

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-BA-15-2020

MR. PAULO MASCARENHAS **.... Applicant**

Versus

STATE OF GOA AND OTHERS. **.... Respondents.**

Mr. Sarvadnya Patil, Advocate for the Applicant.

Mr. G. Nagvenkar, Additional Public Prosecutor for Respondents.

Coram : NUTAN D. SARDESSAI, J.

Date : 26th June, 2020

P. C.:

Heard Shri Sarvadnya Patil, learned Advocate for the applicant and Shri G. Nagvenkar, learned Additional Public Prosecutor on behalf of the State.

2. It was the contention of Shri S. Patil that the applicant who was alleged to have assaulted the mother of the complainant with a stone and hammer on her head but she was discharged from the hospital within two days of her admission. Quite on the contrary the applicant had sustained injury on his person and was in the

hospital for about 5 days and was discharged only on 15.05.2020. He was available at his residence from then till he moved an application for anticipatory bail before the learned Additional Sessions Judge which came to be dismissed on 16.06.2020. The panchanama had been drawn, the weapons of assault had been recovered and substantially major statements had been recorded by the Police. the investigation was substantially over and there was no reason to implicate the applicant of the offence particularly under section 307 of IPC. It was a fit case to order his release on bail and therefore appropriate orders be passed securing him with the benefit of bail in anticipation of arrest.

3. Shri G. Nagvenkar, learned Additional Public Prosecutor on behalf of the State submitted that the investigation was still underway and that although the weapons of assault had been recovered, the presence of the applicant was required in custody to find out why he has inflicted injuries on his person with a knife. The mother of the complainant was the sister-in-law of the accused and due to property disputes the present incident had taken place. There were several statements on record implicating the applicant in the Crime. Moreover the injury was inflicted on the head of the injured which was a vital part of the body and for which the intention coupled with the overt act was relevant and not the outcome of the injuries so inflicted on the person of the injured. The prosecution had rightly

incorporated section 307 of IPC against the applicant and therefore on all these counts the application for bail had to be rejected.

4. I have considered the submissions of Shri Patil, the learned Advocate for the applicant and Shri G. Nagvenkar, learned Additional Public Prosecutor on behalf of the State.

5. It is apparent that the applicant was also injured though there is a dichotomy of opinion as to whether the injuries were self inflicted as claimed by the State or they were inflicted by the injured in the course of the scuffle between her and the applicant. That apart the weapons of assault have already been recovered being the stone and the hammer and otherwise a substantial part of the investigation has been completed. The question whether the injuries were inflicted by the applicant on his person or whether the injuries were inflicted by some other person is a matter which has to be thrashed out during the course of the trial on receipt of the medical report and it is not at this stage to determine whether such an injury was self inflicted or otherwise. The contention of Shri Patil that section 307 IPC is not attracted is also not to be entertained looking to the location of the injury on the person of the injured being the head and a vital part of the body and the intention of the applicant to inflict such injuries on her person. The fact that she may have been discharged from the hospital within two days is not the criteria that would determine the

seriousness or gravity of the offence particularly under section 307 of IPC.

6. Nevertheless looking to the fact that a substantial part of the investigation is over and that the applicant was otherwise available to the State and yet he was not placed under arrest, i do not find any reason not to secure him with the benefit of bail in anticipation of arrest.

7. The application is accordingly allowed on the following terms:

- a) In the event of arrest the applicant shall be enlarged on bail on executing bail bond in the amount of ₹25,000/- (Rupees twenty five thousand only) and furnishing a local surety in coextensive amount to the satisfaction of the learned Additional Sessions Judge, Mapusa.
- b) He shall co-operate with the course of investigation and shall report to the Police Station for a period of one week w.e.f 27.06.2020 between 10:00 hrs till 12:00noon.
- c) He shall shall not tamper with the witnesses directly or indirectly or otherwise hinder the course of investigation.
- d) He shall not leave the State of Goa and the territorial waters of India without the prior written permission of the learned Additional Sessions Judge, Mapusa.

e) He shall attend the trial on all the dates of the hearing as and when the chargesheet is filed and case is committed to the court of Sessions for trial.

8. In these terms the application stands disposed off.

Nutan D. Sardesai, J.

msr.