

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICTION (BAIL) NO.276 OF 2019
AND
CRIMINAL APPLICATION (BAIL) NO.275 OF 2019

CRIMINAL APPLICTION (BAIL) NO.276 OF 2019

Mr. Ismail Shaikh @ Kabbu,

Son of Abdul Khan Shaikh, aged 30 years, unmarried, Driver, residing at House No.238, Near MPT Ground, Patrong, Baina, Vasco da Gama, Goa presently in Police Custody, Through his brother Mr. Nawaz Shaikh, Son of Abdul Khan Shaikh, aged 28 years, residing at House No.238, Near MPT Ground, Patrong, Applicant
Baina, Vasco da Gama, Goa.

Versus

- 1 State of Goa
(through Vasco Police Station),
Vasco, Goa.
- 2 Public Prosecutor,
High Court of Bombay, Panaji, Goa. Respondents

CRIMINAL APPLICATION (BAIL) NO.275 OF 2019

Mr. Parshuram alias Patri Shivanand
Pathakar alias Pathatre

Son of Shivanand Pathakar, aged 26 years, unmarried, service, presently in judicial custody Through his father Mr. Shivanand Pathakar, aged Applicant
50 years, service, residing at House NO.335, Near Airport, Assoi, Dongri, Chicalim, Goa.

Versus

- 1 State of Goa
(Through Vasco Police Station),
Vasco, Goa.
- 2 Public Prosecutor,
High Court of Bombay, Panaji, Goa, Respondents
Panaji Goa.

Shri Iftikar Agha and Shri K. Morajkar, Advocates for the applicants.

Shri Mahesh Amonkar, Additional Public Prosecutor for the respondents.

Coram :- NUTAN D. SARDESSAI, J.

Reserved on:- 4th December,2019.

Pronounced on : 18th December,2019.

Order:

The applicants seek their release on bail by their applications under Section 439 CrPC coming up for dismissal today.

2. It was the applicants case that an offence was registered by the respondent no.1 under Crime No.131 of 2019 under Sections 370, 376, 506(ii) r/w. 34 IPC, Section 8 of Goa Children's Act, Sections 4, 8 and 12 of the POCSO Act and Sections 3, 4, 5 and 7 of Immoral Trafficking (Prevention) Act. They have been arrested in the said crime and are in judicial custody after the initial remand to police custody. The applicants are permanent residents of the stated addresses and are residing with their family. The first applicant is self-employed, provides taxi services at the Airport and also renders taxi services for Goa Miles. He was placed under arrest after being picked up from his residence on 17/10/2019 at 19.43 hours and taken in custody. He was innocent, the sole earning member of the family and otherwise had not committed any offence. It was therefore a fit case to order his release on bail on such terms and conditions as may be imposed by this Hon'ble Court. The second applicant too carved a similar case of being placed under arrest on the night of 17/10/2019 upon his arrival at his residence. He too claimed that he was a law abiding citizen, innocent and the sole earning member of his family. He had not committed any offence and therefore, it was a fit case for grant

of bail on such terms and conditions as may be imposed by this Hon'ble Court.

3. The State opposed the applications on the premise that the complainant had lodged a complaint at the Police Station prior to July 2019 and till date, the two applicants with two others acting in furtherance of their common intention and for their monetary benefits procured, lured and induced the minor victim girl into commercial sexual activities and provided her to various customers for money, which were arranged by them in a closed premises within the vicinity of public places. Furthermore, the applicants have also threatened the victim girl with dire consequences in case she refuses to go to the customers arranged by them giving rise to the registration of the offence under the earlier stated provisions of law. The applicants were placed under arrest on the evening of 17/10/2019 and the necessary investigation had been commenced in the case. The statement of the victim girl was recorded in the presence of NGO and which was found corroborating with the complaint. Moreover, her statement was also recorded under Section 164 CrPC by the JMFC, Vasco.

4. The victim was medically examined which confirmed that there was an evidence of vaginal penetration. The victim was also a minor as revealed from her medical examination. The two applicants had a criminal record and particularly the applicant no.1 who was a notorious character while the second applicant was a budding criminal. Their presence in the custody was essential to investigate their role in the entire crime and besides there were several cases registered at the Vasco Police Station. There were several girls in the said activity on account of the involvement of the applicants and whose identity was required to be confirmed. The applicants had not been cooperating with the course of investigation and besides there was every possibility that they may flee from the State and would not be available for the investigation if released on bail which may hamper the investigation. In view thereof, their applications had to be dismissed.

