

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO.234 OF 2019**

Mr. Swetan s/o. Santosh Simipuruskar,
Age 33 years, Occ-Business,
R/o. H.No.EW.872,
Gogal Housing Board,
Margao, Salcete, Goa.

.... Applicant

V/s

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

2. Police Inspector,
Fatorda Police Station.

.... Respondents

Shri M. Teles, Advocate for the Applicant.

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

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on :- 7th October, 2019

Pronounced on :- 22nd October, 2019

ORDER :

By this application under Section 438 of the Criminal Procedure Code, the applicant seeks relief of anticipatory bail, who has been booked by the respondent no.1 of the offence punishable under Sections 379, 407, 411, 285, 120-B read with 34 of the Indian Penal Code as well as under Rule 12 and 74 of the Petroleum Rules, 2002 in Crime No.130/2019.

2. Shorn of unnecessary details, few facts which are germane for disposing of the present application can be summarised thus:

On 28/08/2019, complainant Sanil Bavkar lodged a complaint with the police that persons namely Dastagir Pathan, Kripashanker and the applicant along with two unknown persons, in pursuance of their common intention committed theft of a gallon of petrol from his petrol tanker bearing registration no.GA-01-T-9668 which was allotted to the complainant for his petrol pump at Shirvoi, Quepem.

3. It is the case of the prosecution that one Subhash Faldessai, an owner of a petrol pump at Quepem on several occasions earlier, received short supply of petroleum products from the tankers dispatched by BPCL Company, Zuari Nagar, to his petrol pump. He, therefore, directed his manager namely the complainant to follow the tanker on 28/08/2019. The complainant therefore, by concealing his identity proceeded on a scooter and waited till the allotted tanker leaves the premises of BPCL/ZOIL, Zuari Nagar. He noticed that about 14.00 hrs. the said tanker stopped by the side of the road which was being driven by its driver namely Inayat Pathan. Accused Akbar

Doddamani, who had a master key opened the manifold valve box of the tanker bearing registration no.GA-01-T-9668 belonging to the complainant and removed one gallon of petrol. When he was in a process of removing the second gallon, the said Act was video recorded on a mobile phone and, was caught red handed.

4. During interrogation it revealed that it is a large network involved in theft of petroleum products, where even the Officials and Personnel of BPCL and ZIOTL are also involved, for, unless a duplicate key is provided by the concerned, it was not possible to commit theft of petroleum. It is revealed during investigation that one Chandrakant, son of Venkatesh Prabhu, resident of Shantinagar, Ponda, Goa is also involved in the activity of committing theft of petrol from the tankers whilst in transit. He came to be arrested.

5. It further revealed during investigation that the applicant is the prime accused and mastermind in procuring/preparing a duplicate master key which could open all highly secured specially made pad locks by “ABLOY Finland” Company successfully, which can open all pad locks of all BPLC company tankers.

6. While arguing on behalf of the applicant Shri M. Teles, the learned Counsel strenuously urged for grant of pre-arrest bail to the applicant by contending that he is a law abiding citizen with wife and two minor children, doing his business in a legal manner. He has a clean record and there are no criminal antecedents. It is submitted by the learned Counsel that rest of the accused have already been released on bail. The investigating agency had already recovered the alleged stolen petrol.

7. Admittedly, an application under Section 438 of the Criminal Procedure Code moved by the applicant before the learned Additional Sessions Judge came to be rejected on 31/08/2019.

8. The applicant, therefore, seeks his release in case of his arrest, as no purpose will be served by detaining him in custody as he is ready to assist the investigating agency as and when required to do so. He further undertakes that he will neither abscond nor hamper or tamper with the evidence of the prosecution.

9. The learned Counsel has placed reliance upon the well known judgment of the Hon'ble Supreme Court in case of ***Siddharam Satlingappa Mhetre V/s. State of Maharashtra & Ors.*** reported in ***(2011) 1 SCC 694***, as well as few other judgments which shall be dealt with while assigning the reasons.

10. On the other hand, Shri Rivankar, the learned Public Prosecutor strongly objected the relief asked for, for the reasons namely that the applicant is the mastermind and the main culprit under whose command the entire conspiracy has been hatched. Such activities are going on since long. Pilferage of petroleum products on the way from BPCL to petrol pump has been going on at the instructions of the applicant. He submits that it needs to be probed as to how the keys of the tankers could reach the accused.

11. It is further brought to my notice that *prima facie* involvement of the applicant in such a serious offence is apparent from the call detail records which are produced before this Court in the form of case diary indicating a well connected nexus between the applicant and the rest of the accused, especially the driver of the

tanker on 28/08/2019. There were continuous exchange of calls between the applicant and the rest of the accused. The investigation is still in progress.

