

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO.18 OF 2023

ABDUL WAHAB THROUGH HIS NEXT
FRIEND ZAHEER KHAN PRESENTLY
LODGE IN JUDICIAL CUSTODY CENTRAL
JAIL

... APPLICANT

Versus

STATE OF GOA THROUGH PUBLIC
PROSECUTOR AND 2 ORS

... RESPONDENT

Mr. Kautuk Raikar, Advocate for the Applicant.

Mr. Nikhil Vaze, Additional Public Prosecutor for Respondent nos. 1
and 2-State.

Mr. Vithal Naik, Advocate for Respondent No. 3 under Legal Aid
Scheme.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 15th January, 2024

P.C.:

1. This is an application for bail in the matter which is pending before the learned Children's Court. The allegations against the accused are under Section 376 IPC r/w. 8(2) of Goa Children's Act and Section 6 of the POCSO Act.

2. Basically a bail application is filed on the ground that the accused is in custody from the last 4 years as he was arrested on 24/01/2020

and till date only 5 witnesses have been examined.

3. Mr. Vaze appearing for the State would submit that the list of witnesses shows around 19 witnesses out of which 5 are examined, the prosecution intends to examine 4-5 witnesses including the Investigating Officer.

4. The record produced before this Court more specifically the cross-examination of the victim, the mother of the victim/complainant and the Medical officer, which shows their examination and cross-examination have been adjourned umpteen number of times and that too on the dates which were beyond even few weeks. The mandates of Section 309 of CrPC cast a burden on the Sessions Court to fix a trial programme and to examine the witnesses on the date fixed. Grant of adjournment for examination of witnesses and cross-examination should only be on exceptional circumstances.

5. In this matter it is clear that no trial programme is fixed and witnesses have been called only as per the request of the learned Public Prosecutor, one at a time.

6. Since the accused is in custody for the last 4 years and the victim, complainant as well as the Medical Officer are already examined, the learned Children's Court is directed to adhere to the procedure of Section 309 CrPC by fixing a trial programme of the remaining

witnesses and giving the specific dates for examination, cross-examination and re-examination, if any. Witnesses shall be examined by fixing such programme, within a period of 4 months.

7. It is made clear that neither the prosecution nor the learned Counsel for the accused shall seek adjournments only for the purpose of cross-examination of the witnesses. Once the trial programme is fixed, the same shall be adhered to and the adjournments would be granted only on exceptional circumstances and that too by giving a short date.

8. Mr. Raikar appearing for the accused submits that he will cooperate with the Children's Court in examining the remaining witnesses by fixing the trial programme and by not asking for any adjournment.

9. In view of the above observations, the Bail application stands disposed of. If the learned Children's Court fails to complete the trial within a period of 4 months, liberty is granted to approach this Court afresh. However, if the applicant is found asking for adjournments, the same will be considered as one of the grounds for taking up his bail application.

10. The application stands disposed of.

11. Parties shall act on the authenticated copy of this order.

BHARAT P. DESHPANDE, J.

MEENA
VISHAL BHOIR



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