

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPLICATION (BAIL) NOS.164 to 168 OF 2019.

CRIMINAL APPLICATION (BAIL) NO.164 OF 2019.

Aftab Savanoor,
s/o Suleman Savanoor,
aged 20 years,
LIG-315 Housing Board,
Gogol, Margao.

... Applicant.

Versus

1. State of Goa,
Through Public Prosecutor
High Court, Panaji-Goa.

2. Police Inspector,
Fatorda Police Station
Fatorda, Salcete-Goa.

... Respondents.

WITH
CRIMINAL APPLICATION (BAIL) NO.165 OF 2019.

Jafar Modinasab Tilavalli,
s/o Modinsab Tilavalli,
aged 20 years, r/o Bhatkal
Housing Board Gogol
Margao-Goa.

... Applicant.

Versus

1. State of Goa,
Through Public Prosecutor
High Court, Panaji-Goa.

2. Police Inspector,
Fatorda Police Station
Fatorda, Salcete-Goa.

... Respondents.

**WITH
CRIMINAL APPLICATION (BAIL) NO.166 OF 2019.**

Sameer Ahmed Agasanhalli,
s/o Munri Sayed Agasanhalli,
aged 21 years,H.No.69,
Housing Board Gogol,
Margao-Goa.

... Applicant.

Versus

1. State of Goa,
Through Public Prosecutor
High Court.

2. Police Inspector,
Fatorda Police Station
Fatorda, Salcete-Goa.

... Respondents.

**WITH
CRIMINAL APPLICATION (BAIL) NO.167 OF 2019.**

Sanjay S. Kadagannavar,
s/o Somappa Kodagannavar,
aged 23 years, H. No.B/14,
Housing Board Gogol.
Margao-Goa.

... Applicant.

Versus

1. State of Goa,
Through Public Prosecutor
High Court, Panaji-Goa.

2. Police Inspector,
Fatorda Police Station
Fatorda, Salcete-Goa.

... Respondents.

**WITH
CRIMINAL APPLICATION (BAIL) NO.168 OF 2019.**

Imtiyaz Ahmed Kamdod
s/o Madarsab Kamdod,
aged 21 years, r/o H.No.661,
Rumdamol Board Gogol,
Davorlim, Navelim- Goa.

... Applicant.

Versus

1. State of Goa,
Through Public Prosecutor
High Court.

2. Police Inspector,
Fatorda Police Station
Fatorda, Salcete-Goa.

... Respondents.

Mr. V. Amonkar, Advocate for the applicants.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

Mr. R. De Sa, Advocate for the intervenor.

**Coram:- PRITHVIRAJ K. CHAVAN, J.
Reserved on:16th July, 2019.
Pronounced on:-08th August 2019.**

ORDER

These applicants have been booked by the respondent no.2 vide crime no.81/2019 under Sections 143, 147, 148, 149, 341, 326, 307 and 504 of the Indian Penal Code, pursuant to a complaint dated 20.5.2019 lodged against them by one Amit s/o Dwakar Arondekar. The applicants have, therefore, moved these applications under Section 438 of Cr.P.C.

2. The facts, in brief are as follows:-

On 20.05.2019 at 15.15 hours, the complainant noticed five to six unknown persons riding their motorbikes/scooter bearing registration Nos.GA-08-H-4740, GA-08-AK-1504 and GA-08-AN-0335 chasing his friend namely Mr. Vishwas Gurak who was driving his Hyundai car bearing registration No.GA-08-N-5935.

3. They intercepted him at Borda, Margao Goa and started inflicting fist blows, kicks blows. He was assaulted with bricks resulting into serious injuries. It is the case of the respondents that it was a broad day light criminal act of wrongfully restraining the injured by the applicants who were armed with bricks and a knuckle duster, assaulted the victim

resulting into serious injuries. It is alleged that the intention of the applicants by forming an unlawful assembly was to kill the injured however, they failed in the same, due to the intervention of the complainant and others. It is also alleged that public present at that time, clicked the incident on their mobile phones. The accused escaped from the scene of occurrence after commission of the crime. They are absconding and evading arrest for interrogation.