12. There is no question of parity since the rest of the accused were just the puppets in the hands of the applicant. It is also submitted that despite a notice under Section 41(A) of the Criminal Procedure Code, the applicant did not attend the police station for cooperating in the investigation. It is submitted that without arrest, it would be difficult to unearth the entire network.

13. Having heard the learned Counsel for the applicant extensively as well as the learned Public Prosecutor, I am of the considered view that the applicant is not entitled to be released in the event of his arrest, for the reasons to follow.

14. A perusal of the case diary reveals that the applicant vis-a-vis accused Chandrakant Prabhu and Abdul Rajaram Tahsildar as well as the driver Dastagir Pathan and Akbar Doddamani were in contact with each other on 28/08/2019 indicating a strong link and *prima facie*

involvement of the applicant, who himself is an owner of two petrol tankers.

15. The second important aspect is that there are strong reasons to believe as regards the active involvement of the Officials of BPCL in the nefarious activity of manufacturing a duplicate master key which went into the hands of the present gang, who managed to prepare a duplicate master key which would open all the tankers pertaining to BPCL depot, thereby causing huge loss to the petrol pump owners by siphoning of petroleum product from tankers while in transit and using the said money for illegal activities and other undisclosed activities.

16. Unless this is thoroughly probed by interrogation, it would be difficult to reach to the roots of the crime. It reveals from the record as well as from the reply of the respondent that accused Dastagir Pathan, who was the driver of the tanker stated that he was informed by the applicant that he would send the key with one person which was brought by accused Akbar Doddamani and handed it over to Dastagir Pathan for removal of the petrol. After removing the petrol Akbar Doddamani fled away from the spot with the master key.

The key could be recovered after his arrest.

17. It cannot be lost sight of the fact, as rightly stated in para 5 of the reply by the prosecution, that the manner and circumstances under which petrol was removed from the tanker on the public roads and highways, namely, the busy Eastern Express National Highway in the close proximity of highly inhabited locality wherein on both sides of the road there exist commercial shops and residential flats and in case of any mishap/accident, it would have a catastrophic effect in the light of the fact that a tanker contains 12,000 litres of highly flammable volatile combustible liquid. In case it explodes, it would result in major disaster claiming hundreds of innocent lives. Looking to the nature and magnitude of the offence, it can be said that it could affect a very large number of people. Such is the gravity of the offence, which therefore, needs to be very meticulously and thoroughly investigated. Direct links of the applicant with the accused, who have already been arrested is *prima facie* apparent from the discussion made herein above.

18. In case of *Siddharam Satlingappa Mhetre V/s. State of*

Maharashtra & Ors. [(2011) 1 SCC 694], following are the parameters enunciated by the Hon'ble Supreme Court to 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 the 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 accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication 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.

19. Indeed, it is a serious offence, the gravity of which has already been stated herein above and the role of the accused qua the commission of the offences. It is informed to the Court that the applicant is avoiding to cooperate with the agency despite service of notice under Section 41-A of the Cr.P.C. and, therefore, the possibility of fleeing away from justice cannot be totally ruled out. There seems to be no false accusation in order to humiliate the applicant in the light of the fact that there is sufficient material which needs thorough investigation. The role of the applicant from the record appears to be that of the kingpin and mastermind of the organisation. By granting the relief of anticipatory bail, some prejudice would definitely be caused to the free, fair and full investigation of the case in view of the fact that there is a larger conspiracy of involvement of the BPCL company officials without whose support the offences in question could not have been committed.

20. As such, after having carefully examined the entire record available with the Court, more particularly, the material pointing towards the complicity of the applicant, it would not be safe to grant the relief as prayed for.

21. Shri Teles, the learned Counsel for the applicant has placed reliance on a judgment of the Hon'ble Supreme Court in a case of ***Arnesh Kumar V/s. State of Bihar & Anr.*** reported in **(2014) 8 SCC 273**. The Counsel drew my attention to the following para :

“From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to

prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses.”

22. I am afraid, this ratio would not be of any assistance to the Counsel as the answers to all these queries have already been

answered in the preceding paras in view of the ratio laid down by the Hon'ble Supreme Court in a case of *Siddharam Mhetre* (supra). There is no question of parity as the role attributed to the applicant is quite different and distinct than that of the rest of the accused. He being a mastermind, there is no question of seeking his release on the ground of parity.

23. I have not expressed any views on the merits of the matter. It is made clear that the observations herein above are restricted only for the limited purpose of considering the anticipatory bail application.

24. Corollary of the aforesaid discussion is that it is not a fit case for granting the relief of pre-arrest bail. The application is rejected.

PRITHVIRAJ K. CHAVAN, J.

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