

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL MISC. APPLICATION (BAIL)NO.54 OF 2021**

CEON BRUNO FERNANDES, Applicant
PRESENTLY IN JUDICIAL CUSTODY
AT THE CENTRAL JAIL COLVALE

V/S

STATE OF GOA, THR. THE PUBLIC Respondents.
PROSECUTOR

Mr. R. Naronha, Advocate for the applicant.

Mr. S.G. Bhobe, Public Prosecutor for the respondent – State.

Coram:- SMT. M.S. JAWALKAR,J.

Date :- 6th July, 2021.

ORAL ORDER:

Heard Mr. R. Naronha, learned Advocate for the applicant and Mr. S.G. Bhobe, learned Public Prosecutor for the respondent – State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 for bail in Crime No.113 of 2017 registered against the applicant (Original Accused No.2) and two other persons for allegedly committing offences punishable

under Section 302 r/w. Section 34 of IPC, 1860 and pending trial before the Additional Sessions Judge, Mapusa bearing Sessions Case (302) No.5 of 2017.

3. The facts of the matter in brief is that on 25/06/2017 a Complaint came to be lodged at the Porvorim Police Station by one Mr. Dipesh Naik, alleging before the Calangute Police Station that on 24/06/2017 at about 22.30 hours he along with his friends, namely, George Denzil Noronha were having drinks at Calangute fish market at which time one Mr. Tyron Nazareth, resident of Khobravaddo, Calangute came near them and joined their company and thereafter at about 23.30 hours, the Complainant alongwith his friends George Denzil Noronha went to buy some beers at Vicky Bar leaving behind Mr. Tyron Nazareth and on reaching at the entrance of the Bar, one Mr. Joseph Sequeira, resident of Pintos's Vaddo, Candolim, Bardez – Goa alongwith two unknown male persons of which one person was wearing a red colour T – shirt and 3/4TM jeans pant came near them on Activa Scooter and asked them about the whereabouts of Mr. Tyron Nazareth and that the Complainant told him that he does not know about the whereabouts of the said Mr. Tyron Nazareth and told him to search for himself and that thereafter the aforesaid three persons got down from the scooter and

went walking towards Calangute fish market and went to Mr. Tyron Nazareth and started assaulting him with weapons such as sword, chopper and knife which they were carrying in their handa and caused him stab injuries thereby causing bleeding injuries and thereafter all of the three left from the place with Aactiva Scooter. Accordingly, the Complainant has lodged his Complaint against Mr. Joseph Sequeira, resident of Pinto's Vaddo, Candolim, Bardez – Goa and two unknown male persons for assaulting his friend Mr. Tyron Nazareth with sword, chopper and knife, causing him stab injuries thereby causing bleeding injuries and requested for legal action as per law.

4. Pursuant to the aforesaid Mr. Dipesh Naik lodged his Complaint dated 25/06/2017 at the Calangute Police Station, the said Mr. Tyron Nazareth succumbed to his injuries while undergoing medical treatment at Casualty, District Hospital, Mapusa on 25/06/2017 at about 00.50 hours and as a result of which the aforesaid Complaint dated 25/06/2017 of the said Mr. Dipesh Naik came to be registered at Calangute Police Station as F.I.R. No. 113/2017 dated 25/06/2017. The allegation that the aforesaid Mr. Joseph Sequeira alongwith two others have committed offences punishable under Sections 302 read with Section 34 of the Indian

Penal Code, 1860 and accordingly, the applicant and the aforesaid Mr. Joseph Sequeira and another person came to be arrested on 27/06/2017 by the Calangute Police.

5. After investigation chargesheet bearing No.76 of 2017 came to be filed which in turn committed to Adhoc Sessions Judge, Mapusa. The case is registered as Sessions Case (302) No 5/2017. The applicant's bail application came to be dismissed vide order dated 15/12/2017 by the Sessions Court on the ground that from the material placed on record, there is a clear role attributed to the Applicant / Accused No. 2 in the offence of murder and that there is every likelihood that if released on bail is likely to abscond and abstain from trial and may even threaten the eyewitnesses.

