

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 23 OF 2021

NILESH M. GAONKAR APPLICANT
Versus
STATE, THR. OFFICER IN
CHARGE, VALPOI POLICE
STATION, VALPOI AND ANR RESPONDENTS

Mr. C.A. Ferreira with Mr. D. Zaveri, Mr. Sujay Kamulkar and
Ms. Lawina Costa, Advocates for the Applicant.

Mr. S.G. Bhobe, Public Prosecutor for the Respondents.

Coram:- M.S. JAWALKAR, J.

Date:- 9th February, 2021

P.C.

Heard Mr. C.A. Ferreira, the learned Counsel for
the applicant and Mr. S.G. Bhobe, the learned Public
Prosecutor for the respondents.

2. The present application is filed for grant of
anticipatory bail.

3. The applicant submitted that the learned Sessions
Judge, North Goa, rejected application for anticipatory bail on

solitary ground that *prima facie*, offence committed is bailable offence.

4. The applicant further submitted that he is a social activist and a member of an organization called “Revolutionary Goans”, which organization espouses the causes of Goa and Goans and endeavours to ensure that there is good governance in the State of Goa. On learning of an election meeting being conducted in violation of Election Code of Conduct, more particularly, because the meeting was held on night prior to the Zilla Panchayat Election, the applicant along with other members of Revolutionary Goans went to report the said event on 11.12.2020.

5. Angered by the expose done by the applicant and others and apparently to salvage himself from the possible consequences of violation of the Model Code of Conduct in force for Goa Zilla Panchayat Elections, a complaint was filed with respondent no. 1, who clearly under pressure, registered the FIR No. 64/2020. It is submitted that it is falsely alleged that the applicant along with others, forcibly entered into the

premises of one hotel, Sai Family Restaurant when they were celebrating dinner party and took video by stating that the complainant and others were violating the Code of Conduct on account of Zilla Panchayat Election by holding a public meeting and threatened to publish the same in social media and induced them to give money otherwise they will spoil the name. It is submitted that offence under Section 451 is bailable and insofar as Section 384 is concerned, it is observed by the learned Additional Sessions Judge that no basic ingredients are satisfied as there are no allegations of fear or injury to the complainant.

6. Apprehending his arrest, the applicant moved an application before the Sessions Court, North Goa for anticipatory bail. The learned Additional Sessions Judge though agreed with the submissions made on behalf of the applicant, held that application for anticipatory bail was itself not maintainable since Section 384 was not attracted and that since only Section 451 of IPC *prima facie* stood attracted and the said offence is bailable. Hence, the application for anticipatory bail is not maintainable and therefore, was

rejected. The learned Additional Sessions Judge elaborately discussed the facts and *prima facie* observed that there is no ingredients of Section 383 of IPC punishable under Section 384 of IPC revealed from the complaint nor there is any delivery of money disclosed.

7. The learned Public Prosecutor, Mr. S.G. Bhobe fairly made a statement that the ground on which the anticipatory bail is rejected is not proper. However, if this Court is granting bail, the applicant should be granted bail on condition that he should furnish his mobile number and contact details and other usual conditions.

8. I have considered the arguments advanced by both the parties. In my considered opinion the ground on which the anticipatory bail is rejected is erroneous. Once, having come to the conclusion that the FIR discloses a non-bailable offence and the applicant is *prima facie* not involved in the same, the learned Additional Sessions Judge ought to have granted anticipatory bail to the applicant. There is no recovery warrant and attending/reporting to serve the

purpose.

9. Section 438 of Cr.P.C. reads thus:

438. Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade

him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub- section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue aailable warrant in conformity with the direction of the Court under sub-section (1).

10. Thus, it is clear that if a person is having a reason to believe that he may be arrested on accusation of having committed non-bailable offence, he is entitled to apply for anticipatory bail. Instead of looking into

what is made out, *prima facie*, one has to see what is the accusation. Here FIR is registered for having committed bailable as well as non-bailable offence i.e. under Section 451 of IPC and Section 384 of IPC. Thus, the ground for rejecting the application for anticipatory bail is erroneous.

11. After considering in details the facts and circumstances and after observing that *prima facie* bailable offence has been committed, there was no reason to reject the anticipatory bail on the ground that *prima facie* non-bailable offence was not made out from the complaint. While granting anticipatory bail one has to see the factors mentioned in Section 438 of Cr.P.C. are there or not.

12. In my considered opinion the applicant is entitled to grant of anticipatory bail subject to conditions which will take care of his co-operation in further investigation. Accordingly, I proceed to pass the following order:

ORDER

- (a) The application is allowed.
- (b) In the event of arrest in connection with investigation of FIR No. 64/2020 of Valpoi Police Station, the applicant, Nilesh M. Gaonkar shall be released on bail on his execution of a P.R. bond in the sum of Rs.10,000/- with one solvent surety in the like amount.
- (c) The applicant shall co-operate with the Investigating Agency and shall attend the Valpoi Police Station as and when required by the I.O.
- (d) The applicant shall not attempt to contact or influence the prosecution witnesses.
- (e) The applicant shall furnish his mobile number and other contact details along with his permanent address to the I.O.
- (f) The application is disposed of in the aforesaid terms.

M.S. JAWALKAR, J.

EV