

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**(LD-VC-BA-57/2020)**

Krishna Savlo Naik

...Applicant

Vs

State of Goa and anr.

...Respondents

Shri Damodar Dhond, Advocate for the applicant.

Shri Gaurish Nagvenkar, Addl. Public Prosecutor for the respondents.

**Coram:- DAMA SESHADRI NAIDU, J.**

**Date:4<sup>th</sup> November 2020.**

PC.

The applicant is the second accused in Crime No.51/2019, registered by Porvorim Police Station. It is for the alleged offences under sections 307, 323, 324, 325 read with Section 34 of IPC. The complainant is the injured victim, who is said to have been assaulted by the applicant and three other accused. As the record reveals, the other three accused have already been enlarged on bail. Though the alleged incident happened on 21.3.2019, the applicant surrendered before the Judicial Magistrate of First Class, at Mapusa, on 24.6.2019.

2. On the applicant's surrender, with the trial Court's leave, the police subjected the applicant to custodial interrogation for one week. Later, after interrogating the applicant, the police sought no further custody. On 24 August 2019, the police filed the chargesheet, in Sessions Case No. 63/2019, before the Sessions Judge-I, Mapusa.

3. Shri Damodar Dhond, the learned counsel for the applicant, has strenuously contended that all the other three accused, including A1, have already been enlarged on bail. As to the alleged role played by all the accused, Shri Dhond stresses that the first accused and the applicant face similar allegations: that they inflicted knife wounds on the victim. But the

first accused has already been enlarged on bail. According to him, the police justified the lenient attitude towards the first accused on the premise that they could not recover any weapon from him. But the complaint is graphic about, Shri Dhond points out, the role the first accused played and speaks about the weapon he allegedly used. Shri Dhond insists that even on the principle of parity, this Court ought to consider the applicant's bail application.

4. About the applicant's criminal antecedents, Shri Dhond submits that out of nine cases, as listed in para 24 of the prosecution's reply, the applicant has earned acquittal in the second one. The fourth case was filed by his own sister, with whom he has a property dispute; and the fifth case by his sister's neighbour. According to Shri Dhond, both the complainants have already submitted affidavits to the trial Court expressing their willingness not to prosecute the case. About the third case, Shri Dhond submits that the police have filed a final report, as no case was made out against the applicant.

5. Therefore, Shri Dhond has urged this Court to consider the applicant's bail application sympathetically, mainly, keeping in mind his wife and three years old child.

6. On the other hand, Shri Gaurish Nagvenker, the learned Additional Public Prosecutor, has vehemently contended that the applicant cannot seek any parity on the premise that another accused has been enlarged on bail. According to him, the role attributed to each of the accused defers in intensity. Then, he has drawn my attention to the applicant's criminal antecedents. He has submitted that the applicant still poses a threat to society. That is, enlarged on bail, the applicant may threaten the witnesses or interfere with the course of the trial. So, Shri Nagvenker has urged this Court to dismiss the bail application.

7. Heard Shri Damodar Dhond, the learned counsel for the applicant, and Shri Gaurish Nagvenkar, the learned Additional Public Prosecutor for the respondents.

8. Indeed the offence is grave. The applicant surrendered himself before the trial Court in June 2019; he has been in judicial custody ever since. Soon after his surrender, the police sought the applicant's custody for one week and interrogated him. A week later, the police did not seek any extension; therefore, the trial Court remanded him in judicial custody.

9. True the other accused have been released on bail. Two accused, that is accused nos. 3 and 4, secured bail from this Court. As the bail order reveals, they were said to have employed only physical force in assaulting the complainant. Later the first accused was granted bail by the trial Court. Though the complaint reveals that along with the applicant, the first accused too inflicted knife wounds on the complainant, the trial Court considered the first accused's bail application positively. It was on the premise that police failed to recover any weapon from him; on the contrary, they did recover the weapon from the applicant.

10. At this stage, we are guided by the *prima facie* allegations and proof collected by the police before their filing the charge sheet. The complaint does reveal that both the first accused and the applicant have inflicted knife wounds. The Police's failure to recover the weapon from the first accused, according to the applicant, cannot be a mitigating factor. But the alleged leniency, if any, shown to the first accused cannot be a factor for consideration here. The applicant must earn his bail based on the considerations that are particular to him. There can be no parity in the negative.

11. I may have to consider another disturbing factor: the applicant's criminal antecedents. True, in one case he has earned acquittal, and in another the police filed the final report. In two other cases, his sister and neighbour may have come forward to compound the offence. At this stage, I cannot take cognizance of the complainants' willingness to compound the offences in a couple of cases.

12. That said, the fact remains that the applicant has been in judicial custody for over 16 months. The chargesheet has been filed, and the

matter is ripe for trial. On the last occasion, when I took up the bail application, the learned Additional Public Prosecutor represented that the trial Court was all set to frame the charges. And once that happens, this Court may consider the applicant's request. So, I adjourned the matter and put it up for today.

13. Though the matter was listed before the trial Court, according to the applicant's counsel, on three occasions, it could not frame the charges either because of docket pressure or other related causes. Therefore, it is inequitable if the prosecution insists that the applicant's bail application should not be considered until the trial Court framed charges.

14. As to the criminal antecedents, I note that there can be a threat of the applicant indulging in similar crimes or coercing the witnesses. To ward that off, this Court may as well impose stringent conditions. Pitted against individual freedom is the possibility of the applicant's indulging in further crime. That possibility can be curtailed if this Court sets suitable conditions. Accordingly, the bail application is allowed subject to these conditions:

### **ORDER**

- (i) The applicant is directed to be released on bail on his executing P.R Bond for Rs.30,000/- and on his furnishing two sureties, each for the like sum, to the satisfaction of the learned Additional Sessions Judge-I, Mapusa.
- (ii) The applicant shall visit the jurisdictional police station twice a week at 11.00 am.
- (iii) The applicant shall not indulge in any offence, including a similar crime.
- (ii) The applicant should not leave the State of Goa, without prior permission of the learned Additional Sessions Judge-I, Mapusa.

- (iii) The applicant shall attend the hearing of the case on the dates fixed by the trial Court.
- (iv) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.
- (v) 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.
- (vi) The Bail Application stands allowed.

**DAMA SESHADRI NAIDU, J.**

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