5. Heard Shri I. Agha, learned Advocate for the applicants who reiterated the contents of his application, read through the complaint and submitted at the outset that an offence under Section 376 IPC was not attracted to the case. The bail

applications filed by the applicants were rejected by the learned Sessions Judge. He placed reliance **in Freedom Firm v/s. Commissioner of Police, Pune and ors.**[Cr. Public Interest Litigation No.4 of 2015] and submitted that there was no basis in the case of the respondents that the applicants would jump the bail. A plea that there were other offences registered against the applicants would also not survive in view of the disposal of the said proceedings. In the circumstances therefore and as the investigation in the case was almost complete, the applicants had to be enlarged on bail.

6. Shri Mahesh Amonkar, learned Additional Public Prosecutor for the State submitted at the outset that the applicants were placed under arrest on 17/10/2019 and thereafter the statements of the victim and other girls were recorded. The victim girl is under constant fear and threats from the applicants and therefore it is not a fit case to order the bail of the applicants until the statement of the victim is recorded in the Court. The offence alleged is serious in nature and therefore they are not entitled to the benefit of bail. He however fairly

conceded that the time limit for filing the charge-sheet was likely to expire on 17th instant.

7. i have heard Shri I. Agha, learned Advocate for the applicants and Shri Mahesh Amonkar, learned Additional Public Prosecutor for the respondents and besides perused the records of investigation including the Case Diary. It is apparent from a consideration of the complaint that a detailed report was made by brother Sebastian George, Headmaster of the school indicating in detail how the victim girl (name withheld) was submitted to the sexual activities and that it was also reflecting on her performance in the school including nonattendance. It was also indicted from the complaint that the victim was a minor and that her initiation in sexual activities was at the instance of the two females and the applicants and that it could never be assumed that the offence under Section 376 IPC was not made out against her as was the contention of Shri I. Agha, learned Advocate for the applicants. Rather a cursory perusal of the complaint would indicate that the victim girl was subjected to the sexual activities much against her consent considering her tender age and that she was also subjected to fear and threats

apart from intimidation in case she did not cooperate with them in participating in the illicit activities at their instance. Therefore, the contention on behalf of the applicants that they were entitled to the benefit of bail cannot be entertained.

8. In **Freedom Firm**(supra), which also involved a case of trafficking under the Immoral Trafficking (Prevention) Act, 1956(ITPA) r/w. Section 370 IPC, the accused had applied for an anticipatory bail which was readily granted in his favour. It was carved out on behalf of the petitioners that there was a misuse of the provisions of bail, which results in stalling the proceedings under the ITPA and thereby deprives the victims of their rightful claim to rehabilitation apart from indirectly encouraging illegal trafficking. In the said case several guidelines were laid down in the matter of grant of bail in the cases of human trafficking which were recorded in paragraph 26 of the order.

9. Furthermore, in **Freedom Firm**(supra), guidelines were also laid down in paragraph 30 for streamlining the prosecution of the cases of human trafficking and the matter of grant of bail in such cases too were spelt out. Considering the guidelines laid down therein, it cannot at all be heard on behalf of the

applicants that they would be entitled to the benefit of bail in the factual matrix. There are several offences registered against the applicants and although two cases have been closed as A Summary and in one case he has been acquitted, the fact however remains that he is still involved in the serious offences of the Vasco Police Station under section 307 amongst others. Looking to the tender age of the victim and the manner in which she has been lured in this case, there is no basis for ordering the release of the applicants on bail even by imposing stringent conditions. The fact that the first applicant is on the threshold of getting married and settling into matrimony is not a ground for ordering his release on bail when juxta positioned with the nature of the offences alleged against him and the gravity and seriousness of the crime.

10. i find favour with the contention of Shri M. Amonkar, learned Additional Public Prosecutor that ordering the release of the applicants at this stage would be counterproductive to the case of the prosecution and there is every possibility that the victim might not be available for examination in the Court when the chargesheet is filed against the applicants shortly giving

weightage to the fact that she is under fear and there are threats and intimidation to her and to her safety at the instance of the applicants in case she does not cooperate in their activities of trafficking and sexual exploitation. i do not find any merit in the applications which are hereby dismissed.

NUTAN D. SARDESSAI,J.

mv