

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO.254 OF 2019**

Mr. Arif Gudusab Langoti
Son of Gudusab Langoti
Age : 28 years, Occu.Pvt. Service
R/o. H.No.L-21, Ekta Nagar,
Housing Board Colony,
Mapusa, Bardez, Goa.

.... Applicant

V/s

1. State of Goa,
Through Police Inspector,
Porvorim Police Station.
2. Public Prosecutor,
High Court of Bombay at Goa,
Panaji-Goa.

.... Respondents

Shri Vedraj Toraskar, Advocate for the Applicant.
Shri Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on :- 21st October, 2019

Pronounced on :- 22nd October, 2019

ORDER :

This is an application under Section 438 of the Criminal Procedure Code. The applicant has been charge sheeted by the respondent of an offences punishable under Sections 307, 120-B read with 34 IPC and Section 8(2) of the Goa Children's Act.

2. Prosecution case, in short, is that on 07/02/2019 at 4.30 hrs. informant Mrs. Ankita Bhagat lodged a report that on the same day around midnight while returning from a movie at Porvorim, Bardez, Goa some unknown persons riding on a orange colour Aprilia scooter assaulted her husband and minor daughter, aged about four years, with a long knife resulting into serious bodily injuries to their head, left ear and left hand. An offence came to be registered as above.

3. After investigation, it revealed from the call detail records and the other material that accused Zamir Sayad along with five more accused namely Bobby, Sumeet, Sonu (brother of Bobby), Arif Langoti (the applicant) and one Dinesh Mehra had committed the crime in furtherance of their common intention. The accused were following the victim in three vehicles i.e. Maruti Suzuki Ciaz bearing no.2181, which belonged to the applicant, Aprilia bike bearing no.GA-03-AK-2040 and black colour Activa scooter of accused Zamir Sayad.

4. The investigation agency analysed mobile number of the applicant i.e. 7517655160 and revealed its tower location which was found near Vijayalaxmi Apartment, Panaji at the time of incident and

on Mapusa road Prvorim Goa i.e. near the scene of offence. The investigating agency also found that there was a criminal conspiracy. It is the case of the prosecution that the applicant along with accused Bobby @ Bhupendra Bundela, Sumit and Sony are still absconding. Efforts are being made to nab them. According to the prosecution, it appears to be the case of a contract to kill the victim, who has a restaurant and real estate business. The accused were unsuccessful in their attempt to eliminate the husband of the informant who suffered grievous injuries. A charge sheet has already been filed and it is informed that the Children's Court, Panaji is seized of the matter. The evidence of the informant has already been recorded.

5. According to the learned Counsel for the applicant, he is an engineer by profession, though there is no such mention in the application. It is submitted that it is a false case foisted upon him and that he had never been involved in any such offences. He is a law abiding citizen and he would not tamper the prosecution evidence in any manner. It is submitted that the entire prosecution story rests on suspicion and it is a settled position that suspicion, however grave, cannot take place of proof. The applicant claims that he has deep

roots in the society and there is no question of his abscondance. He is ready to abide by any terms and conditions.

6. Admittedly, the Children's Court has already rejected an application seeking anticipatory bail by an order dated 17/09/2019.

7. In case of ***Siddharam Satlingappa Mhetre V/s. State of Maharashtra & Ors.*** reported in ***(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.

8. The trial is in progress before the Children's Court, Goa. It cannot be strictly said that the investigation has been completed in all respects, in the light of the fact that the role of the applicant is yet to be thoroughly probed by the investigating agency in view of the fact that *prima facie* it appears to be a case of unsuccessful contract killing. The photographs tendered on record, especially of the daughter of the informant, aged about four years, as well as the applicant depicts the gravity and seriousness of the offence. It reveals

from the record that the accused persons had kept a constant watch upon the husband of the informant and were waiting for a proper opportunity to mount an assault.

9. The call detail records of the accused *inter se* also *prima facie* indicate the complicity of the applicant in the crime. It reveals from the call detail record that the accused were following the victim from his restaurant at Nagoa, Arpora to his residence at Devashree Garden, Wadakade, Porvorim till the Mall de Goa, Porvorim, which attracts Section 120-B of IPC. The weapon used by the applicant is yet to be recovered, which can only be possible by an interrogation.

10. The accusation is well founded. The offence is grave in nature. The role of the applicant, as discussed herein above, is clear as he was present at the time of commission of the offence near the spot of incident, which is evident from the call detail records. Since the applicant is not cooperating with the investigating agency, there is likelihood of his fleeing away from justice. If it is a case of “contract to kill” the life of the victim cannot be put to risk again.

11. Despite filing a charge sheet, the applicant is even not ready to appear/surrender before the trial Court, which *prima facie* indicates that he does not wish to cooperate for further investigation. There is no question of causing any prejudice to the applicant in case of refusal of anticipatory bail. Rather, it would cause some prejudice to the investigating agency as it may not be in a position to probe the crime thoroughly. The chances of applicant tampering with the witnesses also cannot be ruled out looking to the mode and manner in which the offences appear to have been committed.

12. The learned Counsel for the applicant placed reliance in case of ***Geejaganda Somaiah V/s. State of Karnataka*** reported in (2007) 9 SCC 315. He has highlighted paras 21 and 22 of the judgment which speaks about Section 25 to 27 of the Evidence Act, which read thus:

“21. Section 25 of the Evidence Act mandates that no confession made to a police officer shall be proved as against a person accused of an offence. Similarly Section 26 of the Evidence Act provides that confession by the accused person while in custody of police cannot be proved against him. However, to the aforesaid rule of

Sections 25 to 26 of the Evidence Act, there is an exception carved out by Section 27 the Evidence Act providing that when any fact is discovered as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 27 is a proviso to Sections 25 and 26. Such statements are generally termed as disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker. Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence.

- 22. As the Section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of*

accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 the Evidence Act.”

13. There is no second opinion about the scope of Section 25 and 26 of the Evidence Act of which Section 27 is a proviso. The impact of these sections can only be considered after a trial and not at the stage of entertaining an application for anticipatory bail. There is no doubt that a confession made by an accused to a police officer is inadmissible evidence. It is for the trial Court to decide whether the investigating agency has properly investigated the matter including the alleged confessions, if any. The ratio can be accordingly distinguished.

14. In case of ***Shri Gurbaksh Singh Sibbia & Ors. V/s. State of Punjab*** reported in (1980) 2 SCC 565, the Hon'ble Supreme Court has observed that in view of Article 21 of the Constitution of India any statutory provisions concerned with personal liberty cannot be whittled down by reading restrictions and limitations into it. The Hon'ble Supreme Court has duly considered the ratio in ***Shri Gurbaksh Singh Sibbia*** (supra) in case of ***Siddharam Satlingappa Mhetre*** (supra).

15. The Hurt Certificate of the victims namely the minor girl, aged about four years, reveals that she sustained grievous hurt at her left hand with sharp edged object and that of her father Mr. Laxmikant Bhagat sustained injuries on his head and left ear, which is the vital part of the body.

16. There is nothing on record to indicate that the applicant has roots in the society.

17. 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.

18. As such, taking into account all the relevant facts and circumstances into consideration, I do not deem it to be a fit case to grant pre-arrest bail to the applicant. The application, thus, stands rejected.

PRITHVIRAJ K. CHAVAN, J.

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