

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-BA-64-2020**

Santosh Kumar Kar

... Applicant

Vs

State of Goa & Anr.

... Respondents

Shri Vibhav Amonkar, Advocate for the Applicant.

Shri Gaurish Nagvenkar, Additional Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 3 NOVEMBER 2020****P.C. :**

The applicant is the first accused in Crime No.230/2018, registered by Calangute Police Station. The crime attracts Sections 370(3) read with 34 IPC, besides section 4, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956.

2. The applicant was arrested on 06.12.2018 and has been in judicial custody ever since. Earlier, in March 2020, he applied for bail before the trial Court but could not succeed. Later, in June 2020, he came to this Court with the same prayer. This Court disposed of that application preserving the applicant's liberty to renew his request for regular bail in three months. Then, the prosecution told the Court that still they had to examine two more victim girls and that could be completed in those three months. Therefore, after the lapse of that period, the applicant has come up with this application.

3. Shri Vibhav Amonkar, the learned counsel for the applicant, has submitted that the police investigated the crime and filed the charge sheet. The charge sheet bears no details incriminating the applicant. As to the trial, Shri Amonkar informs the Court that the alleged first victim girl

was examined as PW1, but she did not support the prosecution. So far, no other witness has been examined.

4. As to the applicant's antecedents, Shri Amonkar argues that the police, as a matter of habit, have been raiding a particular place and apprehending people with no decoy, not even recovery of any money from the place. Therefore he has urged this Court to enlarge the applicant on bail.

5. On the other hand, Shri Gaurish Nagvenkar, the learned Additional Public Prosecutor, has vehemently contended that the applicant has had ample criminal antecedents. Already, he has been accused of three similar crimes. Therefore, he has opposed any bail to the applicant, especially on the premise that the crime carries the maximum punishment of life imprisonment.

6. Head Shri Vibhav Amonkar, the learned counsel for the applicant, and Shri Gaurish Nagvenkar, the learned Additional Public Prosecutor for the respondents.

7. Indeed, the offence is under section 370(3) read with 34 of IPC, besides Sections 4, 5 and 7 of the Immoral Traffic (Prevention) Act. On 6 December 2018, the applicant was arrested; on 23 February 2019, the charge sheet was filed; and on 11 September 2019. in the trial, the prosecution examined PW1, said to be the first of the three victim girls. Thereafter, the matter underwent seven adjournments, but the prosecution could examine no other witness. I am told that despite numerous summonses, the other two victim girls have not responded.

8. On the last occasion, the prosecution represented to the Court that they would endeavour to examine the other two victim girls in three months. Of course, they might have tried their best but could not succeed. With that, we are not sure when the trial is going to end, with an additional factor of the prevailing pandemic. As to the testimony of PW1,

one of the alleged victim girls, she has not supported the prosecution version.

9. That said, what worries the Court is that the applicant has repeatedly exposed himself to similar crimes, *prima facie*. Earlier, in 2016 once and later in 2017 twice, he had been charged with the same crime. In this context, Shri Amonkar, the learned counsel, reminds me that the applicant cannot be termed a habitual offender because that expression under the Goa, Daman and Diu Habitual Offenders Act, 1976, requires three conviction in five years. He also stresses that the applicant has only faced allegations of committing a crime, but at the same time he enjoys the presumption of innocence.

10. I am afraid that the technical consideration of the expression 'habitual offender' may not have any relevance here. Any Court, while considering a bail application, will exercise its discretion and will also look into the criminal antecedents of the applicant. The antecedents need not culminate in conviction.

11. At any rate, the mitigating factors are these: the applicant has been in judicial custody close to two years; the investigation has been completed and chargesheet filed; one of the victim girls has been examined; that victim girl has not supported the prosecution version. Though this Court earlier granted time and the matter underwent seven adjournments before the trial Court, yet the prosecution could not secure the other witnesses' presence. So it is entirely uncertain when the trial is going to end.

Under these circumstances, I reckon it is a fit case for granting bail to the applicant, of course, subject to conditions. The conditions are as follows:

ORDER

- (i) The application of bail is allowed.

- (ii) The applicant is directed to be released on bail on his executing P.R. Bond for ₹25,000/- and on his furnishing two sureties, each for the like sum, to the satisfaction of the learned Additional Sessions Judge, Panaji.
- (iii) The applicant should not leave the State of Goa, without prior permission of the learned Additional Sessions Judge, Panaji.
- (iv) The applicant shall cooperate with the police during the investigation and shall attend the hearing of the case on the dates fixed by the trial Court.
- (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.

DAMA SESHADRI NAIDU, J.

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