

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 319 OF 2019.

JOAQUIM D'COSTA, PRESENTLY IN
JUDICIAL CUSTODY AT COLVALE,
CENTRAL JAIL COLVALE, THR. SOMESH
MANSIN

... Applicant.

Versus

STATE OF GOA, THR. POLICE
INSPECTOR, MAPUSA POLICE STATION,
MAPUSA AND ANR.,

... Respondents

Shri Galileo Francisco Teles, Advocate for the Applicant.

Shri Pravin Faldessai, Addl. Public Prosecutor for the
Respondent Nos. 1 and 2.

Shri Preetam Talaulikar, Advocate for the Respondent No.3.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 3rd January, 2020

P.C.:

Heard Shri G. Teles, learned Advocate for the applicant who invited my attention to the order passed by this Court in Criminal Application (Bail) no.309/2019 and sought for parity in so far as the release of the applicant on bail was concerned.

It was also his contention that looking to the tenor of the reply filed to his earlier application there was no basis to call him as a history sheeter and that he was entitled to the benefit of bail as a substantial number of witnesses had been examined and therefore, necessary order be passed in his favour.

2. Shri Preetam Talaulikar, learned Advocate for the respondent no.3 submitted that the applicant was a hardened criminal and had hatched a criminal conspiracy to kill the respondent no.3 but who had survived a murderous assault on his person. The applicant was a historysheeter and atleast two offences were registered under Section 307 I.P.C. against him and that three more eye witnesses were yet to be examined and on that ground too, he was not entitled to the benefit of bail as there was a likelihood of these witnesses also being intimidated by the applicant.

3. Shri Pravin Faldessai, learned Addl. Public Prosecutor submitted that there were only five material witnesses to be examined on behalf of the prosecution of which four were already examined and the fifth one was not available as reported in the earlier bail application. Pursuant to the order of this Court dated 02.02.2019, the four of the five material witnesses who ought to be examined first had already been examined while the fifth one was not available and the other

witnesses would be examined in due course of time. It was otherwise his contention that the offence alleged against the applicant was serious in nature and the learned Addl. Sessions Judge had rightly dismissed the application for bail by the order dated 02.12.2019.

4. I heard Shri G. Teles, learned Advocate for the Applicant, Shri Preetam Talaulikar, learned Advocate for the respondent no.3 and Shri Pravin Faldessai, learned Addl. Public Prosecutor on behalf of the respondent nos.1 and 2. It is a matter of record that of the five material witnesses referred to in the order dated 02.02.2019, four have been examined on behalf of the State and since the time of the order dated 02.02.2019, substantial time has elapsed. Although it is the contention on behalf of the respondent no.3 that the applicant is a history sheeter, nonetheless it is apparent from the reply filed by the police that in one case the applicant was acquitted and in another case he was an undertrial in which the offences were not of a serious nature. Therefore, prima facie he cannot be branded as a history sheeter or a hardened criminal or one who is a habitual offender. Applying the grounds of parity and considering that material witnesses have already been examined, I do not see any reason why the applicant should be denied the benefit of bail.

5. Hence, on that premise, the applicant is ordered to be

enlarged 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.
5. 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.
6. In these terms the application stands disposed off.
7. Parties to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J.

MF/-