

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO.258 OF 2019

Mr. Imran Bepari

.... Applicant

V/s

Police Inspector & Anr.

.... Respondents

Shri Arun Bras De Sa, Advocate for the Applicant.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondent.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on : 22nd October, 2019

Pronounced on : 18th November, 2019

ORDER :

This is an application under Section 439 of Cr.P.C. The petitioner has been booked by the respondent in Crime No.71/2019 under Sections 143, 147, 148, 341, 506(II), 324, 427, 307 read with 149 of IPC.

2. In short, it is alleged that on 28/04/2019 at about 20.05 hrs. at St. Cruz, the petitioner along with other accused in furtherance of their common object formed an unlawful assembly, armed themselves with deadly weapons and threatened the complainant with dire

consequences. It is alleged that the accused at serial nos.6 & 7 assaulted the complainant with slaps and fist blows. They damaged the scooter of the complainant. The petitioner assaulted the friend of the complainant namely Anthony on his back below the neck with *koyta* with an intention to kill him. It is further alleged that all the accused persons assaulted another friend of the complainant namely David with a *koyta* over an issue of previous enmity.

3. An application for bail preferred by the petitioner before the learned Sessions Judge on 11/09/2019 came to be rejected on the ground of petitioner's criminal antecedents.

4. Heard Shri Arun Bras De Sa, learned Counsel for the petitioner and Shri Pravin Faldessai, the learned Additional Public Prosecutor for the State.

5. At the outset, it is vehemently urged by Shri De Sa to enlarge the applicant on bail solely on the ground that the petitioner had not at all been involved in the offence alleged, which can be seen from the CCTV footage. The Counsel urged to view the CCTV footage in

order to ascertain this fact.

6. On the other hand, Shri Faldessai, drew my attention to the list of antecedents of the petitioner, *inter alia*, stating that in the instant case, he was armed with a *koyta* in his hand by which he mounted an assault upon the victim. Shri Faldessai has also pointed out towards the Injury Certificate. The Injury Certificate of the victim Anthony Nadar indicates a grievous injury as certified by Dr. Amol Amonkar.

7. In the presence of the learned Counsel for the petitioner and the learned Additional Public Prosecutor, CCTV footage has been watched which clearly depicted the presence of the petitioner armed with a deadly weapon mounting assault upon the victim. The learned Counsel for the petitioner, having noticed the said fact has not stated anything.

8. Be that as it may. Following are the offences registered against the petitioner with different police stations under different sections of Indian Penal Code:

- (i) Old Goa Police Station Cr.No.61/13 u/sec. 143,147,148,234,307 r/w 34 IPC.
- (ii) Old Goa Police Station Cr. No.92/14 u/sec 307 r/w 34

IPC.

(iii) Old Goa Police Station Cr. No.21/16 u/sec 504,323,427,354(A),509 IPC & sec 8 of Goa Children's Act.

(iv) Old Goa Police Station Cr. No.100/16 u/sec 143,147,148,324 r/w 149 IPC.

(v) Old Goa Police Station Cr. No.116/2016 u/sec 143,147,148,323,341,342,427,447 r/w 149 IPC.

(vi) Old Goa Police Station Cr. No.14/2018 u/sec 143,147,341 r/w 149 IPC.

(vii) Panaji Police Station Cr.No.157/2016 u/sec 326,341,504 r/w 34 IPC.

(viii) Panaji Police Station Cr. No.10/2015 u/sec 326,341,504 r/w 34 IPC.

(ix) Mapusa Police Station Cr. No.152/2016 u/sec 354-D,336,509,504 r/w 34 IPC.

9. It is pertinent to note that as per the prosecution, the petitioner is a history-sheeter who is the brother of accused Arbaaz Beapri, who is also involved in the present crime. A bare look at the aforesaid cases indicate that the petitioner was involved in an offence under Section 307 of IPC in at least two matters and under Section 326 of IPC in two matters apart from involving in rioting, outraging the modesty, stalking as well as causing sexual harassment. Not only the list

indicates that the petitioner has been a member of unlawful assembly in almost all the offences, but is also involved in an offence registered against him under Section 341 of IPC.

10. Looking to the background history of the petitioner, coupled with the CCTV footage referred herein above, there would hardly be any reason to enlarge him on bail, for, by doing so would tantamount to risking the life of the victim of the crime. There is every likelihood of threatening or tampering with the witnesses by the petitioner in light of aforesaid facts. The nature of the offence is quite serious and grave. The weapon used is lethal. There is also possibility of his fleeing away from justice. Investigation is still in progress and, therefore, for the reasons stated herein above, this would not be a fit case to release the applicant on bail at this stage.

11. Shri Arun Bras De Sa has placed reliance on the judgment of the Hon'ble Supreme Court in case of *Maulana Mohd. Amir Rashadi V/s. State of U.P. & Anr.* reported in *2012 DGLS (SC) 35*. He emphasized on para 6 of the judgment which reads thus:

“(6) It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament

facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court, etc.” (emphasis supplied)

12. No doubt, merely because there are several cases against the petitioner, would not in itself be a ground to refuse bail. However, it cannot be lost sight of the fact that in the case (supra) second respondent was a sitting member of parliament and, therefore, foisting cases due to political pressure cannot be ruled out, which is not the case at hand. In the case before the Supreme Court most of the cases against the petitioner ended in the acquittal for want of appropriate witnesses or pending trial. It is not the case of the petitioner herein that he has been acquitted for all the cases. The role of the petitioner in the instant case from the CCTV footage also, *prima facie*, indicates his complicity and active role in the alleged offence and, therefore, the ratio can be distinguished accordingly and would not be of any assistance to the petitioner.

13. A cumulative effect of the aforesaid discussion is that there is no merit in the petition and, therefore, it is rejected.

PRITHVIRAJ K. CHAVAN, J.

NH