



**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO.31 OF 2025**

Mr. Kaushal Shetye,
Son of Thishidas Shetye,
32 years of age, Indian National,
Married, Resident of H.no. 158,
Pirozona waddo, Moira, Bardez
Goa.403507. (Presently Lodged
Judicial custody in Central Jail,
Colvale-Goa)Applicant

Versus

1. State of Goa
Through PP, High Court of
Bombay at Panaji, Goa.
2. The Police Inspector,
Mapusa Police Station,
Mapusa, GoaRespondents

Mr. S.S. Kantak, Senior Advocate with Ms. Neha Kholkar, Advocate for the Applicant.

Mr. Nikhil Vaze, Additional Public Prosecutor for the Respondent/State.

Mr. Vinayak Porob with Mr. Nigel Fernandes, Advocates for Respondent No. 3.

CORAM : VALMIKI MENEZES,J.

RESERVED ON : 23rd June 2025

PRONOUNCED ON : 25th June 2025

ORDER:

1. Registry to waive the office objections and register the matter.
2. This is an Application for bail filed by the Accused Kaushal Shetye who was arrested on 04.06.2025 in Crime No.83/2025 registered at the Mapusa police under Section 126(2), 352, 351(3), 118(2), 79,109 and 61r/w 3(5) of Bharatiya Nyaya Sanhita, 2023 (BNS), pursuant to Complaint dated 03.06.2025 by Shruti Shirodkar.
3. According to the complaint, a group of unknown persons assaulted the Complainant, Shruti and her husband Vivek at about 20.30 hrs, at Bastora, with knives, rod, choppers and dandas, at their food cart, where they were carrying out their business. A written complaint was lodged by Shruti on 03.06.2025 at the Mapusa Police Station immediately after the incident. The complainant and her husband were sent for medical examination and according to the hurt certificates there were injuries in the nature of hematoma on the head Vivek and bruises on the Shruti. Though opinion on the injuries was reserved, the same were not reported as grievous injuries or fractures.
4. Subsequently on the Complainant giving a statement on the same night, an F.I.R No.83/2025 was registered at about 1.15 am at the Mapusa Police Station under section 126(2), 352, 351(3), 118(2) r/w 3(5) of Bharatiya Nyaya Sanhita, 2023 (BNS). All these offences are punishable

with fine or a term of imprisonment less than 5 years.

5. The statement of the Complainant records that she “came to know” the names of the assailants as Kartik Shetye, Tulshidas Shetye, Kunal Shetye and Rutvik Shetye. She further stated that Kartik assaulted them with a rod, Tulshidas kicked her and Rutvik assaulted her husband. However, the Complainant is silent on the role played by the Applicant (present Accused). Pursuant to this statement of the Complainant/victim section 79,109 and 61 of BNS, 2023 were added to the offences which are punishable with imprisonment terms ranging from 7 to 10 years.

6. On this basis the Applicant and the co-accused, Vinod and Ranganath were arrested on 04.06.2025. Till date there is no statement recorded of Vivek, husband of the Complainant. Though the original compliant records that Shruti was informed by her husband Vivek that in the morning on 02.06.2025, one male person had a heated argument with him over the issue of road rage, and abused him, and to retaliate, the incident of assault on the night of 02.06.2025 took place. Since according to the Complainant, the assault was mainly aimed at her husband Vivek, due to his altercation with some unknown male during the morning session, and considering that Vivek was subjected to medical examination after the assault, one would expect his statement to be recorded by the Investigating Officer. However there is no statement of Vivek on record.

7. After arrest the Applicant, Vinod and Ranganath were remanded to police custody till 11.06.2025 and thereafter to Judicial custody where they have since been lodged. The Applicant, Vinod and Ranganath had filed bail

applications, the present Applicant's Bail Application bearing No.141/2025 in the Additional Sessions Court, Mapusa which came to be rejected vide its order dated 11.06.2025, which simultaneously remanded the applicant and other two co-accused to judicial custody. The rejection was solely on the ground that release of the Applicant would prejudice the investigation and if new facts emerge during the further course of investigation, then the respondent(IO) will not be able to secure the custody of the applicant.

8. The following submissions were advanced by the Learned advocates for the parties:

9. Learned Senior Advocate Mr Subodh Kantak, advocate for the Applicant submitted that the Applicant has not been named in the Complaint and there is no role attributed to him, neither is there a mention of his name in the statement of the complainant/victim. Advocate for the Applicant further submitted that statements of all the witnesses have been taken however, the statement of the husband of the complainant/victim is not yet recorded. He submits that a reading of the statements would not implicate the Applicant as a participant in the crime. There is also no allegation that the Applicant is alleged to have used any of the weapons referred to in the statement

10. Mr.Nikhil Vaze, Learned Public prosecutor on behalf of the state has opposed the application relying upon the submissions made in the reply of the I.O. He submits that the Applicant and his associates might tamper with the evidence, and threaten the witnesses from deposing freely as they belong to neighbouring village of the complainant/victim. The Public

Prosecutor further submits that the statements of all the witnesses have been recorded, and some of the accused mentioned in the statement of the victim are absconding; the Anticipatory bail applications filed by the absconding accused are pending hearing before the Sessions Court.

