

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO. 309 OF 2019**

Ashvek Yeshwant Valvalkar,
H.No.189, Bhatti, Parra,
Bardez, Goa,
Presently lodged at Central Jail
Colvale, Bardez, Goa
Through his next friend,
Mr. Yeshwant Valvalkar,
H.No.189, Bhatti,
Parra, Bardez, Goa.

... Applicant

Versus

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

2. Police Inspector,
Mapusa Police Station,
Mapusa, Goa.

... Respondents

Shri S. D. Lotlikar, learned Senior Advocate with Shri J. Karn,
learned Advocate for the Applicant.

Shri Pravin Faldessai, Addl. Public Prosecutor for the State.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 13.12.2019

Pronouced on: 18.12.2019

ORDER:

The applicant seeks his release on bail after multiple attempts at seeking for bail have failed and as per the directions issued by this Court in its order dated 02.02.2019 and the subsequent order dated 27.06.2019.

2. Heard Shri S. D. Lotlikar, learned Senior Advocate with Shri J. Karn, learned Advocate on behalf of the applicant who adverted to the order of this Court dated 02.02.2019 and submitted that an observation was made by this Court on behalf of one of the applicants that he could move the learned Sessions Judge for bail after examining the material witnesses numbering five. The applications for bail were accordingly dismissed with a liberty to the applicants including the present applicant to renew the request after a period of three months or after the examination of the above named witnesses whichever was earlier and with a further direction to the learned Sessions Judge to proceed to conduct the trial as expeditiously as possible. The request for bail was renewed before the learned Sessions judge and in the meantime four

out of the five witnesses were examined while the fifth one was abroad. An additional witness too came to be examined named Ravi Naik and who had clearly stated that he was not knowing the applicant prior to the date of the incident and came to know him only when he assaulted him. The said Ravi Naik had also stated that he knew the applicant about whom he had gathered information on the facebook about one or two years prior to the incident. All the material witnesses had been examined and therefore, looking to the tenor of the directions issued by this Court, it was a fit case to order the release of the applicant on bail who was in jail for the last two years.

3. Shri Pravin Faldessai, learned Addl. Public Prosecutor on behalf of the State contended that the offence alleged against the applicant was serious in nature and the learned Addl. Sessions Judge had therefore rightly dismissed the application for bail vide her order dated 02.12.2019 while conceding that the material witnesses named in the order dated 02.02.2019 had already been examined. Shri Preetam Talulikar, learned Advocate for the respondent no.3 who had intervened in the application for bail vehemently opposed the release of the applicant on bail on the premise that he was a hardened and notorious criminal and that releasing him on bail would be hazardous to the respondent no.3. Three more eye witnesses were yet to be examined and besides, two

witnesses had turned hostile. He adverted to the complaint annexed to his intervention application and submitted that there was no quarrel that the victim could participate in the criminal trial. There were threats to his life and looking to the seriousness and gravity of the offence, the applicant was not entitled to the benefit of bail.

4. I have heard Shri S. D.Lotlikar, learned Senior Advocate on behalf of the applicant, Shri Pravin Faldessai, learned Addl.Public Prosecutor on behalf of the State and Shri Preetam Talaulikar, learned Advocate on behalf of the respondent no.3 and besides perused the statement of the said Ravi Naik produced on record on behalf of the applicant. Shri Talaulikar also placed reliance in the case of **Shivam Trivedi Vs. State of UP, {Bail Application no.11235/2019}** where certain conditions were imposed while ordering the release of the applicant on bail and to point out how the said applicant had violated the conditions of bail and set the victim of rape ablaze. The applicant in his contention was a hardened and notorious criminal and there was every threat to the life of the respondent no.3 and the complainant and therefore, the bail application had to be dismissed.

5. At the outset, the learned Single Judge while dealing with the bail application of the applicant and another had by its order dated 02.02.2019 given a clear indication while

disposing off the application of the applicants that they were at liberty to move the learned Sessions Judge for bail after the examination of the material named five witnesses and within three months thereof. The submission of Shri Lotlikar, learned Senior Advocate that four of the five witnesses have been examined and the fifth is not available being abroad has not been singularly denied or disputed on behalf of the respondent no.3. It is equally a matter of record that another learned Single judge of this Court by its order dated 27.06.2019 had disposed off the bail applications of the applicant and another in which there was due reference to the statement of an injured Ravi Naik and the learned Judge had observed that the witnesses to the crime were reluctant to give their statement due to the apprehension and terror of the applicant who was a hardcore criminal and they were likely to suffer harm in case they gave their statements. Even after considering all these aspects of the matter and that the offences were registered against the applicant under various provisions of I.P.C., the learned Judge once again reiterated that after the five witnesses were examined, the applicant was at liberty to approach the learned Addl. Sessions Judge for the grant of bail and in that view of the matter, rejected the applications for bail.

6. Since 02.02.2019 and even after the order dated 27.06.2019, the fact remains that the named witnesses have

been examined except one who is admittedly overseas. The injured Ravi Naik too whose name finds reference in the subsequent order dated 27.06.2019 has also been examined on behalf of the prosecution. Therefore, to all intents and purposes all the material witnesses have been examined on behalf of the prosecution whose names were listed in the order dated 02.02.2019 and thereafter the injured Ravi Naik. The applicant is in custody and it cannot be gathered that only on that premise he would not be in a position to influence the witnesses considering the contention on behalf of the respondent no.3 that two witnesses have turned hostile. However, it would be rather farfetched to hastily conclude that the applicant has been instrumental in the two witnesses of the prosecution turning hostile as is the contention of Shri Preetam Talaulikar, learned Advocate for the respondent no.3. The injured Ravi Naik too has been examined and therefore, looking to the tenor of the order of this Court dated 02.02.2019 in particular which is almost ten months remote from today, it cannot be heard on behalf of the respondent no. 3 that the applicant has to continue to be detained in custody only on the premise that some additional witnesses are yet to be examined. There is no imminent threat or intimidation spelt out on behalf of the respondent no.3 to his life and limb at the instance of the applicant as to continue his detention in custody. No doubt the offence alleged against the applicant is serious in nature but looking to the tenor of the earlier order,

there is equally no reason to deny him the benefit of bail.

7. In **Shivam Trivedi** (supra) the applicant was admitted to bail on certain terms and conditions for the offence under Section 376-D and 506 of I.P.C. It is public knowledge that the applicant was alleged to have set ablaze the victim who had lodged the complaint against him and that she had succumbed to her injuries while he was out on bail. However, this aspect is a subsequent event and which however does not buttress the case of the respondent no.3 to oppose the bail application of the applicant herein.

8. In the circumstances, therefore, i am inclined to order the release of the applicant on bail on the following terms and conditions:-

1. He shall be enlarged on bail on executing bail bonds in the amount of ₹25,000/- (Rupees Twenty Five Thousand Only) and furnishing a local surety in coextensive amount to the satisfaction of the learned Addl. Sessions Judge, Panaji.
2. He shall not intimidate the witnesses or otherwise in any manner bear upon the trial by his presence.
3. He shall not visit the scene of crime nor anywhere near the house of the complainant and or the prosecution witnesses.
4. The applicant will fully co-operate with the expeditious disposal of the case and shall not seek any adjournment

on the dates fixed for trial when the witnesses are present in the Court.

9. In the event the applicant breaches any of the conditions of bail, the State shall be at liberty to seek for the cancellation of bail.

10. In these terms the application stands disposed off.

11. Parties to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J.

MF/-