

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPLICATION(BAIL) NO.26 of 2021.

MAXSON ROSARIO,
PRESENTLY LODGE IN
JUDICIAL CUSTODY
AT CENTRAL JAIL,
COLVALE

....Applicant.

Vs.
POLICE INSPECTOR,
PORVORIM POLICE STATION,
PORVORIM AND ANR.

.... Respondents.

Shri Arun Bras Desa and Shri Sahil Sardessai, Advocates for the applicant.

Shri P. Faldessai, Addl. Public Prosecutor for the respondents.

Coram:- M. S. JAWALKAR, J.

Date:-23rd February, 2021.

P.C.:-

The applicant is the accused in FIR No.11/2019, for the alleged offences under Sections 364A, 394, 342, 504 read with Section 34 of IPC.

2. Facts of the case in brief are that on 23.1.2019 the complainant resident of Porvorim lodged his complaint to the effect that on 22.1.20019 from 17.15 hrs to 16.00 hrs of 23.1.20219, four unknown persons with their common intention abducted the complainant on the pretext of showing the bungalow for renovation and wrongfully confined him in a closed room by tying his hands, legs and mouth with the help of rope and cloth material and abused him in filthy words and assaulted with slaps and forcefully snatched away his belonging worth Rs.3,80,000/-. The accused persons also demanded Rs.1,00,000/- from the complainant in exchange

of his life. The petitioner was arrested on 21.2.2019. He has been in jail ever since.

3. Heard Shri A. Desa, the learned counsel for the applicant and Shri Pravin Faldessai, the learned Additional Public Prosecutor for the respondents.

4 It appears that vide order dated 18.12.2020, the Additional Sessions Judge, Mapusa dismissed the application for bail on the ground that there was bail application filed earlier after recording of deposition of PW1 which came to be dismissed and there was no challenge to it.

5. Now, the applicant has come before this Court for the first time. The ground for filing present bail application is that the testimony of PW1 does not prima facie spell out the ingredients of the offence punishable under Sections 364A, 394, 342, 504 read with Section 34 of IPC. Moreover, the substantive evidence of a witness is his statement in Court which indicates innocence of the applicant. The Identification Parade cannot be substantive piece of evidence. It is only for the investigation purpose. The learned counsel also pointed out from the deposition of PW1/complainant that he was cross examined by the Public Prosecutor as he was not supporting the case. He has deposed that he identified the accused no.1 and 2 to be the said person whom he had identified before the Magistrate at Mapusa. He further categorically deposed that photographs of accused no.1 and 2 was shown to him by Porvorim Police Station at Police Station prior to identification before the

Magistrate. He shows his inability to identify the accused no.1, 2 and 3, as persons present in the car. He also deposed that he was not paying attention to their faces and was concentrating on driving his own car. In view of this statement made by the complainant there is no propriety in keeping the applicant behind the bar. It appears that the applicant is resident of Goa itself and by imposing stringent conditions he can be released on bail. The second bail application was rejected only on the ground that the earlier bail application was rejected and there was no challenge to the said order.

6. In my considered opinion deposition of PW1 is sufficient to release the applicant on bail. Accordingly, I pass the following:-

ORDER

- (i) The application of bail is allowed.
- (ii) The applicant is directed to be released on bail on his executing P.R. Bond for Rs.50,000/-(Rupees fifty thousand only) before the learned Additional Sessions Judge, Mapusa.
- (iii) The applicant should not leave the State of Goa, without prior permission of the learned Additional Sessions Judge, Mapusa.
- (iv) The applicant shall attend the hearing of the case on the date fixed by the trial Court.
- (v) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.
- (vi) The applicant shall furnish his detail address and mobile number to the Investigating Agency as well as any change in it.

- (vii) The applicant's failure to abide by these conditions will entail the prosecution to apply for the cancellation of bail now granted to the applicant.
- (viii) The Bail Application stands disposed of.

M. S. JAWALKAR, J.

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