

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION (BAIL) NO.58 OF 2021

SAHED KHAN,
PRESENTLY IN JUDICIAL
CUSTODY AT CENTRAL
JAIL, COLVALE

.... APPLICANT

Versus

STATE OF GOA, THR. PUBLIC
PROSECUTOR AND ANR.

.... RESPONDENTS

Mr. Kautuk Raikar, Advocate for the Applicant.
Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

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

Date : 17th August 2021

ORAL ORDER :

Heard learned Counsel for the applicant and learned
Additional Public Prosecutor, Mr. Pravin Faldessai, for the
Respondents.

2. The applicant has filed the present application for bail
under Section 439 of CrPC. The applicant is arraigned as
accused no.3 in Sessions Case No.37/2021 and was arrested by
respondent no.2 on 07.01.2021 in Crime No.01/2021 registered
under Sections 370 IPC and Section 4,5 & 7 of Immoral Traffic
(Prevention) Act.

3. Learned Counsel for the applicant submits that this is a trap case wherein the police has used a decoy customer. He states that FIR was filed on 06.01.2021 and the applicant was arrested on the third day, i.e. on 07.01.2021. Of all the three accused, accused nos.1 & 2 were arrested at the spot and the present applicant/accused no.3 was arrested after two days of the incident based upon the statement of the victim girl. It is further contended none of the witnesses have named the applicant. It is contended that as per the prosecution case Ravi and applicant are one and the same person. This could be proved by conducting Test Identification Parade, which has not been done by the prosecution. So also, there is no evidence in entire chargesheet to show that Ravi and the applicant are same. He contends that the onus is on the prosecution to prove that the applicant is the person who was involved in this case. There is no evidence to show that the applicant is connected to the victim girl at that particular time even as per the mobile location. The learned Counsel submits that in the absence of such prima facie evidence, the applicant cannot be detained in custody and hence may be released on bail.

4. To support his contentions, learned Counsel has relied on ***Kashmir Singh V/s. State of Goa (Criminal Application***

(Bail) No.282 of 2018, Mr. Vijay Singh V/s. State of Goa (Stamp Number (Main) No.1477/2020), Krishna Savlo Naik V/s. State of Goa & Anr. (LD-VC-BA-57-2020) and the judgment of the Hon'ble Apex Court in the case of **Maulana Mohd. Amir Rashadi V/s. State of U.P. & Anr.**

5. On the other hand, the learned Additional Public Prosecutor has vehemently opposed the bail application contending that the applicant has been using different names to commit the offence. Learned Additional Public Prosecutor also pointed out that there were similar offences registered against this applicant wherein he is referred as Ravi alias Sahed alias Munna and he is a habitual offender.

6. I have heard the learned Counsel for the applicant and the learned Additional Public Prosecutor for the respondents and with their assistance, I have perused the chargesheet, specifically, the statement of victim girl. In the said statement there is no reference of applicant's name nor there is any statement clarifying that Ravi and Sahed is one and the same person. Though it is submitted by learned Additional Public Prosecutor that there are similar offences registered against the applicant wherein he was described as Sahed alias Ravi

alias Munna, however, in the present matter at least, the prosecution filed to point out any evidence prima facie showing that the applicant Sahed and Ravi is one and the same person. One cannot go on presumption. There is no Test Identification Parade conducted nor any call details record is placed on record. As such, as it appears that investigation is complete and chargesheet is filed. At this stage, there is no material to show that there was any such disclosure that applicant Sahed and the person named in the statement Ravi is one and the same. Only on the basis of earlier chargesheets filed the prosecution is claiming that the applicant and Ravi is one and the same person.

7. In that view of the matter, I am inclined to grant bail, subject to certain conditions, which will take care of apprehensions of learned Additional Public Prosecutor.

8. Accordingly, I proceed to pass the following order:

O R D E R

- (i) The Criminal Application for bail is allowed.
- (ii) The applicant, Mr. Sahed Khan, is directed to be released on bail on his executing PR bond for ₹25,000/- and furnishing one solvent surety for the like amount to the satisfaction of 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.

(v) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.

(vi) The applicant shall not commit similar or other offences.

(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.

Parties to act on the authenticated copy of this order.

SMT. M.S. JAWALKAR, J.

NH

NITI K

HALDANKAR

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HALDANKAR
Date: 2021.08.17
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