6. On 01/03/2018, the Trial Court framed charges against the applicant and the other two accused persons in Sessions Case (302) No. 5/2017, pursuant to which the trial in the aforesaid Sessions Case has commenced and the Trial Court on 29/06/2018 recorded the evidence of the Prosecution Witness PW1, Shri. P. Jaikrishna and thereafter, on 03/08/2018, the evidence of Prosecution Witness PW2. The evidence of the Prosecution Witness PW3 was recorded by the Trial Court on 22/10/2018 and thereafter, after a considerable delay on account of the Presiding Officer of the

Trial Court having no powers to conduct Sessions Trial, the Sessions Case (302) No. 5/2017 came to be transferred before the Additional Sessions Judge, Panaji upon which, the Complainant, Shri. Dipesh Naik who was examined by the Prosecution as Prosecution Witness (PW4) entered the witness box as late as 30.04.2019 and whose Examination - in - Chief as on 02.01.2020 has been only partly recorded, however, on account of an outbreak of the novel pandemic 'Covid - 19', the trial in the aforesaid Sessions Case (302) No 5/2017 has been abruptly halted in terms of the various Circulars in form S.O.P's issued by the Hon'ble Supreme Court, the High Court of Bombay and the Court of the Principal District and Sessions Judge, North - Goa from time to time.

7. It was only upon relaxation of the various Circulars and S.O.P's issued by the Hon'ble High Court of Bombay and the Court of the Principal District and Sessions Judge, North Goa, that the Petitioner's Case, being Sessions Case (302) No. 5/2017 was taken up for hearing by the Trial Court for the first time on 26/10/2020, however, the trial in the said Sessions Case (302) No. 5/2017 was adjourned by the Trial Court for recording of evidence in time bound direction matters of the Hon'ble Supreme Court in Case, being SCORS No.10/2014, however, on the aforesaid date of

hearing, the Petitioner, once again has filed a fresh bail application under Section 439 of the Code of Criminal Procedure, 1973, however, the same vide Order dated 21.11.2020 came to be rejected by the Trial Court. The reason given by the Trial Court for rejecting the Application filed by the applicant for being enlarged on bail was that the eye witnesses in the aforesaid Sessions Case (302) No.5/2017 were yet to be examined and whose statements were required to be corroborate with the Disclosure Panchanama which was conducted at the instance of the Accused and that weapons were also attached. Though the Accused who have been identified by the Complainant in the Test Identification Parade has turned hostile at the time of evidence, the report of the CFSL also states that the crime cut mark has been found by sharp tool marked as EXH.10 which is a sword and that there are other incised wound also caused by sharp weapons. It has been also observed by the Ld. Trial Court that in an earlier Order passed by it after filing of the Charge Sheet that there was a clear role attributed to the Accused in the offence of murder and also that the Accused are likely to abscond and threaten the Prosecution witnesses, which Order has not been challenged before the Higher Court and thus there is no change of circumstances for permitting the Accused to file for being released on bail.

8. There is no effective hearing before the Trial Court in view of the various Circulars and S.O.P.'s issued by the High Court and District Court on account of the outbreak 'Covid 19'. The delayed trial resulting in the incarceration of the applicant in judicial custody at the Central Jail, Colvale.

9. The learned Public Prosecutor for the respondents has submitted that the accused person alongwith two unknown accused persons with their common intention assaulted the complainant's friend namely Mr. Tyron Nazareth with the weapons thereby causing him serious bleeding stab injuries who succumbed to the injuries on 25/06/2017. Section 302 IPC has been adduced and Section 307 IPC deleted on 25/06/2017. The learned Public Prosecutor submits that weapon of assault i.e. a chopper used by accused person Mahesh Rampal for the commission of offence has been attached at his instance and the weapon of assault i.e. knife used by accused person Ceon B. Fernandes has been attached at his instance.

