

**IN THE HIGH COURT OF BOMBAY AT GOA  
LD-VC-BA-85-2020**

Varun Nayyar

... Applicant

Versus

Police Inspector,  
Porvorim Police Station.

... Respondent

Shri Arun Bras De Sa with Shri Sahil Sardessai, Advocate for the Applicant.

Shri Sagar Dhargalkar, Additional Public Prosecutor for the Respondent.

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

**Date:- 8 DECEMBER 2020**

**ORAL ORDER :**

The applicant is the sole accused in Crime No.111 of 2020, registered by Porvorim Police Station. The alleged crime attracts section 376 IPC, read with section 8(2) of the Goa Children's Act, 2003, besides section 92 of Rights of Persons with Disabilities Act, 2016, as well as sections 4, 5 and 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. The facts in brief are that on 17th or 18th August 2020, an unknown person came by a car, picked up the victim, a minor girl, on the road, took her to a hotel, and in the room he molested her. When she raised an alarm, he let her dress up and then dropped her back from where he had picked her.

3. Though initially, the crime was registered against an unknown person, later on 21.08.2020, the applicant was arrested. It was based on the statements of certain alleged eye witnesses who are said to have seen the applicant taking the victim girl.

4. After failing in his effort to get a regular bail from the trial Court, the applicant has filed this bail application under Section 439 of CrPC.

5. Shri Arun Bras De Sa, the learned counsel for the applicant, has to begin with, submitted that its a classic case of mistaken identity. In this

context, he has submitted that neither the victim girl nor the so called star witnesses, who are said to have seen the victim girl in the applicant's company, could identify the applicant in the test identification parade. Even the prosecution 'say' has been categoric that neither the victim girl nor the alleged eye witnesses could identify the applicant as the culprit in the identification parade. He has also submitted that in the chargesheet, there is hardly any material worth the name to link the applicant to the crime.

6. As to the forensic evidence, Shri De Sa has taken me through the record and has submitted that there were no visible marks of any outrage on the private parts of the victim. And to a specific question during the course of investigation, the victim girl has submitted that the applicant, if he were the person, only tried to insert his finger; but on her resistance, he desisted. Eventually, he picked her up and dropped her back. Therefore, he has urged this Court to enlarge the applicant on bail, of course, subject to any suitable conditions.

7. In response, Shri Sagar Dhargalkar, the learned Additional Public Prosecutor, has submitted that the case involves a minor girl, who has been suffering from dyslexia. Therefore, the applicant cannot take advantage of the fact that she could not recognise him. That apart, he has drawn my attention to the trial Court's order of rejection of the applicant's bail application. In that, it has mentioned that there has been *prima facie* material to link the applicant with the crime. Shri Dhargalkar has also pointed out that medical evidence reveals that there is an injury on the victim girl's breast which shows that her modesty has been outraged.

8. Thus, the learned Additional Public Prosecutor has urged this Court to dismiss the bail application.

9. Heard Shri Arun Bras De Sa, the learned counsel for the applicant; and Shri Sagar Dhargalkar, the learned Additional Public Prosecutor for the respondent.

10. Indeed, it is a crime that attracts not only section 376 of IPC and section 8 (2) of the Goa Children's Act but also sections 4,5 and 8 of PCSO Act, as well as section 92 of Rights of Persons with Disabilities Act. The gravity of the offence cannot be underplayed. Besides, at this stage, I ought to be guided by the prosecution version to see whether the applicant deserves bail. Indeed, that consideration must be in the backdrop of the statutory presumption the applicant enjoys regarding his innocence. Thus, this Court has to take a holistic view of the crime, neither getting overwhelmed by the emotional quotient of the victim--the minor girl being disabled--nor swayed by any misplaced sympathy for the applicant on account of the common law presumption he enjoys.

11. But all is said and done, there ought to be at least *prima facie* material to link the applicant with the crime.

12. Indeed, initially, the crime was registered against an unknown person. Later, based on the statements of certain persons the applicant was picked up as being the perpetrator of the crime. Then, there were test identification parades. In the one involving the victim, she could not identify the applicant. We could countenance her inability to identify the perpetrator given her disability. But the three alleged eye witnesses, who are said to have seen the victim girl in the applicant's company, too have failed to identify the applicant in the test identification parade.

13. Even the victim's testimony and the medical evidence--I stress, only *prima facie*--have not been conclusive for us to draw any inference that there has been any rape or molestation. When the victim girl resisted the applicant's alleged attempt, he is said to have allowed her to get dressed up and dropped her at the place from where he had picked her up.

14. In this case, the investigation has been completed and chargesheet filed. The perpetrator's identity remains unascertainable. A pre-trial bail cannot be treated as exoneration of the applicant from the crime. Eventually, the applicant's fate depends on the trial that is yet to

take place. In the meanwhile, it is inequitable to let the applicant suffer pretrial incarceration only based on the gravity of the offence, without anything more on the record to link him with the crime.

15. Under these circumstances, I 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 ₹50,000/- and on his furnishing two sureties, each for the like sum, to the satisfaction of the learned trial Judge.
- (iii) The applicant should not leave the State of Goa, without prior permission of the learned trial Judge.
- (iv) The applicant shall not attempt to meet, influence or threaten the victim girl or any other witness, under any circumstance, nor should he abuse the process. If the prosecution entertains any doubt on this count or has any *prima facie* material to show to the Court that the applicant has violated conditions it is always open for the prosecution to apply for the cancellation of the bail.
- (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 commit similar or other offences.
- (vii) The Bail Application stands disposed of.

Parties to act on the authenticated copy of this order.

**DAMA SESHADRI NAIDU, J.**

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