

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 25 OF 2021

Gavrish @ Gourish Bandodkar,
Pres. At Central Jail Colvale
Thr. Laxmi G. Bandodkar

..... Applicant

V e r s u s

The State of Goa,
Thr. Public Prosecutor

.....Respondent

Mr. Arun Bras De Sa and Mr. Sahil Sardessai, Advocates for the Applicant.
Mr. Pravin Faldessai, Additional Public Prosecutor for the State-Respondent.

CORAM : NITIN W. SAMBRE, J.
DATE : 25th March, 2021

P.C.

In Sessions Case No. 12 of 2019, the prayer of the applicant for a grant of regular bail came to be rejected.

2. The applicant herein, one of the co-accused, was arrested and charged for an offence punishable under Section 341, 504, 506 (ii), 307, 302 and 201 read with Section 34 of the Indian Penal Code vide Crime no. 104/2019 in response to the complaint dated 08.07.2019.

3. Whilst inviting my attention from the contents of the complaint

dated 08.07.2019, Shri Arun Bras De Sa, the learned Counsel appearing for the applicant, would urge that no specific active role is attributed to the applicant in the commission of the crime in question. So as to substantiate his claim, he would invite attention of this Court to the contents of the complaint dated 08.07.2019 and the other material available on record. According to him, neither weapon nor any other incriminating material is seized from the applicant. In the aforesaid background, the claim is merely based on the provisions of Section 34 of the Indian Penal Code. The applicant cannot be continued in detention particularly when charge is already framed against him. So as to substantiate his claim, he has relied on the judgment of the Apex Court in the matter of *Pandurang & Ors. vs. State of Hyderabad* reported in *AIR 1955 SC 216* and *Dukhmochan Pandey & Others vs. State of Bihar* reported in *AIR 1998 SC 40*. The learned Counsel based on the aforesaid Judgments, has urged that unless the common intention for commission of an offence of murder is inferred, he cannot be continued to be in detention.

4. The learned Additional Public Prosecutor while opposing the claim for bail, would urge that there are two series of offences in which the

applicant along with three other accused have actively participated. According to him, the incident in question need not be considered in isolation and, that being so, the satisfaction of necessary ingredients of Section 34 of the Indian Penal Code are very much satisfied.

4. In the case at hand, the complainant Dilip, is one of the victim, whereas his friend Krishna, was murdered by in all four accused including the Applicant. It appears that the role attributed to the applicant is that of riding the motorcycle with a pillion rider and two other accomplices on other motorbike. From the custody of co-accused, two weapons are already seized.

5. In the first part of the offence, deceased Krishna's brother was assaulted by the applicant and necessary ingredients of Section 34 of Indian Penal Code i.e. to say the common intention with a prior consultation amongst the accused persons can be inferred.

6. In the complaint, it is claimed that along with Krishna, complainant started chasing the accused persons and, at a secluded place, all the accused persons assaulted the complainant and one of the co-accused Jack severed the right hand of the deceased Krishna by a sword. As such, it can be inferred that the common intention of the applicant in the matter of

commission of crime is apparent as the applicant was part of the group of accused persons who had chased the victim and after assaulting the complainant, the other co-accused have murdered Krishna.

7. But, for the assault by sword, there was complete participation of the applicant in the crime in question and, that being so, the continuation of the series of events which has led to the offence, *prima facie*, makes this Court to believe that the provisions of Section 34 are rightly invoked.

8. In the aforesaid background, the reliance placed by the learned Counsel for the applicant on the Judgment in the matter of ***Pandurang*** (supra), will be of hardly any assistance.

9. The offence in the case in hand, is punishable by life imprisonment or death. There is an eye witness to the serious offence alleged against the applicant.

10. As such, in my opinion, no case for grant of bail is made out. The application as such fails and stands rejected.

NITIN W. SAMBRE, J.