

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-BA-42-2020**

Ramjan Mujavar

... Applicant

Versus

State of Goa & Anr.

... Respondents

Shri D. Dhond, Advocate for the Applicant.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Reserved on :- 11th September 2020****Pronounced on : 14th September 2020****ORDER :****Background:**

The applicant, 19 years old, is the sole accused in Crime No.165 of 2020, registered with Ponda PS., Goa. He faces the allegations punishable under Sections 376 and 506(ii) of IPC. He was arrested on 29th July 2020 and has been in judicial custody ever since. In the first week of August 2020, the applicant tried for a regular bail before the Additional Sessions Judge, North Goa, Panaji, but has failed. On 17th August 2020, the trial Court dismissed the Bail Application No.120/2020.

Facts:

2. As the applicant has pleaded, he is a medical student pursuing his second year MBBS in a neighbouring State. He was born and brought up in Goa. When he was preparing for the entrance examination, he met victim Anamika¹ in the class. In three years, their friendship blossomed into love, but not to the liking of Anamika's father.

¹Pseudonym

3. Whenever the applicant would visit Goa during his vacations, he was meeting with Anamika. On the last few occasions, these meetings paved way to physical intimacy, too. But coerced by father, Anamika lodged a police complaint, which, in course of time, led to his arrest. It was despite his cooperating with the police in the investigation.

4. Poor as he has been, now, with his continued incarceration, he has been missing clauses; he also faces the prospects of having his academic career destroyed. So he wants the Court to enlarge him on bail, for he is desperate to pursue his studies.

5. As pleaded by the prosecution, the applicant has exploited the friendship and carnally coerced Anamika both with cajoles and threats. He has repeatedly abused Anamika sexually. And that was against her will. He has taken her nude photographs and blackmailed her. After committing such heinous crime, the applicant deserves no sympathy.

Submissions:

6. Shri D. Dhond, the learned counsel for the applicant, has first described the applicant's family background, financial position, and educational prospects, including what seems to be the applicant's brilliance as a student. After that, he has drawn my attention to the photographs allegedly taken by the applicant and Anamika together— with all fun and frolic.

7. Eventually, Shri Dhond has submitted that undeniably the applicant and Anamika have been in love. But Anamika's father never liked it. For a host of parental reasons including financial and religious backgrounds, the father coerced Anamika into lodging a police complaint. In this context, Shri Dhond explains that the police never intended to arrest the applicant. Put on notice, the applicant attended the investigation and cooperated. But a week later, yielding to the pressure Anamika's father brought on them, the police arrested him.

8. To elaborate, Shri Dhond submits that the police had secured one week's custodial interrogation and later sought no extension. Even otherwise, the police by now have gathered the entire information and have almost completed the investigation. In fact, on the first day of his interrogation, the applicant surrendered to the police his cell phone, the critical component in the alleged crime. Therefore, Shri Dhond urges this court to enlarge the applicant on bail with suitable conditions if the court desires.

The Prosecution:

9. On the other hand, Shri Pravin Faldessai, the learned Additional Public Prosecutor, has opposed the bail application with all the vehemence at his command. To begin with, Shri Faldessai urges me not to be swayed by the applicant being a medical student. What is important, according to him, is the nature of crime and its gravity. He says I will be convinced if I go through the shocking details that came to light during the police investigation.

10. Shri Faldessai denies there has ever been any love between the applicant and Anamika. She is rather a victim of sexual exploitation. He has also submitted that Anamika herself deposed under Section 164 of Cr PC and described the methods the applicant adopted to assault Anamika sexually on many occasions. As the applicant lives in another state, it is difficult for the police to secure his presence during the trial should he be granted bail. Besides, Shri Faldessai also points out that the applicant has so far not handed over to the police the nude photographs.

11. In the end, Shri Faldessai has submitted that released on bail, the applicant will surely interfere with the process of investigation, threaten the witnesses, and may even try to tamper with the evidence. So he insists on this Court's dismissing the bail application.

12. Shri Faldessai has often referred to, what he terms, the shocking details in the investigation. So I have required the case diary for my perusal. To Shri Faldessai's credit, he has provided it by evening. I have gone through that. But I have found nothing unusual or shocking in it.

Discussion:

13. Both the applicant and Anamika are 19 years old. The applicant is studying second year MBBS; Anamika, second-year B Tech. They both are meritorious, having secured free seats. After passing out from high school, they joined a coaching institute in Goa, got acquainted, and made friends with each other. Neither denies that both had been good friends. But, as the prosecution alleges, at some stage this "good friendship" has degenerated into an ugly exploitation and coercion, leading to a heinous crime.

14. As Shri Dhond has described, the applicant hails from a destitute family, with a different religious background. He has not only secured free admission into medicine but has also won scholarship. Therefore, the applicant's education is almost free. The applicant's mother is a domestic help serving a couple of households and his sister is a salesgirl, another sister having been married off. Applicant has been born and brought up in Goa, though he is studying in a neighbouring State.

