

IN THE HIGH COURT OF BOMBAY AT GOA.
(LD-VC-CRI-56/2020)

Agu Frank Godwin	...Petitioner
Vs	
State of Goa	...Respondents

Shri Arun De Sa and Shri Sahil Sardessai, Advocates for the Applicant.
Shri P. Faldessai, Addl. Public Prosecutor for the respondents.

Coram:- DAMA SESHADRI NAIDU, J.
Date: 8th October 2020.

PC.

On 24.2.2018, three friends met in a restaurant and started consuming liquor in the name of celebrations. That led to a brawl. In that brawl, two friends began beating the third friend. All of a sudden, one of the two friends took out a knife and stabbed the third friend. After stabbing him, he himself took the third friend to the hospital. But, by then, the third friend had died.

2. In this brawl, the second accused is the person who stabbed the friend, and the first accused is the other friend who joined in the fray of beating the victim. Then, Pernem PS registered Crime No.30/2018 for the alleged offences under section 302 read with section 34 of IPC.

3. Later, the applicant, who is the first accused, approached this Court and had the charge modified into that of section 304(2) read with section 34 of IPC. After failing in his attempt before the trial Court to secure the bail, now the applicant has come before this Court.

4. Heard Shri Arun Bras De Sa, the learned counsel for the applicant, and Shri Pravin Faldessai, the learned Additional Public Prosecutor for the respondents.

5. As seen from the record, in the drunken brawl, the applicant and the second accused picked up a quarrel with their friend and started beating him. Then, suddenly, the second accused took out a knife and stabbed the victim. Having done that, he took him to the hospital, but it was too late. The police investigated the crime and filed the charge-sheet in Sessions Case No.5 of 2018 before the Additional Sessions Judge, Mapusa.

6. As seen from the record, about four eyewitnesses have given consistent statements. They have all stated that it is the second accused that stabbed the victim. Besides, they have also noted that the applicant had been part of the fray and seen hitting the victim. In this context, as the offence also attracts section 34 of IPC, we cannot absolve the applicant of any guilt. Nor can we certify that the role he has played is minor. Of course, all this is a prima facie observation.

7. Having said that, I must also note a couple of mitigating factors. Prima facie, it was a fight among friends under the influence of alcohol. The second accused who is said to have stabbed the victim, then, rushed him to the hospital. The applicant, though arrayed as the first accused, has been attributed only one overt act: *beating the victim*. The police have completed the investigation and filed the charge-sheet. Given the role

attributed to the applicant, if we disregard section 34 for a while, I reckon it is a fit case for enlarging him on bail.

8. But the applicant's claim has one set-back. The applicant has no valid passport or visa. It seems he entered the country under a pseudonym, with fabricated travelled documents. For that offence, he has already been tried and sentenced. In fact, he has already served the two-year sentence imposed on him. Therefore, that crime cannot revisit him; lest it should amount to double jeopardy.

9. Besides considering the gravity of the crime, this Court should also be looking at the prospect of securing the applicant's presence during the trial if he is enlarged on bail. For this, the applicant's counsel has submitted that the Nigerian Embassy has given a letter of confirmation about the applicant's credentials as a Nigerian citizen. Of course, the learned APP joins the issue and contends that unless Indian authorities, including the police, verify with the Nigerian Embassy, we cannot be sure whether even the letter now the applicant has produced about his credentials is an authentic one.

10. The applicant's counsel further suggests that until the Authorities get the whole information verified through proper channels, this Court may impose stringent conditions. The applicant will report to the jurisdictional police station twice a day, besides presenting a permanent, verified address of residence.

11. Under these circumstances, I allow this bail application subject to these conditions:

ORDER

- (i) The applicant is directed to be released on bail on his executing P.R Bond for Rs.50,000/- and on his furnishing two sureties, each for the like sum, to the satisfaction of the learned Additional Sessions Judge, Mapusa.
- (ii) The applicant shall report to the Pernem Police Station twice a day, between 10.00 am and 11.00 am, and 5.00 pm and 6.00 pm.
- (iii) The police concerned will also verify with the Nigerian Embassy through proper channels about the applicant's credentials or identity. If there emerges any discrepancy in the information they secure, they may apply to the Court for the cancellation of the bail.
- (iv) The applicant should not leave the State of Goa, without the prior permission of the learned Additional Sessions Judge, Mapusa.
- (v) The applicant 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'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.

DAMA SESHADRI NAIDU, J.