

**IN THE HIGH COURT OF BOMBAY AT GOA.****LD-VC-BA-104-2020**

Prathamesh Udai Naik

...Applicant.

Versus

State of Goa and Anr.

...Respondents.

Shri Vibhav Amonkar, Advocate for the Applicant.

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

**Coram:- DAMA SESHADRI NAIDU, J.****Date:18 December 2020****ORAL ORDER :**

The applicant is the sole accused in Crime No.128/2020, registered on 28.10.2020 by the Anjuna Police Station. The alleged offence attracts section 376 and 506(ii) of IPC. In fact, the complaint was against unknown persons. And the allegation is that some unknown persons wearing masks, trespassed upon the applicant's house and raped her. The next day applicant was apprehended on suspicion.

2. Kept in judicial custody, the applicant applied for a regular bail. During the course of the hearing, the learned trial Court has summoned the applicant, who, then, filed the affidavit declaring that the applicant is from the neighbourhood and that he was not the culprit. According to her, he could have easily recognised him despite the mask, had he been the perpetrator.

3. Besides, her statement under section 164 of CrPC has also come to be recorded. In that, too, she reiterated the same version as she put in the affidavit before the trial Court. Eventually, in the test identification parade as well, she did not identify the applicant as the assailant. Despite these developments, the trial Court dismissed the bail

application. Aggrieved, the applicant has come before this Court, invoking Section 439 Cr PC.

4. In the background of the above developments, Shri V. Amonkar, the learned counsel for the applicant, has submitted that there is no iota of evidence against the applicant; even the complainant herself exonerates him. Despite that, the trial Court has refused to give the applicant the benefit of doubt, at least *prima facie*. Therefore, he has urged this Court to grant the bail.

5. On the other hand, Shri Pravin Faldessai, the learned Additional Public Prosecutor, has pointed out that the crime is grave, and the Court may be vary before concluding merely based on the victim's statement that the applicant deserves bail.

6. Heard Shri Vibhav Amonkar, the learned counsel for the applicant; and Shri Pravin Faldesai, the learned Additional Public Prosecutor for the respondents.

7. Indeed, when we accept, of course *prima facie*, the allegations as set out in the FIR, we also need to take into account any other mitigating factor for it involves the liberty of an individual who also enjoys the presumption of innocence. Here at the trial Court's behest, the victim filed an affidavit, when the bail application was being heard. She has declared that it was not the applicant. And she has been consistent in her stand even in her statement under Section 164 CrPC. So was the test identification period; the victim did not pick the applicant as the suspect.

8. Under these circumstances, I reckon, it is a fit case for this Court to allow the bail application. I, accordingly, do so 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 trial Judge.
- (iii) The applicant should not leave the State of Goa, without prior permission of the learned trial Judge.
- (iv) 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.
- (v) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.
- (vi) The applicant shall not commit similar or other offences.
- (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 Bail Application stands disposed of.

Parties to act on the authenticated copy of this order.

**DAMA SESHADRI NAIDU, J.**