

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO.49 OF 2021

BHIMGUNDA MARUTI PATIL,
PRESENTLY IN JUDICIAL
CUSTODY AT CENTRAL JAIL,
COLVALE

....APPLICANT

VERSUS

STATE, THR. THE PUBLIC
PROSECUTOR AND ANR.

....RESPONDENTS

Shri Franco Coburn Freddie Joseph, Advocate for the Applicant.
Shri Pravin Faldessai, Additional Public Prosecutor for the Respondent.

AND

**CRIMINAL MISC. APPLICATION (BAIL) NO.353 OF 2021
(FILING NO.)**

NINGAPPA CHAULAGE,
PRESENTLY LODGED IN
JUDICIAL AT CENTRAL
JAIL COLVALE

.... APPLICANT

VERSUS

THE POLICE INSPECTOR,
OFFICER IN CHARGE OF
VALPOI POLICE STATION,
VALPOI AND ANR.

.... RESPONDENTS

Shri Rohan Desai, Advocate for the Applicant.
Shri Pravin Faldessai, Additional Public Prosecutor for the Respondent.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 29 APRIL 2021

P.C. :

Accused No.5 in Crime No.60 of 2020, registered by Valpoi Police Station, is the applicant in Criminal Misc. Application (Bail) No.49/2021;

the accused no.3 in the same Crime is the applicant in Criminal Misc. Application (Bail) No.353/2021 (Filing No.). They both face almost identical allegations. So, I have decided to dispose of these two bail applications through this common order.

2. The Valpoi Police Station registered a crime for the alleged offences under sections 3 and 5 read with sections 25 and 27 of the Arms Act, besides section 120-B of IPC.

3. The facts in brief are that on 12.11.2020, the patrolling police found a car moving under suspicious circumstances. Then they intercepted and searched it. On search, they found five inmates in the car, the accused no.1 being the driver and the applicants being the co-passengers along with two others. In the car, the police also found “one revolver of wooden butt with one loaded live round without a trademark and serial number (Desi Katta), one long blade koita/sickle, one sharp edged iron rod with nail puller (Katauni), two big screw drivers, one insulation remover cutter, and one cutter”. After taking the inmates of the car into custody, the police registered the crime and investigated it. Eventually, on 07.02.2021, they police filed the chargesheet. Indeed, there is an element of dispute about the supplementary chargesheet, but we need not visit that controversy.

4. Sent in judicial remand, the applicants unsuccessfully tried for the regular bail before the trial Court but could not succeed. So they are before this Court after five months of pre-trial incarceration.

5. The learned counsel for both the applicants, complementing each other, have submitted that the applicants have been mere gratuitous passengers without any knowledge about the weapons allegedly hidden in the car. To elaborate, they have submitted that the accused no.1 is a professional driver, who has been engaged by a tourist. Excusing himself from duty on the premise that his mother had been ill, A1 took the car and

invited the other four, including the applicants, to go with him about Goa. The accused no.3 being his friend and accused no.5 being his employee in the motel run by the accused no.1 and his mother obliged accused no.1.

6. In further elaboration, both the learned counsel have submitted that even when the police intercepted the vehicle, the revolver was found concealed next to the driver, and the remaining weapons were found in the boot of the car. According to them, the applicants knew of neither the revolver nor the other weapons in the boot. Stressing on the legal nuances, the learned counsel have pointed out that for the prosecution to apply sections 3 and 5, read with sections 25 and 27 of the Arms Act, the applicants as accused must have been in conscious possession of the weapons.

7. That apart, the learned counsel have also insisted that section 120-B of IPC has been roped in only to implicate the applicants, for the prosecution found no further incriminating material against them during the investigation. They have also argued that though the police have allegedly found enmity between one Mr. Prakash Patil and accused no.1, his wife was examined one month after the applicants' arrest. At no point of time has Prakash Patil or his wife complained to the police about any alleged incident of threat, as now the prosecution seeks to establish through the chargesheet. According to them, even if there was enmity between Prakash Patil and accused no.1, the applicants have nothing to do with it. Therefore, they want the Court to enlarge the applicants on bail, of course, subject to suitable conditions.

8. On the other hand, Shri Pravin Faldessai, the learned Additional Public Prosecutor, has submitted that conspiracy has been writ large on the applicants' conduct. To elaborate, he has submitted that on the previous day, accused no.5 went along with accused no.1 and a couple more people to Prakash Patil and served a threat on him. To fulfill that

threat the next day, armed with weapons they again went, this time including the third accused as well, to Prakash Patil's house but did not find him. When they were on their way back, they were intercepted.

9. Therefore, the learned Additional Public Prosecutor insists that the third and the fifth accused being a friend and an employee respectively have been very much aware of the weapons. They are a part of the conspiracy. Given the gravity of the offence, the learned Additional Public Prosecutor opposes the bail.

10. Heard Shri Franco Coburn Freddie Joseph of the applicant in Criminal Misc. Application (Bail) No.49/2021; Shri Rohan Desai, the learned counsel for the applicant in Criminal Misc. Application (Bail) No.353/2021; and Shri Pravin Faldessai, the learned Addl., Public Prosecutor.

11. As vehemently contended by the learned counsel for the applicants, I may not consider the additional chargesheet. I will confine my discussion to the facts as reflected in the chargesheet, which has already been filed before the trial Court.

12. Accused no.1 is said to be a professional driver engaged by one tourist. One day he took leave of that tourist on the excuse that his mother had been ill and used the car for himself. He picked up the applicants and the other accused; when he was on the move, the police intercepted that vehicle. Now, the applicants try to explain away why they were travelling along with accused no.1. According to them, accused no.1 offered them a ride and a tour around Goa, especially the beaches. *Prima facie*, a couple of unconnected people getting into a car engaged by somebody else and going for a joy ride defies logic. Even if we disregard conscious possession of the weapons by the applicants as they plead; the fact, however, remains that during the investigation, the police discovered enmity between one Praksh Patil and accused no.1. Praksh Patil's wife

stated to police that the previous day accused no.1 and accused no.5 along with a couple of others, excluding accused no.3, came over to their house and threatened Prakash Patil.

13. That apart, on the day of interception, as per the prosecution, the applicants and the other accused first went to Prakash Patil's house but did not find him there. Only on their way back were they intercepted. At least, *prima facie*, this sequence of events imputes knowledge to the applicants about the weapons in the car. Given the gravity of the offence as has been rightly contended by the learned Additional Public Prosecutor, it is inadvisable for the Court to enlarge the applicants on bail—at this stage.

Having said that, I reiterate that any observations I have made in this disposition are *prima facie* and do not affect the applicants' right to revive their request for bail under any changed circumstances in future. With these observations, I dismiss both bail applications.

DAMA SESHADRI NAIDU, J.

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