4. Mr. Amonkar, learned Counsel for the applicants submits that the applicants have been falsely implicated in this case. They had approached the Sessions Court, South Goa Margao by filing applications for anticipatory bail nos.208/2019 to 212/2019 on 21.5.2019. Interim bail was granted by imposing certain conditions, however, on 23.5.2019, Advocate for the applicants, without intimating the applicants withdrew the applications and, therefore, it came to be disposed of even before the returnable date. The applicants were unaware about the said development. However, respondent no.2 visited the residential premises of the applicants. The applicants preferred fresh Anticipatory Bail

Applications before Sessions Court bearing Nos.216/2019 to 220/2019. The learned Sessions Judge rejected the applications by order dated 06.06.2019.

5. It is submitted that the applicants have roots in the society. They are of young age. They are innocent. They are fisherman by profession and only earning members of the family. It is further submitted that they are law abiding citizens with no criminal antecedents. They are ready to co-operate with the Investigating Agency and abide by any terms and conditions.

6. On the other hand, Mr. Rivankar, learned Public Prosecutor strongly objected the release of the applicants in the event of their arrest mainly on the ground that it is a case of road rage in which the applicants have taken law into their hands by brutally assaulting the victim Vishwas Gurav who sustained a serious head injury. The applicants are required to be interrogated thoroughly which is possible only by obtaining their police custody remand. It is submitted by Mr. Rivankar that the vehicles used in the commission of the offence and knuckle duster by which an

assault was mounted on the head of the victim is to be recovered. It is submitted by Mr. Rivankar that the manner and mode in which the applicants have formed an unlawful assembly and used criminal force is itself sufficient to refuse pre-arrest bail, else, it will give a wrong message to the society and will be an encouragement to the applicants to repeat such offence in future.

7. Mr. Rivankar, learned Public Prosecutor drew my attention to the photographs taken by the public depicting the applicants in action. All the applicants, according to the learned Public Prosecutor, were members of an unlawful assembly who were armed with weapons such as bricks and knuckle duster. The offence of attempt to commit murder has been committed by the members of this unlawful assembly in prosecution of their common object.

8. Mr. Rohit D'Sa, learned Counsel for the intervenor states that the injured was hospitalised on 20.5.2019 and was discharged on 24.5.2019. There are 14 stitches on his right parietal region. He therefore, prayed for rejection of these applications.

9. In the case of *Siddharam Satlingappa Mhetre Vs State of Maharashtra*.¹ the Hon'ble Supreme Court has enunciated guidelines and relevant consideration for exercise of powers under Section 438 of Cr.P.C. The relevant paragraphs are as under:-

“97. The intention of the legislature is quite clear that the power of grant or refusal of bail is entirely discretionary. The constitution Bench in Sibbia case has clearly stated that grant and refusal is discretionary and it should depend on the facts and circumstances of each case. The Constitution Bench in the said case has aptly observed that we must respect the wisdom of the legislature entrusting this power to the superior courts, namely, the High Court and the Court of Session. The Constitution Bench observed as under:-(SCC p.589, para 33)

“33. We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application. It is customary, almost chronic, to take a statute as one finds it on the ground that, after all 'the legislature in its wisdom' has thought it fit to use a particular expression. A convention may usefully grow

¹ (2011) 1 SCC694

whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected.”

100. *Section 438 Cr.P.C. does not mention anything about the duration to which a direction for release on bail in the event of arrest can be granted. The order granting anticipatory bail is a direction specifically to release the accused on bail in the event of his arrest. Once such a direction of anticipatory bail is executed by the accused and he is released on bail, the court concerned would be fully justified in imposing conditions including the direction of joining the investigation.*

Scope and ambit of anticipatory bail

109. *A good deal of misunderstanding with regard to the ambit and scope of Section 438 Cr.P.C. could have been avoided in case the Constitution Bench decision of this Court in Sibbia case was correctly understood, appreciated and applied. This Court in Sibbia case laid down the following principles with regard to anticipatory bail:*