The Gravity of Offence as Alleged:

15. Now, let us examine the prosecution's version, as I gather chiefly from the victim's statement under Section 164 of Cr PC. Met in the coaching class, they both continued their friendship even after joining their respective professional courses. It was, pure and simple, friendship. In October 2019, the applicant insisted on celebrating Anamika's birthday. He wanted her to come out. When she refused, he pressurised her. She relented to have only a cup of tea with him. The applicant took Anamika to his house and introduced her to his mother, who offered her cake and

also new clothes. Without her permission, the applicant took her cell phone on the pretext that his phone did not have an advanced camera to take photographs. Then he took her to a hotel “to talk something really important.”

16. Despite Anamika’s protests, he booked a room, forced her to sign in the register, and offered to the hotel her identity card without her consent. He had sex with her with a threat to kill her if she did not agree. He took photographs, too. Then, he dropped her at her house.

17. The next day, Anamika’s father went to the college campus and asked her about what had happened. Then he took her to the police station. The police summoned the applicant and, later, suggested a compromise. In this process, the applicant also agreed to delete the photographs, but he did not do so in Anamika’s presence. As per her father’s suggestion, she kept her phone with him. When Anamika contacted the applicant using a friend’s phone, he admitted that he did not delete the photographs but cried and told her that he wanted to marry her.

18. In January 2020, one day the applicant went to Anamika’s campus, showed her the photographs, and told her to go with him whenever he called. The next day, he used physical force and took her out from the campus. In an isolated place he had sex without her consent. The applicant told Anamika that after “we get married” he would teach a lesson to her father because he suffered the humiliating experience of going to the police station. He brought “a new mobile phone for me from my money”, so that she could call him every day. The applicant would talk to her even till 2 am at times. Besides talking things obscene, he would suggest to her to change her religion after the marriage.

19. When Anamika was in the hostel, once the applicant asked her over the phone to send him a nude photo. When she refused, he told her as

they would get married, nothing is wrong. Eventually, Anamika states she posted through her phone a nude photo under duress. During the lockdown, the applicant came down to Goa and sexually abused her. Once, when Anamika's parents were away, he had sex with her in her house, again without her consent.

20. On one occasion, the applicant messaged to Anamika on her Instagram that he did not delete the photographs including the nude ones. Finally, she came to know (before the complaint) from her lawyer and neighbour that the applicant "sent my nude photograph to my father, and was blackmailing him".

The Applicant's Counter-Assertions:

21. The applicant and Anamika had been in love, but the father never liked it. Rather he detested it. Their love has led to physical intimacy. Throughout, Anamika, a major, willingly participated. When her father took her to the police station, the police summoned the applicant but realised it was love against father's will. So they counselled the parties and left it at that.

22. As Anamika continued to be in touch with the applicant, her father took away her phone. Then, she herself gave money to the applicant and had a phone bought for her. So they continued their conversations. In fact, even now, there are about 164 conversations recorded in the phone—right up to the date of the complaint. On the day the crime was registered, the police seized that phone. So the nature of conversations is a matter of verifiable record.

23. The applicant has taken no nude or obscene photos of Anamika. As they had been in love, there never arose such a situation. As the father has brutally beaten her into submission, she complained to the police. And only to ensure that she would remain under his control, Anamika's father forced her to give a statement under Section 164 of Cr PC.

What matters at this Stage?

24. Conviction requires proof beyond reasonable doubt; but enlargement on bail requires preponderance of probabilities. It is more an exercise of balancing the competing or conflicting claims. It is judicially well established that bail is not a punitive measure.

25. Let us focus on Section 439 of Cr PC. This section confers on the High Court and Sessions Court special powers regarding bail. As subsection (3) of Section 437 does, this Section, too, envisages bail with conditions. But it does not spell out under what conditions a bail can be granted. It has left that to the Court's discretion. Under Section 439, the discretion of a Sessions Court or a High Court is *seemingly* unfettered, but it is, after all, judicial discretion. And no judicial discretion should remain unfettered. It gets its legitimacy from the reasoning it is founded on.

26. Precedentially, the Constitutional Courts have evolved certain parameters for all courts to consider while they entertain a bail application. And the salient factors may be these: (1) the nature of the accusation; (2) the nature of evidence thus far gathered to support the accusation; (3) the severity of the punishment which conviction will entail; (4) the antecedents of the accused; (5) the position and status of the accused with reference to the victim and the witnesses; (6) the possibility of the accused fleeing from justice, or of repeating the offence; (7) the likelihood of the accused tampering with the witnesses; (8) the accused's state of mind or health. Indeed, all these considerations are not of equal importance, but their cumulative effect must weigh with the Court.

27. Here, the accused is a student, so is the victim, both pursuing professional courses. They both are meritorious and have bright academic prospects. Both are still in their teens. They have been well acquainted with each other. The accused has no criminal antecedents; he hails from a

very poor family, continuing his education on a scholarship. He is a native of Goa but pursues his education at a far-off place, with little scope either to interfere with the remaining investigation or threaten, coerce, influence witnesses. After his arrest, he was interrogated custodially for one week. Later, the police sought no extension. He faced, then, no allegation of non-cooperation. The cornerstone is the accused's mobile, which the police secured on the day the complaint was lodged. These are the mitigating factors.

