

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 16 OF 2023
AND
CRIMINAL APPLICATION (BAIL) NO. 694 OF 2023 (F)

CRIMINAL APPLICATION (BAIL) NO. 16 OF 2023

Farida Khatoon ... Applicant
Versus
Police Inspector, Porvorim Police Station & ... Respondents
anr.

AND
CRIMINAL APPLICATION (BAIL) NO. 694 OF 2023 (F)

Wahida Khatoon ... Applicant
Versus
Police Inspector, Porvorim Police Station & ... Respondents
anr.

Mr. Kautuk Raikar, Advocate with Ms. Aditi Salkar,
Advocate for the Applicants.

Mr. Nikhil Vaze, Additional Public Prosecutor for
Respondents-State

CORAM: PRAKASH D. NAIK, J
DATED: 23rd OCTOBER, 2023

ORDER

1. The Applicants are apprehending arrest in FIR No. 54 of 2023 registered with Porvorim Police Station for offence under Section 379 read with Section 34 of the Indian Penal Code (IPC).
2. Vide Order dated 26.09.2023, interim protection was granted to the Applicants with direction to appear before the Investigating

Officer from 03.10.2023 to 06.10.2023 between 11.00 a.m. to 1.00 p.m.

3. The FIR has been registered on the basis of written complaint dated 14.04.2023 lodged by the Complainant alleging theft of his vehicle no. GA-03-P-1365 and documents in the nature of educational certificate, passport, documents of the vehicle and company documents. It is alleged that the accused were Directors of Company Antrose Infra Limited and one of them was Director of Anthrose Impacts (P) Ltd. Both were residing in the flat premises situated at Penha de Franca, Porvorim, Goa. The key of the vehicle was kept in the apartment where the accused were residing.

4. The Applicants moved an application for anticipatory bail before the Court of Sessions Judge, which has been rejected by the Sessions Court vide order dated 07.08.2023.

5. Learned Advocate for the Applicants, Mr. Raikar, submitted that the Applicants are falsely implicated in this case. The complaint is motivated. The Applicant in Criminal Application No. 16 of 2023 was a Director of the Company with the Complainant. In respect to her share, the Complainant had issued various cheques to the tune of approximately Rs.46 Lakhs, which were dishonoured and the Applicant has filed a complaint for an offence under Section 138 of

the N.I. Act on 28.06.2023, which is pending. Pursuant to the interim protection granted by this Court, the Applicants had cooperated with the investigation. They had appeared before the Investigating Officer. They were interrogated by the Investigating Officer. The allegations in the complaint are afterthought which are evident from the fact that prior to registration of the FIR and written complaint dated 14.04.2023, the Complainant had submitted the written complaint dated 16.02.2023 alleging that the vehicle in question was taken away by John Jude, which was again missing. The CCTV footage does not indicate the presence of the Applicants in the vehicle or anywhere near the vehicle while it was taken away by some person. On 13.02.2023, the Applicant in Criminal Application (Bail) No. 16 of 2023, had travelled to Mumbai by train. Although it is alleged that the said Applicant had visited Hyderabad and that the earlier Applicant had visited Hyderabad, it is not the case of the Investigating Agency that the vehicle in question was being taken to Hyderabad by them. The Applicants are ladies. They are educated persons. There are no criminal antecedents against them. Custodial interrogation of Applicants is not necessary.

6. Learned Additional Public Prosecutor, Mr. Vaze, submitted that the Applicants have not co-operated with the investigation. Although they had appeared before the Investigating Officer, they did not assist the prosecution in any manner. The questionnaire put

to them was not responded. Their answers were evasive. They avoided answering questions. Although the Complainant has alleged that the vehicle was taken away by Mr. John Jude, it was brought back and kept in the premises and thereafter it was noticed that some person had taken it away. The Complainant had alleged that the key of the vehicle was in the apartment and that it was taken away by the Applicants. Investigation is required to be conducted to find out the whereabouts of the vehicle for which the Applicants' cooperation was necessary. The register of the Hotel at Hyderabad indicates that the Applicant in Criminal Application (Bail) No. 16 of 2023 had been to Hyderabad on 11.02.2023 whereas the other Applicant was also at Hyderabad at the earlier point of time. The Applicants have refused to provide any information about their purpose of visit to Hyderabad. In these circumstances, the custodial interrogation of the Applicants is necessary and pre-arrest bail may not be granted to them.

7. From the tenor of the complaint, it is apparent that the Applicants were acquainted with the Complainant. One of them was the Director of the Company along with the Complainant. It is pertinent to note that the vehicle allegedly went missing for the second time on 10.07.2023. The Complainant had submitted the written complaint to Porvorim Police Station on 16.02.2023. This complaint indicates that on 07.01.2023, the Complainant got a call from one of the Applicant that Mr. John Jude Albuquerque had taken

the vehicle for not paying the house rent. The said complaint indicates that there was issue between the Complainant and Mr. John Jude Albuquerque about payment of rent in respect to the premises which was let out to the Complainant. The earlier complaint dated 16.02.2023 mentions the fact that the Complainant had given the car keys to Mr. John Jude and gave in writing that if he failed to pay the rent on or before 15.02.2023, he would sell his car and pay the money for which his signatures were taken on the vehicle transfer papers on the same day and at the same time, the Complainant was threatening one Flavia Monteiro that if she does not pay the amount, she would end her life. The Complainant had paid full money on 10.02.2023. The grievance of the Complainant was that the car was not returned and the said grievance was against Mr. John Jude Albuquerque. This complaint does not refer to any allegations against the Applicants. Apparently, another written complaint was forwarded on 14.04.2023, wherein it is alleged that the Applicants had taken away the car and other articles referred to therein. Learned Advocate for the Applicants has relied upon the photocopies of the cheques purportedly issued by the Complainant which, according to the Applicants, were dishonoured and the proceedings under Section 138 of the N. I. Act, are initiated against the Complainant. The CCTV footage in respect to the incident dated 10.02.2023 with regards to taking away the parked car from the premises, does not indicate the

presence of the Applicants at the scene of offence. There is no evidence to indicate that the Applicants were seen along with the subject vehicle. Although it is the case of the prosecution that the Applicants had visited Hyderabad, there is no evidence to indicate that the vehicle was found at Hyderabad to indicate one of the incriminating circumstance against the Applicants.

8. In the light of the aforesaid factual aspect, the Applicants need not be subjected to custodial interrogation and the interim relief granted in this application deserves to be confirmed.

ORDER

(i) Criminal Application (Bail) no. 16 of 2023 and Criminal Application (Bail) no. 694 of 2023 (F), are allowed.

(ii) Interim relief granted by this Court vide Order dated 26.09.2023 is confirmed.

(iii) In the event of arrest of the Applicants in connection with FIR no. 54 of 2023 registered with the Porvorim Police Station, the Applicants be released on bail on executing PR bond in the sum of Rs.20,000/- each with one surety in the like amount to the satisfaction of the Investigating Officer.

(iv) The Applicant shall appear before the Investigating Officer as and when called for.

(v) Application disposed off.

(PRAKASH D.NAIK, J.)