

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATIONS (BAIL) NO.186 & 187 OF 2019

CRIMINAL APPLICATION (BAIL) NO.186 OF 2019

Mr. Rajesh Warkhandkar	 Applicant
V/s	
State of Goa & Anr.	 Respondents

AND

CRIMINAL APPLICATION (BAIL) NO.187 OF 2019

Mr. Sanjay Warkhandkar	 Applicant
V/s	
State of Goa & Anr.	 Respondents

Shri Athnain Naik, Advocate for the Applicants.

Shri S.R. Rivankar, Public Prosecutor for the Respondents.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on :- 30th August, 2019

Pronounced on : - 13th September, 2019

ORDER :

The above applications are filed under Section 439 of Cr.P.C. in Crime No.61/2019 under Section 307 read with 34 IPC by the applicants, who came to be arrested by the respondent no.1 on 26/04/2019.

2. A few facts germane for disposing of the present applications are summarised thus:

The applicants are tenants/lessees in respect of H.No.300, New Vaddem, Vasco-Goa. The complainant Jesus Anthony Fernandes states that his uncles have constructed rooms nearby his house which are given on rent. The applicants are the tenants in occupation of the said rooms since last four years. There used to be petty quarrels between the applicants and the complainant's aunt namely Milu. It is the case of the prosecution that the applicants used to abuse and pick up quarrels with the landlords. The complainant used to scold the applicants' family by asking them not to abuse and, therefore, it is alleged that the applicants have grudge against the complainant and his family.

3. The incident in question occurred on 26/04/2019 at around 18.30 hours. When the complainant was returning back to the house, he noticed applicant Rajesh and his brother Sanjay coming towards him. Rajesh had a bag with him. When he reached near him, applicant Rajesh suddenly removed a chopper and attempted to assault the complainant. However, the complainant managed to escape and ran to his house raising alarm. On hearing his shouts, his uncles namely Paulo and Gabby came for his rescue, when, the applicant

Rajesh assaulted his uncle Paulo with a chopper resulting into deep cut injuries on his back and below the back shoulder, whereas Gabby sustained deep cut injuries on his head above the left ear. It is also stated that in the said scuffle the applicant also sustained injuries on his left shoulder. The matter was reported to the Vasco Police Station wherein a crime came to be registered as above. The applicants were arrested. During investigation, statements of the witnesses came to be recorded. The weapon of offence also came to be seized by the Investigating Officer. The injured including the applicant Sanjay were referred for medical examination. After investigations, charge sheet has been filed in the Court of JMFC, Vasco under Section 307 read with 34 IPC.

4. At the outset, the learned Counsel for the applicants submits that the applicants are labourers and were not at all intending to commit murder of the victims. It is submitted that the complainant and the landlords tried to evict the applicants forcefully from the house and, therefore, there was a scuffle. It is submitted that since charge sheet has already been filed and family members of the applicants are not residing at that place there is no point in continuing

their detention in the jail. It is also submitted that there is no male member in the family as there are only two sisters and a 12 year old child. It is submitted that the applicants will abide by any terms and conditions imposed by this Court.

5. According to the learned Counsel there are no allegations of any kind in so far as applicant Sanjay is concerned. The applicants have no criminal antecedents and, therefore, it is prayed that the applicants be enlarged on bail.

6. On the other hand, Shri Rivankar, the learned Public Prosecutor fairly admits that it was a sudden quarrel. However, he stressed that the weapon used is a chopper having 21 cm length which has resulted in causing serious injuries to the victims and, therefore, prayed for passing appropriate orders. Shri Rivankar, fairly concedes that there is nothing against applicant Sanjay, who can be granted bail.

7. I have meticulously gone through the charge sheet comprising statements of the witnesses and the medical certificate.

8. Undisputedly, the applicants being the tenants of the victims were having trifle quarrels on account of some petty issues. It is also apparent from the statements of the complainant that he used to scold Rajesh's family which obviously would result in some provocation. If the complainant and his uncles wanted the applicants to be evicted from the tenanted premises, they could have approached the Civil Court. Be that as it may. This prima facie cannot be said to be an attempt to murder in the light of the admitted fact that it was a sudden quarrel. The applicants are not hardened criminals. They are poor labourers migrated to the State of Goa for their bread and butter. The charge sheet has already been filed and there would no point in continuing their incarceration till their guilt is proved beyond all reasonable doubts. From the statements of the witnesses on record, prima facie, it appears that the applicants might have voluntarily caused hurt on provocation. This Court is not rendering any findings on the merits of the case, nevertheless, the record reveals that there was no pre-planned design or intention of the applicants to mount assault upon the victims.

9. Medical certificate of Gabby D'Melo reveals that he has

sustained an irregular laceration extending from the side of neck behind the ear. The medico legal certificate of Paulo D'Melo reveals that the injuries are indeed grievous in nature situated on the left shoulder, left scapular region. The injuries sustained by the victims were required to be sutured, however, the certificates do not reveal that they were in fact fatal in nature.

10. Having taken into account the overall circumstances under which the offence alleged to have been committed and in the light of the fact that the charge sheet has already been filed, it would be in the interest of justice to enlarge the applicants on bail by imposing suitable conditions.

11. Consequently, the following order is expedient:

O R D E R

- (i) Criminal Applications (Bail) No.186 & 187 of 2019 are granted.
- (ii) The applicants be released on bail on their executing a PR Bond in the sum of ₹10,000/- each with sureties in the like amount to the satisfaction of the Additional Sessions Judge,

South Goa, Margao.

- (iii) The applicants shall not leave the jurisdiction of the Sessions Court, Margao, till the conclusion of the trial.
- (iv) The applicants shall not visit the tenanted premises.
- (v) The applicants shall not in any manner make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence.
- (vi) The applicants shall attend the trial scrupulously.

12. Applications stand disposed of.

PRITHVIRAJ K. CHAVAN, J.

NH