspector,
Mapusa Police Station,
Mapusa, Goa.

... Respondents

CRIMINAL APPLICATION (BAIL)NO. 140 OF 2019

Suryesh Pandurang Arolkar,
H.No. 3A/10, Khorlim,
Bardez,Goa,
Presently lodged at Central Jail,

(Through his next friend)
Smt. Tanvi Suryesh Arolkar,
(wife of the Applicant)
H.No.3A/10, Khorlim,
Bardez, Goa.

... Applicant.

Versus

1. State,
Through Public Prosecutor,
Office of Advocate General,
Panaji, Goa.

2. Police Inspector,
Mapusa Police Station,
Mapusa, Goa.

... Respondents

Mr. S.D.Lotlikar, Sr. Advocate for the Applicants.

Mr. M. Amonkar, Addl. Public Prosecutor for Respondents.

Mr. P. Talaulikar, Advocate for the Intervenors.

Coram : Prithviraj K. Chavan,J

Reserved on : 25th June 2019.

Pronounced on : 27th June 2019.

Oral Order:

By these two applications, the applicants Ashvek and Suryesh have prayed for their release on bail under Section 439 of Cr. P. C.

They are original accused Nos. 2 and 3 who have been chargesheeted by the police station Mapusa alongwith other accused under Sections 143, 147, 148, 324, 326, 307 read with 149 of I.P.C. and Section 25 of the Arms Act. Both of them were arrested on 01.02.2018.

2. In short, it is the case of the prosecution that on 18.12.2017 at about 13.45 hours at Popular Bar and Restaurant, Moira, Bardez, Goa, these applicants alongwith four others, allegedly formed an unlawful assembly with deadly weapons such as sword, knife, base ball sticks and broken bottles, assaulted the complainant Mr. Sandesh Naik and his friend namely Mr. Ravi Naik as well as one Mr. Mahadev alias Sunny Morajkar, resulting into serious injuries on the vital parts.

3. On the basis of the complaint lodged by Sandesh Naik, an offence vide Crime No. 407/2017 came to be registered with police station, Mapusa.

4. After filing the charge sheet, the learned Addl. Sessions Judge has framed the charge and it is submitted that the trial has already commenced.

5. I have heard Mr. S. D. Lotlikar, learned Senior Counsel for the

applicants, Mr. M. Amonkar, learned Addl. Public Prosecutor and Mr. P. Talaulikar, learned Counsel for the intervenors.

6. It is a matter of record that the first application for bail, preferred by the applicants Mr. Ashvek and Suryesh came to be dismissed by the learned Addl. Sessions Judge, Mapusa by an order dated 05.03.2018. The second application for bail dated 17.04.2018 which was filed after the charge sheet, by applicant Ashvek, also came to be dismissed by the learned Addl. Sessions Judge on 19.09.2018.

7. Applicant Ashvek, thereafter, filed an application for bail before this Court bearing No. STM No. 3893/2018, however, it was withdrawn with liberty to file fresh application.

8. The application filed by applicant Suryesh bearing No. CRMAB / 236/2018 was withdrawn and hence, disposed of by this Court by an order dated 18.09.2018. This Court, in an order dated 18.09.2018, granted liberty to the applicant to withdraw the application with a liberty to move the learned Addl. Sessions Judge afresh after examination of material witnesses namely (1) Sandesh Naik; (2) Sunil Mulgaonkar; (3) Sudesh Kamurlekar; (4) Shiva Rathod and (5) Mahadev Morajkar, inter alia, directing the learned Sessions Judge to

proceed with the trial as expeditiously as possible.

9. It is contended by Mr. Lotlikar that the trial has not yet commenced despite specific directions by this Court. The applicants are languishing in jail ever since their arrest on 01.02.2018. Applicant Ashvek is even not named in the FIR. There is no question of attempt to commit murder by the applicants since the medical certificate does not indicate any such injuries. Even the learned Trial Court could not examine all the witnesses referred to herein above after passing of nine months. He therefore, prayed for release of the applicants on bail.

10. On the other hand, learned Addl. Public Prosecutor strongly objected the release of the applicants on bail mainly on the ground that the applicants have history of committing similar offences and that their antecedents are relevant in refusing the bail. It is submitted that the applicant Suryesh is named in the FIR and also by the witnesses. Even in so far as applicant Ashvek is concerned, it is submitted that he has also been named by the witnesses, especially by one Ravi Naik, whose statement came to be recorded on 20.12.2017. The learned Addl. Public Prosecutor has also drawn my attention to certain instances borne out from record indicating as to how there is a likelihood of interference with the prosecution and threats to the

witnesses in view of the fact that there has been a dispute between the parties on account of sluice gate at Moira.