11. Mr. Vinayak Porob Advocate of the victim submitted that if the applicant is granted bail, the entire investigation would be hampered as the applicant would inform the progress in the investigation to the absconding accused, which will adversely affect the course of further investigation. It was further submitted that the Applicant is in Judicial Custody and his custody can be obtained by the Police for further investigation under section 187 till the period of 15 days has been exhausted. He submits that since Accused Kartik, Tulshidas and Rutwik have applied for Anticipatory Bail, and in the event such bail is rejected and these Accused are taken into custody, attachment of the weapons may be effected, and in that event, release of the Applicant from judicial custody, without giving the IO an opportunity to apply for their custody for further investigation, requires that the Application be rejected. Reliance was placed on **V.Senthia Balaji v/s The state OF Tamil Nadu**¹

12. On considering the material on record, the following facts emerge, and are considered by me whilst weighing whether the Applicant has made out a case for bail:

- a. The original complaint is made against unknown persons whilst the statement recorded immediately after the FIR was

¹ 2023 ALL SCR (Cri) 2125

lodged at 1:15 a.m. on 03.06.2025 states that the complainant/victim came to know of the names of the other accused i.e. Kartik, Tulsidas, Rutwik and Kunal, but however does not name the present applicant or Vinod and Ranganath.

b. There was no test identification parade recorded to establish the presence and identity of the Applicant, Vinod and Ranganath as part of the unlawful assembly and the assault. There is also no specific allegation against the Applicant of having used any weapon, to substantiate the argument raised by the Advocate of the victim that an attachment of the weapon could still be effected at the behest of the Applicant or Vinod and Ranganath.

c. Even though the complainant has alleged that her husband Vivek was the main person assaulted, surprisingly, no statement has been recorded of Vivek, nor has Vivek named the Applicant as one of the assailants;

d. The hurt certificates do not refer to any of the injuries being of grievous nature, though one of the injuries is on the head of Vivek, who has given no statement till date.

e. The investigation is almost complete and statements of all the witnesses have been recorded, as submitted by the learned PP in his arguments. The Applicant has been in judicial custody since 11.06.2025.

13. The learned Advocate for the victim submits that there are no changes of circumstances recorded anywhere since the last bail application was rejected on 11.06.2025. However, perusal of the order rejecting bail on 11.06.2025, and more particularly paragraphs 13 and 14 thereof, placed reliance on a report dated 03.06.2024, produced by the complainant in Court to argue that the complainant was pregnant, and despite the accused being informed of her condition, he continued to assault the complainant and her husband. The Court also considered photographs produced by the complainant in Court, which were considered to arrive at a conclusion that she sustained injuries on her upper limbs. It is difficult to countenance such a procedure being followed by Sessions Court, whilst considering a bail application, to look into documents produced across the bar by the complainant, which do not form part of the record of the investigation. It is not expected of a Sessions Court to consider such material which does not form part of the investigation papers, but is taken as a ground for rejection of a bail. Other than the contents of paragraphs 13 and 14, the remaining paragraphs of the order rejecting bail refer to case law and there is no reference whatsoever to the statements of the witnesses, the hurt certificate or other material collected in the investigation. There is also no reference to the fact that the statement of the main victim, according to the complainant, Vivek, has not been recorded. The bail application was rejected on the basis of contents of paragraph 25 thereof without considering the relevant record and without applying its mind to the parameters set down by the Supreme Court whilst considering such an application. The argument that there has been no change of circumstance, is misplaced since none of the circumstances were in fact considered in the bail order.

14. The Judgments cited by the learned Advocate for the victim is totally out of context in the present matter. **V.Senthia Balaji** (supra) was a matter under the Prevention of Money Laundering Act, 2002, where the considerations of bail are totally different. What the Court was considering in that case was whether the outer limit of 15 days of custody to the Police, from the date of arrest has worked itself out under the PMLA Act, as opposed to the provisions of the Cr.P.C., 1973. What was held therein was that the provisions of Section 167(2) of the Cr.P.C. did not restrict Police custody only to the first 15 days of remand. The Judgment does not apply to cases of regular bail and was restricted to deciding the aforementioned point in relation to the provisions of Section 62 of the PMLA, 2002; it also held that Section 41A of Cr.P.C. had no application to an arrest made under the PMLA, 2002.

15. For reasons stated above, the application of the Accused for bail is granted on the following conditions:

(a) The Applicant shall be released on bail in Crime No.83/2025 registered at Mapusa Police Station on executing a Bail Bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one surety in the like amount, to be executed before the Sessions Court, Mapusa.

(b) The Accused/Applicant shall furnish to the Investigating Officer a copy of his Aadhaar card, full residential address, email ID and his mobile phone number, which shall be kept functional and on at all times to enable the Investigating

Officer to contact him; in addition the Applicant shall report to the Mapusa Police Station once in a week on Monday between 11.00 am to 1.00 p.m until completion of the investigation.

(c) The Applicant shall not interfere with any of the witnesses or attempt to contact them by himself or through any of his agents or tamper with the evidence.

(d) The Applicant shall not enter the Village of Nachinola;

(e) The Applicant shall not travel outside the State of Goa without permission of the Sessions Court at Mapusa. In addition, the Applicant shall deposit any valid Passport in his possession with the I.O. until completion of the investigation.

16. The application stands disposed of in the above terms.

17. All concerned to act on an authenticated copy of this order.

VALMIKI MENEZES, J.