28. Let me come to the aggravating factors as well. The offence is heinous and the punishment is severe. The investigation has not yet been completed. The victim volunteered and had her statement recorded under Section 164 of Cr PC, and it contains disturbing details.

29. Now it is our turn to weigh these conflicting considerations and find the preponderance. In *Sanjay Chandra v. CBI*², the Supreme Court in paragraph 16 has reminded us that it “has, time and again, stated that bail is the rule and committal to jail an exception”. That said, *Sanjay Chandra* has noted that to grant or not to grant bail, the Court must consider “both the seriousness of the charge and the severity of the punishment”. According to it,

“[t]he grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.”

2AIR 2012 SC 830

30. All is said and done, the consideration ought to be cumulative and the reckoning device is preponderance of probabilities. Here, physical proximity or intimacy stands admitted. But one accuses the other of rape; the other calls it love, with premature carnal consummation. The question is whether Anamika willingly participated or was stunned into submission. That will emerge only in trial. The allegations mostly centre on objectionable photographs and exploitation with their help. The offending device is the applicant's cell phone; the police seized it the very first day.

31. The first alleged instance of rape was in October 2019. The victim's father came to know about it. He took his daughter to the police station; there, the police summoned the applicant. The police, in fact, counselled or admonished him, and let him go. Nowhere is there an allegation that the police illegally refused to register a crime. But understandable is the parental concern to keep things under wrap and remedy the situation if possible. Then, the father took away Anamika's mobile phone. Soon Anamika got a new phone, bought by the applicant but with her money.

32. The prosecution accuses the applicant of having taken Anamika's nude photographs. In Anamika's statement under Section 164 Cr PC, she admits that she had sent one to him. Later, she feared exploitation. She also says the applicant has said something on the Instagram, besides sending, as informed by her lawyer-neighbour, an obscene photograph to her father. All these allegations are matters of electronic record. They are verifiable. Some were said to have been taken by the applicant and some by Anamika herself. One photograph is said to have been sent to Anamika's father. None claim, or face an allegation, that they have deleted the data. Even deleted, the data are recoverable. Thanks to technology.

33. On the date of complaint, the police seized the applicant's phone. Despite the severity of allegations, they did not seem it fit to arrest the applicant. Granted, the Court looks at the cold letters on paper, be it allegations or counter allegations. But the police saw and interacted with all people concerned—the accuser, the accused, and all else—and decided not to arrest the accused. They know better. One week later, they summoned the accused and arrested him on the premise that he did not reveal locations where they met after the first event. The meetings are not disputed; only the motive is. The meetings are *non sequitur*.

34. After arresting the accused, the police wanted custodial interrogation and secured it. One week later, they turned the accused in; he was sent to judicial remand. The police did not seek further custodial interrogation. The accused's cooperation is not in doubt.

35. Along with the bail application, the applicant has filed certain photographs, most of them selfies of the accuser and the accused. The Court, *prima facie*, can see two happy teens. Nothing else. Technology enables the investigating agency to know from the digital photos every information about them—the time, the location, and all. The accused has filed the extracts of chattings between the accuser and the accused. They, too, reveal two happy teens in love, *prima facie* though. In one of them, the accuser regrets having sex prematurely. According to the accused, there are still 164 conversations in his cell phone, right up to the date of complaint. The police can verify their tone and tenor, besides the content.

36. Finally, I may analyse the consequences to the Court's granting bail or refusing it. It is a pre-trial detention. As the accused studies medicine in some other State, he may be restrained from visiting Goa. It facilitates his studies and eliminates any apprehension of interference. Given his antecedents, economic status and family background, he hardly poses a threat to any, more so, while staying away. Once found guilty, the

punishment visits him with undiluted vigour. Nothing is lost. On the contrary, if he remains in judicial custody, he loses his education, thus, career and livelihood. Once found innocent, nothing compensates him. Everything is lost.

37. I reckon the preponderance is towards the accused's enlargement on bail. And I do so, of course, subject to conditions.

38. Under these circumstances, I allow this application and enlarge the applicant on bail, subject to these conditions:

(i) The Applicant is directed to be released on bail in connection with Crime No.165 of 2020 registered with the Ponda Police Station, on his executing a personal bond for ₹ 25,000/-, with two sureties for the like amount, to the satisfaction of the learned Registrar (judicial) of this Court.

(ii) The applicant shall stay out of Goa, preferably pursuing his studies, and not enter Goa without this Court's prior permission. But if the investigating officer needs the applicant's presence, he may summon him.

(iii) The applicant shall not, directly or indirectly, induce, threaten, or promise to "any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with evidence". Nor should he abuse the process.

(iv) 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.

39. The Application stands disposed of accordingly.

DAMA SESHADRI NAIDU, J.

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