

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO. 64 OF 2020**

Mr. Somappa Ramappa Rathod,
s/o Ramappa Rathod,
43 years of age,
Indian National,
R/o. H.No.1411/134,
Aradi, Candolim,
North-Goa
(Presently lodged in Judicial Custody at
Colvale-Goa.)

.... Applicant.

Versus

- 1 STATE
(Rep. By Officer-In-Charge,
Calangute Police Station,
Calangute Goa)
- 2 The Public Prosecutor
Panaji-Goa, High Court,
Altinho.

.... Respondents.

Mr. Salil Saudagar with Mr. Yatin Padloskar, Advocates for the Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the State.

Coram : M. S. SONAK

Date : 12th May, 2020.

P. C.:

Heard Mr. Saudagar, learned Counsel for the Applicant, Mr. Faldessai, learned Additional Public Prosecutor for the State.

2. The Applicant, who has been charged with an offence under Section 376 of the IPC seeks bail. The Applicant was arrested on 16.01.2020 and is presently in judicial custody.

3. The allegation against the Applicant reads as follows:

'That on 16.01.2020 at 23.04 hrs registered an offence upon the complaint of Ms. Dawn Kim Boggett, d/o Harry Boggetts, age 58 years, r/o 46 Nowood, Cresnet Killmarch, South Yorkshire, England to the effect that on 15.01.2020 at about 14.00 hrs at Calangute Beach near one shack located at left hand side of the steps to the Calangute beach accused Somappa S/o Ramappa Rathoda, age: 42 years r/o Aradi, Candolim, Bardez Goa inserted his fingers in to the private part (Vagina) of the complainant on the pretext of giving body massage to her thereby committing an offence of rape.'

4. The learned Sessions Judge by Order dated 04.02.2020 declined bail to the applicant, inter alia, on the following grounds:

- a) The investigating agencies were yet to record the statement of Sandra, who was an eye witness to the incident;
- b) The applicant's address at Bijapur was yet to be verified;
- c) The investigations were in progress.

5. As of today, the statement of Sandra, the alleged eye witness, has already been recorded. Mr. Faldessai submits that to the best of his knowledge the chargesheet was ready but is not too sure whether the same has in fact been lodged before the concerned Court. Mr. Saudagar, on the basis of instructions states that the chargesheet has already been lodged before the Judicial Magistrate First Class at Mapusa on 09.03.2020. This, indicates that the investigations are complete.

6. The record also indicates that though the applicant may have been originally a native of Bijapur, for the last 15 years or so, he has been residing at Candolim. The place of his residence has been verified by the Investigating Officer. Mr. Saudagar states that the applicant is residing with his wife and two children, one of whom has answered her SSC exams.

7. According to Mr. Saudagar, the reasons which prompted

the learned Sessions Judge to decline bail do not substantially prevail at this point of time.

8. In the say filed by the Respondents, there is apprehension expressed that the applicant might threaten the victim. However, Mr. Saudagar admitted that the victim who was a British National is no longer in India. The investigation is complete and even the chargesheet has been lodged. The applicant, has a local address at which he is reported to be residing since last 15 years. Above all, Mr. Saudagar on basis of instructions states that presently, there is ban on undertaking any activity of offering massages and in any case, the applicant undertakes not to indulge in this activity until the conclusion of the trial. He urges that this undertaking be recorded by this Court since the same is furnished on the basis of instructions. The undertaking is accordingly recorded and accepted.

9. There is really no material on record to indicate that the applicant will flee from justice or interfere with the witnesses. The applicant is already in custody since 16.01.2020. Though, the offence is serious, no useful purpose will be served by retaining the applicant in judicial custody any further. Accordingly, the applicant, has made out a case for enlargement on bail, no doubt, subject to certain conditions.

10. Accordingly, the applicant is directed to be released on bail in an amount of ₹50,000/- with one local surety in the like amount to the satisfaction of the Additional Sessions Judge at Mapusa, i.e. the Court which had entertained the applicant's Bail Application No. 13/2020. In addition to this, the applicant, will abide by the following conditions:

- a) The applicant will furnish his current local address to the Investigating Officer and in case of any change, immediately intimate the change in address to the Investigating Officer.
- b) The applicant will not leave the State of Goa without obtaining prior permission from the learned Additional Sessions Judge.
- c) The applicant will attend the trial on the dates fixed without any unnecessary excuses.
- d) The applicant will abide by the undertaking furnished by him to this Court.
- e) The applicant will not make any attempts whatsoever to interfere with the victim or the witness in this matter.
- f) The applicant will report to the concerned Investigating Officer once each month.

11. The application for bail is disposed of in the aforesaid terms.

12. All concerned to act on the basis of authenticated copy of this Order.

M. S. SONAK, J.

msr.