

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 32 OF 2022**

Agrenj Das Presently Lodged in Central Jail,
Colvale

... Applicant

Versus

State of Goa, Thr. Mapusa Police Station & ...Respondents
Anr.

Mr. Vibhav Amonkar, Advocate *for the Applicant.*

Mr. S. G. Bhobe, Public Prosecutor *for the Respondent-
State.*

CORAM: B. P. COLABAWALLA, J.
DATED : 18th JANUARY 2023

ORDER

1. The present Application is filed for regular bail under Section 439 of the Code of Criminal Procedure, 1973, (Cr.P.C.). The Applicant is Accused No. 4.

2. It is the case of the prosecution that on 08.12.2017, there was an attempt by certain unidentified persons to rob the Indian Overseas Bank, Canca Verla, Bardez, Goa, (for short “**IOB**”) but could not succeed. When they were trying to flee, the people around caught

two of the Accused and handed them over to the Police. The two persons who were caught at the time of fleeing were Accused Nos. 1 and 3. With their arrest, on the same day, the Mapusa Police Station registered Crime No. 403 of 2017 against six persons alleging offences under Sections 395 and 397 read with Section 120-B of the Indian Penal Code, 1860 (“**IPC**”) and Sections 3 read with Sections 25 and 27 of the Arms Act, 1959.

3. Accused No. 2 (Rajkumar Das), and who according to the prosecution, is the mastermind of the entire operation along with the Applicant, was also arrested on 10.12.2017. He was arrested on the basis of an extra-judicial confession of Accused No.1. Thereafter, Accused No.4 (the Applicant herein), was arrested on 16.12.2017 after the Police got information of his whereabouts. Two other Accused (Accused Nos.5 and 6) were also arrested in Bihar and then by virtue of a transfer warrant, were brought within the jurisdiction of Goa. Accused Nos. 7 and 8 are absconding even till date.

4. Mr. Vibhav Amonkar, the learned Advocate appearing on behalf of the Applicant, submitted that the role assigned to the Applicant was that he was standing outside IOB and was not one of the parties who actually participated in the robbery/dacoity that took place. He submitted that no allegations of use of any firearm is made

against the Applicant and no recovery of the same is also done from the Applicant. In other words, it was the argument of Mr. Amonkar that neither any firearm was recovered from the Applicant and nor was he involved in the actual commission of the crime. He submitted that all that was recovered from the Applicant was a mobile phone and one gold chain allegedly stolen by the Applicant.

5. Mr. Amonkar submitted that though the incident took place as far back as on 08.12.2017, and the chargesheet was filed on 17.03.2018, the matter is still at the stage of argument before charge. He submitted that because of this, the Applicant has been incarcerated for a period of five years and one month as on date. He submitted that there are no antecedents in relation to the Applicant and considering that the trial does not appear to be proceeding any time soon, the Applicant be granted bail. Mr. Amonkar submitted that even though it is the case of the prosecution that the Applicant herein is a co-conspirator with the mastermind Mr. Rajkumar @ Raju Das, and which is denied by the Applicant, the said mastermind (Mr. Rajkumar Das – Accused No.2) has been granted bail by this Court vide its order dated 20.10.2020 in LD-VC-BA-46-2020. On the ground of parity also, the Applicant is entitled to bail, was the submission of Mr. Amonkar. On taking instructions, Mr. Amonkar stated that if this Court allows the Applicant to be released on bail, apart from the normal conditions

imposed whilst granting bail, the Applicant shall report four times a week to the concerned Police Station and if there is any default in complying with the aforesaid direction, the Applicant can be taken into custody (without seeking cancellation of bail), and he will not apply for bail thereafter. He further stated, on instructions, that if the Applicant is enlarged on bail, he would be temporarily residing with one Mr. Rajesh Raghunath Birodkar who would also stand as surety for the Applicant. He therefore pleaded with the Court to release the Applicant on bail on such conditions as this Court may deem fit.

