

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO.17 OF 2021

MINAMU HAFUSA, PRES.
LODGED AT JUDICIAL
LOCK UP, COLVALE

... Applicant

VS

STATE, AS REP. BY THE
OFF. IN CHARGE,
CALANGUTE POLICE
STATION AND ANR

... Respondents

Mr. K. Poulekar, Advocate for the Applicant.

Mr. M. Amonkar, Additional Public Prosecutor for the Respondents.

Coram : M. S. SONAK, J

Date : 15th February, 2021

P.C.

This is an application seeking bail since the Applicant is incarcerated from January, 2020 on account of her alleged involvement in the offence punishable under Section 302 of the Indian Penal Code in Sessions Case (302) No.15/2020.

2. Mr. Poulekar, learned counsel for the Applicant submits that in this case there is no direct evidence and the prosecution at the highest relies on the circumstantial evidence. He submits that there are several discrepancies in the present theory about the extrajudicial confession made by the Applicant. He points out that in fact there is

nothing on record to link the Applicant with the alleged death of Zeferino Baretto.

3. Mr. Poulekar submits that the Applicant has no criminal antecedents and she is willing to stand trial and indicate her innocence. He submits that the charge-sheet has already been filed and the apprehension of tampering with the evidence does not arise.

4. For all these reasons, Mr. Poulekar submits that the Applicant may be released on bail.

5. Mr. Amonkar, learned Additional Public Prosecutor opposes the grant of bail and reiterate the reasons reflected in the order made by the Additional Sessions Judge, Mapusa on 25th November, 2020. He submits that by now even the forensic report is available and the findings in the forensic report incriminate the Applicant. He submits that this is a serious offence and the Applicant is a foreign national who is likely to flee from justice if released on bail.

6. For all these reasons, he submits that this bail application may be rejected.

7. On due consideration of the material on record as also the rival contentions, I am satisfied that no case has been made out for

enlarging the Applicant on bail.

8. Apart from the fact that this is an extremely serious offence, the record contains the statements under Section 164 of the Criminal Procedure Code given by at least three witnesses. These witnesses have stated that they saw blood stains on the clothes worn by the Applicant on the date of the incident and the clothes were full of dust. They have also described the appearance of the Applicant on the said date i.e. her hair was untidy, full of dust and her shoes were muddy and even had some blood stains. These witnesses have stated that the accused told them that she had bit a person, whom she stated was a police man, on his hand and then with a stone smashed his head.

9. The record reveals that the death of Zeferino Baretto was on account of head being smashed with stone or similar object. At the site, a bike was found and the owner of the bike has given statement that his bike in fact was given to the Applicant.

10. The learned Additional Public Prosecutor has pointed out that even the blood stains on clothes which were allegedly worn by the Applicant on the date of the incident were recovered in terms of Section 27 of the Evidence Act. Mr. Amonkar has also produced on record the forensic report and submitted that the blood group of stains found on the Applicant's clothes match with the blood group of the deceased

Baretto. Mr. Amonkar pointed out that the Applicant has refused to give her blood for examination and therefore, at least at this stage, any defence that the blood group of the stains and has blood group is one and the same may not be entertained.

11. Mr. Poulekar attempted to suggest that the forensic report relates to the clothes of the deceased. At least *prima facie* stage this is clearly misconceived. At least at two places Exhibits P and Q refer to shoes and short jean pant of the Applicant. The record indicates that these clothes were recovered based on the statement given by the accused. The forensic report at least *prima facie* indicates that the blood group 'O' was found on these items and this is the blood group of the deceased Baretto.

12. According to me, if all the aforesaid circumstances, together with the circumstances considered by the Sessions Judge are cumulatively considered then no case is made out for enlarging the Applicant on bail.

13. The application for bail is therefore rejected.

M. S. SONAK, J.

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