

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL MISC. APPLICATIONS (BAIL) NO.15 OF 2021 & 94 OF 2021 (FILING NO.)****CRIMINAL MISC. APPLICATION (BAIL) NO.15 OF 2021**

SUMIT FADTE,
PRESENTLY LODGED
AT COLVALE JAIL, COLVALE,
THR. RUPESH ANKUSH DHUMALAPPLICANT

VERSUS

STATE,
THR. OFFICE IN-CHARGE OF
MAPUSA POLICE STATION,
MAPUSA & ANR.RESPONDENTS

Shri Ryan Menezes with Shri Nigel Fernandes, Advocates for the Applicant.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

AND

CRIMINAL MISC. APPLICATION (BAIL) NO.94 OF 2021 (FILING NO.)

MOHAMMAD SHAHID
@ SAHID SIDDIQUEAPPLICANT

VERSUS

STATE OF GOA,
THR. PUBLIC PROSECUTOR & ANR.RESPONDENTS

Shri Damodar Dhond, Advocate for the Applicant.

Shri Mahesh Amonkar, Additional Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 3 May 2021

ORAL ORDER:

A fatal fight broke out between two branches of family, and that has led to a loss of life. Then, the Mapusa police registered Crime No.49/2016 for the alleged offences under sections 504, 323, 307, 302,

427, 509(ii), 120-B, read with Section 34 of IPC. And all the accused were arrested on 11.02.2016. Among the accused are father, mother, and four sons, of whom two were minors then. Besides, there are two more accused, who are said to be the friends of the eldest son (A4).

2. In 2016 itself, the trial Court enlarged the father (A1) and mother (A3) on bail. The two juvenile sons were also released. Now, the other accused remain in the judicial custody. The accused no.2, that is, one of the sons, and accused no.5, that is the eldest son's friend, filed these bail applications: Criminal Misc. Application (Bail) Nos.15 of 2021 and 94 of 2021. In fact, the accused no.5, who is the applicant in Criminal Misc. Application (Bail) No.15 of 2021, earlier applied to this Court for bail. This Court disposed of that application, leaving it open for the fifth accused to come back in three months. Of course, it is on the premise that by then a few more witnesses may be examined. Three months passed, but no further witness has been examined yet.

3. To put the issue in perspective, I may touch upon the facts in brief. The dispute concerns a plot of 300 sq. mts., which both brothers, that is A1, and the complainant claim a right over. When one tried to trespass upon the property, the other resisted. Of course, the dispute remains who tried to trespass and who tried to resist. Nevertheless, in the fight that broke out, the victim was the complainant's brother-in-law; he was killed. As I have already noted, in 2016 the trial Court enlarged A1 and A3 (father and mother) on bail. The two juvenile sons, too, got released by default.

4. In the above context, Shri D. Dhond, the learned counsel for the applicant in Criminal Misc. Application (Bail) No.94/2021 (filing no.); and Shri Ryan Menezes, the learned counsel for the applicant in Criminal Misc. Application (Bail) No.15 of 2021, have advanced their arguments.

5. On the other hand, Shri Pravin Faldessai, the learned Additional Public Prosecutor, has advanced arguments for the prosecution.

6. To summarize, I may note that it is the applicants' specific contention that the complainant and his family were the aggressors. They came over to the applicants' place and picked up a quarrel, which has, then, led into a full-blown fight. In that fight, the complainants' brother-in-law has lost his life, but none of the accused has any role in that. The learned counsel have also pointed out that even the accused have registered a crime under section 326 and 307 read with section 34 IPC. Thus, both a case and a counter case are pending.

7. At any rate, the learned counsel pointed out that the applicants have been in judicial remand for over five years, though the chargesheet was filed as far back as in May 2016. In the trial of Sessions Case No.81/2016, according to them, already five witnesses have been examined. That was by 2019. When the sixth witness was partly examined, the pandemic broke out, and no further trial could take place.

8. Under these circumstances, they have pointed out that on an earlier occasion, too, in the fifth accused's bail application, this Court wanted to wait for three months with the hope that a few more witnesses would be examined. Despite the lapse of almost a year, to this day no further witness has been examined.

9. The learned counsel have also submitted that as it is an intra-family fight and as the applicants have no criminal antecedents, this Court may take a lenient view and enlarge the applicants on bail with suitable conditions.

10. On the other hand, Shri P. Faldessai, the learned Additional Public Prosecutor, has strenuously opposed both the bail applications. According to him, it is not a simple family fight, and there is more than what meets the eye. To elaborate, Shri Faldessai has submitted that given the gravity of offence, the applicants deserve no indulgence from this Court. According to him, the prosecution has, in all, cited 75 witnesses; but only five have so far been examined. If the trial has been delayed for

the reasons beyond the prosecution's control, it cannot be blamed for that. Thus, he has opposed the bail applications.

11. Indeed, the alleged crime took place in February 2016. The applicant in Criminal Misc. Application (Bail) No.94 of 2021 (filing no.) was said to be aged 21 then, and the applicant in Criminal Misc. Application (Bail) No.15 of 2021 happens to be a friend, unconnected with the family. As per the applicants' counsel, neither applicant has any criminal antecedents; of course, the learned Additional Public Prosecutor objects to this.

12. As pointed out by the applicants' counsel, the chargesheet was filed in May 2016. And by 2019, five vital witnesses have been examined. Indeed, earlier, this Court wanted to wait until a few more witnesses were examined, but that has not happened in the last two years. There may be numerous reasons, including the prevailing pandemic, why no further witnesses could not be examined. With that uncertainty looming large, it is undesirable for the Court to leave the applicants languishing in jail.

13. Of course, we also have to address the prosecutions' fear that the applicant may interfere with or manipulate the process of trial once they are released on bail. We need to, therefore, ensure that they will not abuse the process nor interfere with due process of law on their getting the bail.

14. Under these circumstances, this Court proposes to enlarge the applicants on bail, subject to these conditions:

ORDER

- (i) The applications for bail are allowed.
- (ii) The applicants are directed to be released on bail on their executing P.R. Bond individually for ₹50,000/- and on their furnishing one surety each for the like sum to the learned trial Judge's satisfaction.

- (iii) The applicants should not leave the State of Goa, without the learned trial Judge's prior permission.
- (iv) The applicants shall visit the jurisdictional police station once a week every Saturday at 11.00 a.m.
- (v) The applicants shall attend the hearing of the case on the dates fixed by the trial Court.
- (vi) The applicants shall not influence, induce, threaten, or coerce the witnesses; nor should they abuse the process.
- (vii) The applicants shall not commit similar or other offences.
- (viii) The applicants' failure to abide by these conditions will entail the prosecution to apply for the cancellation of bail now granted to the applicants.
- (ix) The Bail Applications stand disposed of.

Parties to act on the authenticated copy of this order.

DAMA SESHADRI NAIDU, J.

NH

NITI K
HALDANKAR

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