6. On the other hand, Mr. S. G. Bhobe, the learned Public Prosecutor appearing on behalf of the State, submitted that the crime committed in the present case is very heinous in nature and that the material on record, *prima facie*, establishes that the Applicant herein was a co-conspirator along with all the other Accused including the mastermind Rajkumar Das (Accused No.2). He submitted that the investigation has revealed that the Applicant was found in possession of a stolen gold chain and the mobile phone belonging to one of the customers who came to IOB and the same was recovered from him. He further submitted that the call details of the mobile phone of the Applicant were obtained, and it was found that the tower location of the Accused's Mobile was found near IOB on the date and time of the

Bank dacoity. He submitted that in these circumstances, bail ought to be refused.

7. Mr. Bhobe thereafter submitted that the Applicant herein cannot be granted bail on the ground of parity because there is one very important distinguishing factor. He submitted that Rajkumar Das (Accused No.2), and who was granted bail vide Order dated 20.10.2020, was admittedly residing within the jurisdiction of this Court since the past 17 years. He submitted that in contrast, the Applicant herein is a native of Bihar and which is a Naxalite area and if he is released on bail, there is every likelihood that he would flee the jurisdiction of the Trial Court and would thereafter become very difficult to trace. For all the aforesaid reasons, Mr. Bhobe, the learned Public Prosecutor, submitted that the Applicant ought not be released/enlarged on bail.

8. I have heard the learned Counsel for the parties at some length and I have perused the papers and proceedings in the above bail application. It is not in dispute that the incident of trying to rob IOB took place on 08.12.2017. The Applicant herein was arrested on 16.12.2017 and has been incarcerated since then. In other words, the Applicant herein is suffering imprisonment/incarceration for a period of five years and one month as on today. The chargesheet is also filed

as far back as on 17.03.2018. Despite this, the trial has not commenced, and the matter is yet at the stage of arguments before charge. It is also not disputed that the Applicant herein has no other criminal antecedents like some of the other Accused in the above crime. Even Accused No.2, and who according to the prosecution was the mastermind, has been granted bail by this Court on 20.10.2020. When one takes all these mitigating factors into consideration, merely because the Applicant does not have a fixed habitation in Goa, would not be the sole criteria to reject his bail application. This is more so when one takes into consideration that the Applicant has already been incarcerated for a period of five years and one month and the trial is not going to be completed any time soon.

9. In these circumstances, the application for bail is allowed on terms set out hereinafter:

ORDER

(i) The Applicant is directed to be released on bail on his executing a PR bond of Rs. 30,000/- and on him furnishing two sureties in the like amount to the satisfaction of the Additional Sessions Judge-I, Mapusa.

(ii) The Applicant shall not leave the State of Goa without the prior permission of the learned Additional Sessions Judge-I, Mapusa. As per the statement made on behalf the Applicant, it is noted that he shall be temporarily residing with one Mr. Rajesh Raghunath Birodkar having his address at H. No.4/11, Prabhu Vaddo, Calangute, Bardez, North Goa, Goa 403516. If there is any change of address, the Applicant shall immediately inform the same to concerned I.O. Additionally, the Applicant shall also forthwith inform the I.O. his permanent address in Bihar. On being released on bail, the Applicant shall also, within 7 days of his release, inform the I.O. of his mobile number, if any.

(iii) As per the statement made by the learned Counsel appearing on behalf of the Applicant, and which is accepted as an undertaking given to the Court, he shall report to the Mapusa Police Station on every Monday, Wednesday, Friday, and Saturday between 6.00 p.m. and 7.00 p.m. Further, as per the statement made on behalf of

the Applicant, and which is accepted as an undertaking given to the Court, if any default is committed in reporting to the said Mapusa Police Station, then the Applicant shall be taken into custody and will not apply for bail thereafter.

(iv) The Applicant shall attend the hearing of the case on the dates fixed by the Trial Court.

(v) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing the facts of the case or to any Police Officer.

(vi) The Applicant shall also not tamper with the evidence.

(vii) If any of the aforesaid conditions are violated by the Applicant, the same will entitle the prosecution to apply for cancellation of bail now granted to the Applicant. It is clarified that if the Applicant does not report to the Mapusa Police

Station four times a week as directed above, the Authorities shall be entitled to take him into custody without having to file any application seeking cancellation of the bail.

10. The Bail Application is disposed of in the aforesaid terms.

11. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J.