10. The learned Public Prosecutor has submitted that the motive of the crime is due to the previous enmity between accused and the victim as earlier on 03/05/2017 at about 23.20 hours at near Calangute Fish Market victim and his three associates had attacked the accused and his friend with knife and beer bottle causing serious

stab injuries to the accused and his friend. An offence vide Calangute Police Station Crime No. 74/2017 u/s. 143, 147, 148, 307 r/w. 149 IPC was registered on 04/05/2017 upon the complaint of one Mr. Pankaj s/o. Prem Singh. In this matter, Mr. Tyron Nazareth was released on bail on 19/06/2017 while the other three accused persons were released on bail on 16/06/2017. To take revenge of the above incident Mr. Joseph Bernand Sequeira with his associates has assaulted Mr. Tyron Nazareth by causing him stab injuries with the dangerous weapons resulting in his death.

11. During the course of the investigation, test identification parade of accused persons before the Magistrate wherein the witnesses has identified the accused person.

12. The learned Public Prosecutor for the respondents has submitted that if the accused are released there is every possibility that the accused is likely to abscond and threaten the prosecution witnesses who have testified against them, the trial has already commenced and therefore the possibility of the accused tampering with the witnesses not only before the filing of chargesheet but even after filing of the chargesheet cannot be ruled out.

13. I have heard the learned Counsel for the applicant as well as the learned Additional Public Prosecutor at length. The learned Counsel for the applicant relied on the order in **Suhas Naik v/s. State of Goa** [LD-VC-BA-22-2020] and claiming parity. However, there is no case to claim parity as the said accused was granted bail on the ground that there is little material on record to establish the applicant's conspiracy – prima facie though. The applicant has no criminal antecedents. The learned Counsel for the applicant also relied on **Mohammad Chand Mulani vs Union Of India & Or** [(2006) 13 SCC 143]. However, the matter can be differentiated on fact i.e. under MCOC Act and it was considered that if all allegations against the appellant therein have expected his case would fall only under Section 24 and not under Section 3(2) of MCOC Act. Maximum sentence under Section 24 is three years. As the appellant is already there in the prison for two years the bail was granted.

14. In the present matter, the motive of the crime, prima facie, appears to be the previous enmity between the accused Mr. Joseph Sequeira and victim Mr. Tyron Nazareth. There was an attack by Mr. Tyron Nazareth and his three associates on Mr. Joseph Sequeira with a knife and beer bottle. In this connection,

crime was registered at Calangute Police Station and Mr. Tyron Nazareth and the other three were arrested and they were remanded to judicial custody. This incident occurred on their release on bail. Prima facie, it appears that the present applicant alongwith his associates assaulted Mr. Tyron Nazareth to take revenge. There are various crimes registered against Mr. Joseph Sequeira who is an accomplice of the accused. There were other proceedings that also appear to be pending. The accused/applicant is identified in Test Identification Parade and the statements of eyewitnesses have been recorded before the Magistrate.

15. As such the material witnesses are yet to be examined. It is generally observed that in such type of matters people are reluctant to give evidence though they are aware about the facts. When the statements of eyewitnesses are recorded and are part of chargesheet, it would be proper not to release the applicant on bail specifically when there is every possibility of threatening the witnesses and tampering with the evidence. The offence is serious one and committed in revenge in a broad daylight in public place like fish market. Offence is liable for penalty of life or death, therefore, the applicant may make all endeavour not to be convicted. It is true that due to pandemic the trial was delayed for some period

but that does not give any right to the applicant to be released on bail. The offence is committed in broad daylight in the fish market, therefore, the Court would take into account the expected threats to the witnesses. The crime is of heinous nature and committed in a brazen manner and as such I do not see any ground made out to release the applicant on bail. Hence, the application stands rejected.

SMT. M.S. JAWALKAR,J.

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