11. Similarly, Shri Talaulikar, learned Counsel appearing for the intervenor strongly opposed the release of applicants unless the aforesaid five witnesses are examined by the Trial Court mainly for the reasons that even the applicants who are under trial prisoners, are involved in fresh offences which are relevant factors while considering the bail application. It is submitted by Mr. Talaulikar that in case of release of the applicants, there would be serious threat to the life of the complainant/intervenor.

12. I have given my anxious consideration to the rival submissions at bar and the circumstances placed on record.

13. No doubt, the trial has already been commenced and it is informed by Mr. Amonkar that two witnesses have already been examined by the learned Addl. Sessions Judge.

14. It is a settled position of law that while considering an application for bail, the following circumstances are required to be taken note of namely:-

- i) The prima facie involvement of the accused who alleged to have committed the offence;
- ii) Secondly, the nature and gravity of accusation;
- iii) Thirdly, severity of the punishment in the event of conviction ;
- iv) Fourthly, possibility of the accused absconding in case of his enlargement on bail;
- v) Fifthly, character, behaviour, position etc. of the accused
- vi) Sixthly, chances of the offence being repeated by him;
- vii) Seventhly, reasonable apprehension of the witnesses being influenced; and
- viii) lastly, danger of justice being thwarted by grant of bail.

15. The statement of injured Ravi Naik indicates that he had identified the applicant Ashvek as one of the assailants armed with base ball stick in one hand and a broken beer bottle in the other hand. It is also evident from the statement of Sudesh Kamurlekar that this applicant alongwith other accused hatched a criminal conspiracy to take revenge of lost bid against Mr. Ravi Naik.

16. Mr. Amonkar submitted that the applicant Ashvek is an ex-criminal who is involved and arrested by Calangute police station in Crime No.109/2017 under Section 307 of I.P.C. The applicant has

already been chargesheeted pending a trial. This indeed is a circumstance which needs to be taken note of while considering the application for bail. This prima facie indicates that this is not the first offence in which Ashvek has been arrested by the Mapusa police station. The victim Ravi Naik who was referred to GMC Bambolim District Hospital, suffered grievous injury on his head and other parts of the body, caused due to sharp and deadly weapon. This is also an aspect indicating that there might be an attempt to commit murder of Mr. Ravi Naik. The nature of weapons used and the parts of the body chosen to mount assault are relevant factors by which the applicants cannot be granted bail especially when his conduct during the pendency of the trial is also not free from doubt.

17. It is submitted by Mr. Amonkar that during investigation, it was found that the witnesses to the crime were reluctant to give their statement due to the apprehension and terror of the applicant Ashvek who is a hard core criminal and in case they give their statements, they might suffer some harm. The prosecution has also an apprehension that in view of the antecedents of the applicants, there is every likelihood of threatening the eye witnesses in case the applicants are released on bail.

18. In so far as applicant Suryesh is concerned, the prosecution has submitted a list of different crime numbers registered against him in order to substantiate his past history and involvement in various crimes which itself is sufficient to refuse bail.

- a. Crime No. 311/2012 u/sec. 341, 326, 504, 506, 427 r/w 34 IPC.
- b. Crime No.384/13 u/sec. 143, 147, 48, 504, 506, 323 r/w 149 IPC.
- c. Crime No. 292/16 U/Sec. 143, 147, 148, 447, 504, 324, 506, 427 r/w 149 IPC.
- d. 303/2016 u/sec 341, 326 r/w 34 IPC.
- e. 202/17 U/Sec 143, 147, 341, 504, 506 r/w 149 IPC.
- f. 06/17 U/sec 143, 147, 148, 324, 336, 427, 506(ii) r/w 149 IPC.

19. A bare look at the different crime numbers registered against the applicant Suryesh indicates that he is involved in serious offences in the past and therefore, it would be quite unsafe to release him on bail at this stage when the material witnesses are being examined by the learned Addl. Sessions Judge. It has been rightly argued by the learned Addl. Public Prosecutor that there could be a threat to the witnesses who are yet to be examined.

20. There is also substance in the submission of Mr. Amonkar that

the applicants might use all sort of tricks to refrain the eye witnesses from giving their evidence in the Court.

21. In view of the aforesaid circumstances, it would not be just and proper to grant bail to the applicants looking to the overall conduct, nature of offence as well as the antecedents of the applicants.

22. In such circumstances, the applications are rejected. However, after examination of all the five witnesses referred herein above, the applicants are at liberty to again approach the learned Addl. Sessions Judge, for grant of bail.

23. In the event of fresh application moved by the applicants before the learned Addl. Sessions Judge, the learned judge shall decide the respective applications afresh, uninfluenced by any of the observations made hereinabove and on its own merits. Needless to state that the learned Addl. Sessions Judge would proceed to conduct the trial as expeditiously as possible.

Prithviraj K. Chavan,J.

MF/-