

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-BA-56-2020**

Melburn Coutinho ... Applicant

Vs

State of Goa & Anr. ... Respondents

Shri A.D. Bhohe with Ms. Annelise Fernandes, Advocate for the Applicant.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

Coram: - DAMA SESHADRI NAIDU, J.**Date: - 6 NOVEMBER 2020****ORAL ORDER:**

The applicant is the first accused in Crime No.102/2019, registered by Maina Police Station, for the alleged offences under sections 353, 427, 364, 302, and 201, read with Section 34 of IPC. The police investigated the crime and filed the charge sheet in Sessions Case No. (302)16/2019 before the Sessions Court, Margao. The alleged incident took place at early hours of 6 September 2019. All the three accused were arrested the next day; they have been in judicial custody ever since.

2. As per the prosecution version, on the night of 5 September 2019, six people, including the applicant, were partying in a bar and restaurant. When it was about to be closed, the victim walked in, apparently in a drunken state, and started shouting and demanding that he be served liquor. Then, the applicant stood up, went up, and slapped him on his face, asking him to be quiet. That led to a deadly brawl, involving the applicant, two of the remaining five people, that is A2 and A3, and the victim. Eventually, the applicant and the other two accused took the victim outside the restaurant. On one bike driven by the third accused, the second applicant was the pillion rider. They asked the victim to sit in the

middle. On the second bike, the applicant followed them. As the later events reveal, the victim was stabbed to death.

3. As I have already noted, the police filed the charge sheet on 06.12.2019. After his initial failure before the trial Court to secure the bail, the applicant has come to this Court, invoking section 439 of Cr.P.C.

4. Shri A.D. Bhobe, the learned counsel for the applicant, has submitted that the applicant, to begin with, has no criminal antecedents. Second, the role attributed to him was slapping the victim on the face and nothing more. Then, he has taken me through the statements of a few witnesses: two witnesses out of the group of the six people who were partying and also two other witnesses, one of whom happens to be the third accused's cousin.

5. On the strength of their statements, Shri Bhobe has strenuously submitted that there is ample evidence to show that if at all the crime was committed, it must have been committed by A2 and A3--not A1. In the alternative, he has also submitted that for the alleged offence of slapping the victim, the applicant has already been in judicial custody for over one year. So Shri Bhobe wants the Court to enlarge the applicant on bail with suitable conditions.

6. On the other hand, Shri Pravin Faldessai, the learned Additional Public Prosecutor, has vehemently opposed the bail application. According to him, the offence is grave, and an innocent person has lost his life; so this Court should not show any leniency. Shri Faldessai insists that it is the applicant that caused the brawl. It is improbable that besides slapping the victim, the applicant took no further part in the assault.

7. To elaborate, Shri Faldessai stresses that the post mortem report and the nature of injuries graphically show the gravity of the assault. Besides, the CC TV footage 'from the vicinity' has also established the assault on the victim. As to the alleged minor role the applicant is said to have been played, the learned Additional Public Prosecutor points out that

section 34 does not require any specific overt act attributed to a person in a group. That apart, the applicant did not travel on the same motorbike only because it could not accommodate the fourth person. Though there was no eyewitness to the actual stabbing, the fact remains the applicant had been in the company of the second and third accused all along. So, at this stage, we should presume that the applicant, too, had played an active part. Therefore, Shri Faldessai has urged this Court to dismiss the bail application.

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

9. Indeed, the crime is hideous for an innocent has been lost. Since the police have already filed the charge sheet, we have had the advantage of going through the witnesses' statements. There are two sets of witnesses for our consideration: two witnesses from the group of six people who were partying and two from outside. In that group of six people, three have ended up as the accused and the remaining three as the witnesses.

10. It seems the moment the brawl broke out, the remaining three people left the place. But they were the eyewitnesses until the accused took the victim away on their vehicle to some other place. Going by the statements of those witnesses, I reckon it is the applicant that started the brawl; yet he was attributed with one overt act: slapping the victim. That apart, it has been further established that the applicant did accompany the other two accused who, in fact, took the victim on their motorbike, followed by the applicant on another motorbike. Thereafter, the crime is entirely circumstantial.

11. Though two other witnesses, as read out by Shri Bhobe, spoke about the assault, they too were not the eyewitnesses. Incidentally, one of those witnesses is the third accused's cousin. That witness spells out that

the third accused had an enmity with the victim, and he wanted to settle scores. The third accused himself allegedly told his cousin that he had stabbed the victim with the help of the second accused. Because of the frequent calls from A3 to be part of the group at the restaurant, that cousin was said to be on his way to the restaurant. Then, he met the accused at the bridge. There he saw the victim, too, lying under the bridge.

12. We may finally refer to another witness. He is said to have received a phone call from the third accused with a request that they should do something with the dead body. He also narrates that the third accused told him that he and the second accused killed the victim. Thus, from the evidence the police so far gathered, notwithstanding the severity of the crime, we may deduce that the applicant has not been actively involved in stabbing the victim. Of course, his role as to the initial assault cannot be doubted at this stage.

13. Under these circumstances, I reckon the applicant's entitlement to a presumption of innocence, in the face of the evidence so far the prosecution gathered, still stands undiluted, at least as to the act of murder. Besides, the police have already filed the chargesheet, and the applicant has no criminal antecedents. Of course, whatever I have recorded concerning the other two accused is in the context of this bail application and as articulated by the applicant. The observations, if any, here cannot be taken as this Court's observations against them.

14. As a result, this Court regards the applicant as entitled to bail, of course, 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 ₹30,000/- and on his furnishing

two sureties, each for the like sum, to the satisfaction of the learned Sessions Judge, Margao.

(iii) The applicant should not leave the State of Goa, without prior permission of the learned Sessions Judge, Margao.

(iv) The applicant shall attend the hearing of the case on the dates fixed by the trial Court in Sessions Case No. (302)16/2019 on the file of the learned Sessions Judge, Margao.

(v) The applicant is to attend the jurisdictional police station once in a week—11 am on every Saturday.

(vi) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.

(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 applicant shall not indulge in any other crime, similar or different.

(ix) The Bail Application stands disposed of.

Parties to act on the authenticated copy of this order.

DAMA SESHADRI NAIDU, J.

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