- (a) Section 438(1) is to be interpreted in the light of Article 21 of the Constitution of India.*
- (b) Filing of FIR is not a condition precedent to exercise of power under Section 438.*
- (c) Order under Section 438 would not affect the right of police to conduct investigation.*
- (d) Conditions mentioned in Section 437 cannot be read into Section 438.*
- (e) Although the power to release on anticipatory bail can be described as of an “extraordinary” character this would “not justify the conclusion that the power must be exercised in exceptional cases only”. Powers are discretionary to be exercised in the light of the circumstances of each case.*

- (f) *Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-examined after hearing. Such ad interim order must conform to requirements of the section and suitable conditions should be imposed on the applicant.*

Relevant consideration for exercise of the power

- 111.** *No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide right and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia case that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.*
- 112.** *The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*
- (i) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
 - (ii) *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
 - (iii) *The possibility of the applicant to flee from justice;*
 - (iv) *The possibility of the accused's likelihood to repeat similar or other offences;*

- (v) *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
 - (vi) *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people ;*
 - (vii) *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;*
 - (viii) *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.*
 - (ix) *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
 - (x) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.*
- 113.** *Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and*

circumstances on record.”

10. From the perusal of the FIR, complaint and statement of the injured victim, it is quite apparent that the applicants had formed an unlawful assembly at the relevant time with a common object of using criminal force by wrongly restraining the victim and then assaulting him by means of bricks and knuckle. The statement of the injured which came to be recorded in “*Mother Care hospital*” on 24.5.2019 indicates that on the date of incident he was proceeding from Bhosle circle towards Holy Spirit Church, Margao in his car. Two motor cycles bearing Nos.GA-08-H-4740 and GA-08-AK-1504 and one TVS scooter bearing no.GA-08-AN-0335 with pillion riders stopped in the middle of the road and were creating nuisance. They were five in numbers. Injured blew horn of his car but they did not allow him to overtake. They did not give him side. They were proceeding slowly ahead of his car on their respective bikes and near Swaruchi Showroom, the applicants blocked his car by putting their motorcycles on the road in front of his car and started abusing him in filthy language by saying “*fodrecha*’ and other such bad words.”

11. The injured alighted from the car to ask them the reason as to why they are abusing him, upon which, all of them came towards him aggressively and started assaulting him with fist and kicks blows.

12. One of the accused who was wearing white coloured long sleeves shirt, blue coloured long jeans having red colour bag on his shoulder said Aftab, Sameer "*Maro Usse Zinda Mar dalo*". One of the accused assaulted injured on his chest and back side of his head due to which he sustained bleeding injury and fell down on the ground. One more accused having beard and wearing pink coloured shirt assaulted the injured with knuckle duster on the right side of his forehead. The accused thereafter fled away from the spot. The injured became unconscious and was admitted in the hospital at Margao.

13. Similar is the statement by one Mr. Viraj Naik. He was familiar with the applicants as he was from the same locality and therefore, he intervened and asked the applicants not to create nuisance and to go away from the spot. As such, there is no question of identification of the applicants as the persons who were involved in the offence. It is

apparent that the applicant Sanjay asked the applicants Aftab and Sameer “*Maro Usse Zinda Mar dalo*”, prima facie shows that they wanted to kill the injured and therefore, assaulted by means of bricks on his chest and back side of his head resulting into his fall on the ground in an unconscious state. After noticing the victim lying unconscious, the applicants fled away from the spot.

14. One Deepak Shivram Netardekar also spoke in tune with complainant and Viraj Naik.

15. There are five coloured photographs tendered by prosecution which alleged to have been snapped by the public, depicts the applicants in an aggressive mood assaulting the victim.

16. The nature and the gravity of the accusation and the role played by the applicants is apparent from the statements and FIR as well as from the complaint. It is not the case of the applicants that they were on some cross terms with the injured before the incident.

