

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-BA-31-2020**

Vinay Raikar

... Applicant

Versus

State of Goa & Anr.

... Respondents

Shri A.D. Bhobe with Ms. Annelise Fernandes, Advocate for the applicant.
Shri P. Faldessai, Additional Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 4th September 2020****P.C. :**

The petitioner is the sole accused in FIR No.227/2017, for the alleged offence under Section 302. The alleged incident took place on 22.11.2017, and the applicant was arrested on the very next day. He has been in jail ever since.

2. Overtime, the police investigated the crime and filed the charge sheet. Now the matter is being tried as Sessions Case No.4/2018. It seems, as submitted by the applicant's counsel, a handful of witnesses has been examined. Two of those witnesses are eye witnesses. They are the victim's wife (PW6) and the neighbour (PW3).

3. The record reveals that the applicant applied for bail before the Sessions Court earlier on two occasions: once before the police's filing the charge sheet, and once after their filing it. On both occasions, the Sessions Court dismissed those applications.

4. Now, the applicant has come before this Court for the first time.

5. Shri Bhobe, the learned counsel for the applicant, has taken me through the record and has submitted that even if the allegations are read in their entirety, it will not lead to 302, not even 304 Part II of IPC. According to him, it was an accident. There were exchange of blows

between the applicant, who is the landlord, and the victim, who was the tenant. And this altercation has resulted in the victim's unfortunate death.

6. In this context, Shri Bhobe has also pointed out that the incident alleged took place at 8.00 in the evening. Later, the victim's wife took him inside and let him sleep. But by about 10.00 pm he was found dead. So Shri Bhobe argues that it was not an intentional or premeditated act on the applicant's part. That apart, as mitigating factors, Shri Bhobe pointed out, on instructions, that the applicant has been practically blind. According to him, he is totally blind in one eye and substantially so in the other. Shri Bhobe submits that the applicant has been found COVID positive in the jail, recently.

7. With no criminal antecedents, the petitioner is a permanent resident of the State. He has, Shri Bhobe stresses, remained in pre-trial custody close to three years in jail. There, he urges the Court to enlarge the applicant on bail.

8. On the other hand, Shri Faldessai, the learned Additional Public Prosecutor, on his part, submits that it is premature for the Court to rule on the nature of offence. It has to be guided by the FIR and the charge sheet as the prima facie material, besides the evidence the police gathered so far. According to him, of the many witnesses examined only two were material witnesses. At least two more need to be examined before the Court could form an opinion on the nature of the offence.

9. At this juncture, the applicant's release, Shri Faldessai stresses, will not be in the interest of justice. So he wants the application dismissed.

10. Heard Shri A.D. Bhobe, the learned counsel for the applicant, and Shri Pravin Faldessai, the learned Additional Public Prosecutor for the respondents.

11. Indeed, an unfortunate incident occurred between the landlord and the tenant. The tenant owed some rent arrears to the landlord, who came over to demand them. His demand, it seems, did not yield any result.

As the victim's wife and the other witnesses testify, the applicant, then, assaulted the deceased. It was about 8.00 pm. Later, the victim had his meal and went to bed. But soon thereafter he was found dead at about 10 pm.

12. As rightly contended by Shri Faldessai, it is premature for this Court to have an opinion about the nature of offence—whether it is under Section 302, or Section 304 part II, or any other provision of IPC. Suffice it to say that the applicant, a permanent resident, has no criminal antecedents. An altercation and physical assault, prima facie on the spur of the moment, has resulted in the victim's death. The trial has been underway and a few witnesses have already been examined; those witnesses include the victim's wife and a neighbour, both eye witnesses.

13. I also would like to take consider the applicant's health condition. He is said to be permanently blind in one eye and partially so in the other. Now, afflicted with COVID-19, too.

14. At this juncture, if the applicant is released on bail; I reckon, it will not affect the trial. Under these circumstances, I deem it a fit case to enlarge the applicant on bail subject to these conditions.

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 Rs.50,000/- 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 attend the hearing of the case on the date 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's failure to abide by these conditions will entail the prosecution to apply for the cancellation of bail now granted to the applicant.
- (vii) The Bail Application stands disposed of.

As the learned Additional Public Prosecution has reported, the applicant has tested COVID positive. Therefore, the jail authorities, after consulting the doctors concerned, will decide whether the applicant be released on bail forthwith. If they feel he needs hospitalization, they may take steps on that regard. Once the applicant is safe to be released, the jail authorities will enforce this Bail Order.

DAMA SESHADRI NAIDU, J.

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