

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-BA-68-2020**

Aryan @ Akash @ Ashu Rawat ... Applicant

Versus

State of Goa & Anr. ... Respondents

Shri Damodar Dhond, Advocate for the Applicant.

Shri P. Faldessai, Additional Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 7 DECEMBER 2020****ORAL ORDER :**

The petitioner, along with another person, has been accused of a heinous crime: murder. It was seven years ago. If we briefly refer to the facts, on 15.11.2013, the victim's mother complained to Mapusa Police in MPR No.72/2013, that her son, aged 22 years, had been missing. The same day, at night, the mother came back to the police station and further complained that her son was last seen, as per the information she gathered from the neighbourhood, in the company of the applicant and the other accused. Then, the police registered Crime No.397/2019 for the offence under section 365, read with 34 of IPC.

2. On 16.11.2013, the dead body was found. That prompted the police to add sections 302, 394, and 201 of IPC to the crime. Besides, the police arrested the applicant and the other accused, too, on the same day.

3. At any rate, when the offence took place, the applicant was 18 years 7 months and the second accused was 17 years 6 months. As the second accused happened to be a juvenile then, he earned a reprieve and was released on technical grounds. It was on 29.11.2013. But the petitioner has continued to be in judicial custody to this day.

4. On 14.11.2013, the police filed chargesheet, and the case was made over to the Additional Sessions Judge, Mapusa, as Sessions Case No.18/2014.

5. To begin with, the applicant filed the first bail application soon after his arrest but could not succeed. Later, he filed the second bail application when the police filed the charge sheet. Again, through an order, dated 02.11.2015, the trial Court dismissed that application. By then, the prosecution had examined three witnesses. Recently, the applicant filed the third and final bail application before the trial Court. Again, through an order, dated 30.09.2020, the trial Court rejected that application. By then, seven witnesses had been examined.

6. Through an elaborate order, the trial Court has held that the applicant has criminal antecedents. It has also held that as a few more witnesses are still to be examined, the applicant may threaten the witnesses or jump the bail, should his application be considered positively. Under these circumstances, the applicant has filed this application—the first one before this Court.

7. Shri Damodar Dhond, the learned counsel for the applicant, has taken me through the record and has submitted that the applicant was of tender years when he was arrested and, by now, he has spent over seven years in judicial custody. According to him, his education has suffered irretrievably. About the applicant's family background, Shri Dhond submits that the applicant's father, hailing from Uttar Pradesh, has been employed in a factory, here, in Goa, for the last 26 years. In fact, the applicant was born and brought up in Goa. Besides, the applicant's family comprises his mother and sister, as well. Of course, Shri Dhond has emphasised that the mother has been suffering from severe illness and that the applicant's sister, after completing her engineering course, has recently secured employment, which she is about to join.

8. In this context, Shri Dhond stresses that the applicant hails from a respectable family and it is unfortunate that he has been caught in the web of crime, much of which is untrue, at a very young age.

9. Shri Dhond, has also tried to explain the applicant's criminal antecedents as the prosecution has pointed out in its reply. In 2013 itself, the applicant was involved in two crimes, both attracting Section 380 of

IPC. In Crime No.407/2013, the applicant has been acquitted; but in Crime No.332/2013, again under Section 380 IPC, he had been charged with stealing a laptop. Though the applicant had been sentenced to imprisonment over one year, the trial Court set it off for the period he had been in judicial custody.

10. In the end, Shri Dhond has submitted that in all these seven years, the applicant has suffered. If he is released now, he will pick up his career threads where he had left them before his arrest, pursue his studies, and find an honourable way of living. In his efforts, his family will support. Therefore, he has urged this Court to release the applicant on bail.

11. On the other hand, Shri Pravin Faldessai, the learned Additional Public Prosecutor, has submitted with equal vehemence that the applicant, to begin with, has been charged with a heinous crime which attracts, if proved, a life sentence. He has also emphasised on the applicant's unmistakable criminal antecedents. Besides, Shri Faldessai has submitted that if the applicant is released on bail, it is very likely that he may either jump the bail or threaten the witnesses.

12. Explaining the applicant's *modus operandi*, Shri Faldessai points out that on earlier two occasions, the applicant was, though very young, charged with the crimes of theft. This time, too, it was a case of theft, but it went horribly wrong, resulting in loss of life.

13. To elaborate, Shri Faldessai has submitted that the applicant and the co-accused stole ₹40,000/- which, in fact, was recovered at the applicant's behest. As to the applicant's family condition, Shri Faldessai has submitted that neither the mother's alleged ill health nor the sister's employment prospects dilute the gravity of the offence. Then drawing my attention to the prevailing pandemic conditions, the learned Additional Public Prosecutor submits that despite its best efforts, the prosecution could not examine the remaining 41 witnesses. At any rate, he assures the Court that the prosecution will examine the remaining witnesses in the

trial Court at the earliest. 00Therefore, he has urged this Court to dismiss the bail application.

14. Heard Shri Damodar Dhond, the learned counsel for the applicant; and Shri Pravin Faldessai, the learned Additional Public Prosecutor for the respondents.

15. Indeed, the offence is grave. I need to balance the conflicting claims and interests of the applicant and the prosecution. Pitted against the gravity of the crime is the presumption of the applicant's innocence. Besides, this Court and the Supreme Court have been consistent in their judicial outlook about the inordinate delays in the trial, especially, involving the undertrials who could not earn their bail for one reason or another.

16. Keeping in mind the gravity of the offence, I may proceed further and note that the applicant, then just about 18 years, has been in judicial custody for over seven years. Much of his opportunity to get himself educated or to reform himself has been lost with an accusation hanging over his head. That said, the Court ought to be vigilant in ensuring that misplaced sympathies do not affect the Court's sense of Justice; more so, when the prosecution apprehends that the applicant may either jump the bail or tamper with the witnesses, pending trial.

17. The law is settled that the liberty of an accused who only bears the cross of an accusation or suspicion is a matter of utmost constitutional concern. Of course, that liberty is subject to reasonable restrictions. Then, the Court needs to consider the suspect's case for release if sufficient safeguards could allay the prosecution's apprehension.

18. Here, I reckon, the prospects of the applicant's jumping the bail or tampering with the witnesses can be safeguarded, to the extent possible, with stringent conditions.

19. The fact remains that in the last seven years, the prosecution could examine only seven witnesses. And there still remain 41 more witnesses. That means, the trial may go interminably if the examination of the seventh witness is any indication. His testimony took 18 months to

conclude. In the meanwhile, asking the applicant to suffer pretrial incarceration merely because the trial takes place in a time-wrap is inequitable and offends the notations of fairness.

20. I, therefore, allow the bail application 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 ₹25,000/- and on his furnishing two sureties, each for the like sum, to the satisfaction of the learned Additional Sessions Judge, Mapusa.
- (iii) The applicant should not leave the State of Goa, without prior permission of the learned Additional Sessions Judge, Mapusa.
- (iv) The applicant shall visit the jurisdictional police station twice a week, that is, on Monday and Thursday at 11.00 a.m.
- (v) 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.
- (vi) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.
- (vii) The applicant shall not commit similar or other offences.
- (viii) 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.
- (ix) The Bail Application stands disposed of.

Parties to act on the authenticated copy of this order.

DAMA SESHADRI NAIDU, J.

NH