17. Medical certificate dated 31.5.2019 depicts following injuries:-

“CLW over the right parietal region measuring 5 cms X 2.5 cms in diameter and over the right forehead measuring 1 cms X 0.5 cms in diameter approximately, resuturing was done in this hospital under strict aseptic precaution in the Operation Theater

*Patient shifted to ICU for observation and monitoring. Repeat CT scan Brain was normal. He was examined by **Physician, General Surgeon and Neuro Surgeon and advised to continue conservative line of treatment.***

He was shifted out of the Intensive Care Unit on the 21.5.2019 and same treatment was continued in the room. His Vitals were stable, but his mental condition was unstable. He was complaining about headache and was not getting proper sleep. He was discharged on 24.5.2019 and advised to follow-up after 5 days.”

18. It is apparent from the medical certificate that the injured was shifted to ICU for observation and monitoring. The CT Scan of the brain was normal. However, Physician, General Surgeon and Neuro Surgeon had advised conservative line of treatment. This shows the gravity of the offence and manner in which the applicants attempted to eliminate the victim. These are all prima facie observations which are not on merits of the case since investigation is still in progress.

19. Since the applicants are not co-operating with the Investigating

Agency ever since commission of the offence, possibility of fleeing away from justice cannot be ruled out. Possibility of repeating the similar offence also cannot be totally ruled out.

20. I will also have to keep in mind that if an anticipatory bail is granted, more particularly in a case of this kind, affecting large number of general public using road, its impact would be different. As per the parametres laid down in the case of *Siddharam Satlingappa Mhetre* (supra) this is not a fit case in which the applicants are entitled to be released on anticipatory bail. It is also pertinent to note that the Investigating Agency could not make formal interrogation of the applicants as they are found absent despite visiting their houses. The vehicles used in commission of the offence as well as knuckle duster is also required to be recovered which would not be possible unless the applicants are interrogated.

21. The manner in which the applicants took law into their hands would also lead to a reasonable apprehension that in case of their release, they might threaten the witnesses.

22. No doubt a balance is required to be maintained by protecting the personal liberties of the applicants vis a vis the interest of the complainant and the society at large. Nevertheless, in the given circumstances, it would not be just and proper to grant the relief prayed for by the applicants.

23. Mr. Amonkar, has placed reliance on a judgment of this Court in the case of *Ambadas Kisan Bhagwat and ors Vs. State of Maharashtra*². It was the case under Sections 307, 323, 504 and 506 read with Section 34 of IPC. It was a case wherein cross case had been lodged by the parties against the complainant, meaning thereby there was some rivalry. Moreover, the injury certificate collected during the investigation revealed that blows had landed on right and left side of lower part of the chest. Injury certificate did not contain the opinion of the doctor that the said injuries, if not treated, would have resulted into the death of the victim. It is settled law that in an offence under Section 307 of IPC injury is not sine qua non. The ratio, therefore, can be distinguished and

² 2015(3) Bom Cr.(Cri)503

would not be applicable to this case in the light of the fact that victim sustained head and chest injuries and was threatened to be killed.

24. Mr. Amonkar has also placed reliance on another judgment of this Court in the case of ***Khemlo Sakharan Sawant Vs. State.***³ This ratio also would not be applicable in the case at hand for the reason that in the said case bail was refused by the trial Court only because the co-accused was absconding. In that case principal offender had not been booked and the applicant was charged merely for abetment. This Court has observed that the Sessions Court was in error in refusing bail by getting influenced by the consideration other than the law. In the said case accused was arrested on the ground that no offence of abetment could be proceeded against the applicant unless the principal offender was booked. The principal offender therein was a sitting MLA. Thus, this ratio also can be distinguished and would not be of any help to the applicants.

25. Mr. D'Sa learned Counsel for the intervener has relied upon a

³ 2001(12)BOMLR875a.

judgment of the Hon'ble Supreme Court in the case of **State of M.P. Vs Kashiram and ors.**⁴

26. It is held that in an offence under Section 307 of IPC, determinative question is an intention or knowledge as the case may be, and not the nature of the injury.

27. Without going into the correctness of the statements on merits, suffice it to say at this stage, that the applicants are not entitled to be released on bail for the reason stated herein above. Applications are therefore, rejected.

PRITHVIRAJ K. CHAVAN, J.

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⁴ [(2009)4 SCC 26]