

**` IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 85 OF 2020**

YASH DIWAKAR CHARI, PRESENLT
LODG. IN JUDICIAL CUSTODY AT
CENTRAL JAIL COLVALE, THR.
DIKSHITA CHARI

... Applicant

Versus

STATE OF GOA, THR. PUBLIC
PROSECUTOR AND ANR.,

... Respondents

Shri Damodar Dhond with Shri Vibhav Rajiv Amonkar,
Advocate for the Applicant.

Shri Gaurish Nagvenkar, Addl. Public Prosecutor for the
Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 9th June, 2020

P.C.:

It was the contention of Shri D. Dhond, learned
Advocate that the applicant was arrested on 12.07.2019 in

Crime no.168/2019 and has been in custody since the last eleven months in several offences including Section 307 of I.P.C. The investigation in this case is complete and charge sheet has been filed.

2. The bail application was rejected by the Learned Addl. Sessions Judge on the premise that prima facie involvement is established in the crime and he is not innocent. He adverted to the complaint and the statement of one Shri Kamlesh to substantiate that there was no material available to nail the applicant in the crime. There was no recovery at his instance and that four masks and four jackets which were recovered were at the instance of the accused no.10. Besides, it was his contention that one coita, one sword and one pipe was recovered in this crime. One Dipesh was released by the learned Sessions Judge despite a statement on record that he was named in the crime and on the premise that he was not involved in the crime. He was entitled to bail on all these counts and on the ground of parity.

3. Shri Gaurish Nagvenkar, learned Addl. Public Prosecutor adverted to the disclosure statement on record and submitted that it was evident that the applicant was involved in the crime therefore by operation of Section 149 I.P.C. he was not entitled to bail. The offence was very serious and besides looking to the seriousness and gravity of the offence he was

not entitled to the benefit of bail.

4. i have considered the submissions and the statement on record to which both the learned Advocate and learned Addl. Public Prosecutor adverted to forming a part of the chargesheet including the disclosure statement.

5. There appears to be force in the contention of the learned Advocate for the applicant that the purported statement cannot be looked into, which is hit by Section 25 and 26 of the Indian Evidence Act and what is relevant is only the purported recovery so made on the basis of the disclosure. Besides i have also perused the hurt certificate of the complainant which reveals that he has sustained fracture injury amongst others namely an incised wound and a lacerated wound and no injury was suffered by the complainant or atleast none were indicated on the basis of any certificate being produced to that effect.

6. The applicant has been in custody since his arrest on 12.07.2019 i.e. for the last atleast eleven months. The complaint and the statement on record do not indicate the involvement of the applicant in the crime prima facie although his role cannot be totally obliterated since four of the assailants were wearing masks and the possibility of the applicant being one amongst them cannot be ruled out as

remote. Nonetheless, it would not be appropriate to prevaricate or go on the basis of assumptions that the applicant had a role to play in the crime since apparently even on the basis of the disclosure statement no overt act has been assigned in the crime. Looking to the overall circumstances of the case and that one of the accused has been released on bail by the learned Addl. Sessions Judge, i am inclined to release 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, North Goa, Panaji.
2. He shall co-operate with the course of investigation, and furnish his local address and details to the investigating officer and also to the Court.
3. He shall not leave the State of Goa and the territorial waters of India without the prior written permission of the Court concerned.
4. He shall not directly or indirectly influence the witnesses in this case or in any manner scuttle the trial as and when it is fixed.
5. The applicant shall ensure his presence at the trial on every date of hearing.
7. In these terms, the application stands disposed off.

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

NUTAN D. SARDESSAI, J.

MF/-