

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO.45 OF 2021

POOJA GAUTAM,
PRESENTLY LODGED IN
JUDICIAL CUSTODY AT
CENTRAL JAIL, COLVALE

....Applicant

V/s

POLICE INSPECTOR,
PORVORIM POLICE
STATION, PORVORIM AND
ANR

..... Respondent

AND
CRIMINAL APPLICATION (BAIL) NO.46 OF 2021

MOHIT GAUTAM,
PRESENTLY LODGED IN
JUDICIAL CUSTODY AT
CENTRAL JAIL, COLVALE

....Applicant

VS

POLICE INSPECTOR,
MAPUSA, POLICE STATION,
MAPUSA AND ANR

.....Respondent.

Mr. Arun De Sa with Mr. Sardesai Sahil Samir for the Applicant in both the above Applications.

Mr. Pravin Faldessai, APP for the Respondent/State in both the above Applications.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 8, 2021

P.C.:-

1] In Crime No.342 of 2020, Applicants came to be arrested on 30/12/2021 as Accused Nos. 2 and 3 for offence punishable under Sections 307, 224, 353, 332, 324, 201, 120B read with Section 34 of the Indian Penal Code and Section 3 read with Sections 25 and 27 of the Arms Act.

2] Applicants are chargesheeted and I am informed that two of the Accused are still absconding and as such investigation to that extent is still continued.

3] The learned Counsel for the Applicants would urge that the main Accused No.1 – Vivek is brother of Accused No.3 whereas Accused No.2 is wife of Accused No.1. Accused Nos. 2 and 3 are before this Court seeking bail.

4] The case of the prosecution is, on 30/12/2020, the Applicants alongwith co-accused hatched a conspiracy in aid of Accused No.1 to facilitate his escape from judicial custody. It appears from the

chargesheet, while such offence was executed by Accused No.1, Accused Nos. 2 and 3 who are Applicants herein have helped the said Accused with other co-accused persons. It appears that in the said escape, firing from pistol/revolver was taken recourse to and pepper spray was also used so as to facilitate the escape of Accused No.1. It is claimed that present Applicants travelled all the way from Agra and facilitated his escape by helping him by indirect/ direct way by providing hired two wheeler and also by giving logistic support.

5] While trying to make out a case for grant of bail, the learned Counsel for the Applicants would urge that the offence under Section 307 is punishable with life. As far as said offence is concerned, there is no direct involvement of the Applicants in the said crime and as far as rest of the allegations against the Applicants are concerned, there is hardly any material on record to connect the Applicants with the active participation in the commission of crime in question. So as to substantiate his contentions, attention is invited to the statements of various witnesses in the matter. It is also claimed that even in the identification parade, Accused No.3 was not identified.

6] While countering the aforesaid submissions, the learned APP

would strenuously urge that investigation in the matter of tracing other two accused is in progress and that being so, release of the Applicants will hamper further investigation. He has invited my attention to the mobile phone used by Accused No.1 while he was in judicial custody so as to establish conversation/communication with present Applicants so as to have support for commission of offence in question.

7] According to the learned APP, there is sufficient material at this stage to infer prima facie involvement of Applicants in the crime in question and that being so, prayer is liable to be rejected.

8] Considered rival submissions.

9] It appears that prosecution case is based on the chat/whatsapp messages inter se carried out by Accused No.1 by using the mobile phone while in the judicial custody from the jail while interacting with Applicant No.2. Admittedly, said mobile phone or sim card used by Accused No.1 Vivek has not been recovered or seized in the crime in question. Rather investigation on the said point till date remained inconclusive as nothing has come out as to in whose favour or in

whose name the sim card is issued which was used by Accused No.1. Though it is claimed that from the mobile instrument of Accused No.2 data in the matter of inter se communication between Accused No.1, Accused No.3 and Accused No.2 was tried to be recovered or retrieved through scientific mode, fact remains that the said mobile phone of Applicant/Accused No.2 is already in the custody of investigating agency and that being so, the detention of the Applicant/Accused No.2 cannot be justified on the said count.

10] Fact remains that in the identification parade, Accused No.3 is not identified by the prosecution witnesses.

11] Apart from above, it is not the case of the prosecution that in an offence punishable under Section 307 IPC both the Applicants before this Court have actively participated but for allegation under Section 120B of the IPC.

12] For the purpose of satisfying ingredients of Section 120B though reliance is placed on inter se chat between Accused Nos. 1 and Accused No.2, it cannot be inferred therefrom that Applicants herein were parties to the conspiracy for the offence punishable under

Sections 307, 224, 353, 332 of IPC.

13] As observed hereinabove, since the instrument of the Applicant/Accused No.2 is already seized, her further custody for carrying out investigation in the matter of disappearance of the evidence is not at all justified.

14] In the aforesaid backdrop, in my opinion, once the charge-sheet against the Applicants is already filed, the further detention of the Applicants cannot be said to be justified based on the allegation for offence punishable under Section 120B of the IPC.

15] The analysis of evidence for the purpose of deciding bail primarily denotes that unconnected facts are sought to be relied on for establishing case of conspiracy against the Applicants. The set of conduct of accused persons at different places and times even if are analysed cannot be reasonably linked to involvement of the Applicants to the main crime i.e. offence punishable under Section 307 of the Indian Penal Code. Apart from aforesaid observations, it can be noticed that there are no attributions against the Applicants about providing dangerous weapons to the main accused. There are

no allegations of assault by use of criminal force by the Applicants so as to deter public servant from discharging his duty. As such, necessary ingredients for bodily offence cannot be inferred against the Applicants.

16] As such, in my opinion, for both these Applicants, case for grant of regular bail is made out.

17] As such, it is ordered that both the Applicants i.e. Accused No.2 and Accused No.3 are directed to be released on bail in Crime No.342/2020 for offence punishable under Sections 307, 224, 353, 332, 324, 201, 120B read with Section 34 of the Indian Penal Code and Section 3 read with Sections 25 and 27 of the Arms Act on furnishing personal bond of Rs 50,000/- each with one or two sureties in the like amount.

18] Applicants shall not leave jurisdiction of the learned Sessions Judge without prior permission till charge in the matter is framed.

19] Applicants shall furnish their contact numbers and place of residence in Goa to the Investigating Officer within a period of one

week from the date of their release.

20] Applicants shall attend the Investigating Officer as and when so directed in the matter of further investigation.

21] Applicants shall not tamper with the evidence or influence the witnesses in any manner whatsoever and shall not establish contact with the absconding accused persons.

22] Both these Applications stand allowed in the aforesaid terms.

23] Needless to clarify that observations hereinabove are restricted to the extent of grant of bail to the present Applicants against whom I am informed that there are no antecedents.

(NITIN W. SAMBRE, J.)