

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-BA-47-2020**

Abhinandan Patel

... Applicant

Versus

State of Goa &amp; Anr.

... Respondents

Ms. C. Collasso, Advocate for the Petitioner.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

**Coram:- DAMA SESHADRI NAIDU, J.****Date:- 14 October 2020****P.C. :**

The applicant is the second accused in Crime No.22/2013, registered by Agassaim Police Station. He, along with 6 others, has been accused of a crime under sections 397 and 302, read with 34 IPC. As the alleged offence took place on 27.03.2013, the applicant was arrested on 24.03.2013 and sent to judicial remand. He has been in judicial custody ever since. His earlier bail applications before the trial Court did not yield any result. Later, when he came before this Court, through an order dated 10.07.2020 in Criminal Application (Bail) No.80/2020, it declined to entertain the bail application. But the Court has observed at para 3 thus :

“3. Liberty is however granted to the applicant to apply for bail afresh after three months where hopefully the material witnesses should be examined on behalf of the State.”

2. Now, the learned Additional Public Prosecutor informs me that out of 78 witnesses, before the pandemic broke out, the prosecution

could examine only seven witnesses. When the eighth witness was in the witness box, the pandemic broke out. Therefore, after 10.07.2020, when this Court disposed of the bail application, the trial Court did not examine any more witnesses. At any rate, he submits that the prosecution will make every endeavour to examine seven more material witnesses in the next 3 months. Thereafter, this Court, according to him, may consider the applicant's bail application.

3. On the other hand, the applicant's counsel insists that in the name of a judicial custody, the applicant has already suffered over 7 years of pre-conviction incarceration. Besides, the applicant has no criminal antecedents. Then, the learned counsel has also submitted that the applicant is HIV positive and has also contracted COVID recently.

4. As the record reveals, there is no dispute that the applicant is HIV positive. As to COVID, he has been treated and is now negative. Indeed, the applicant had been HIV positive even before this arrest. Thus, fully conscious of this fact, the authorities, according to the learned Additional Public Prosecutor, have been providing prompt medical care to the applicant. It is not a subsequent development that affects the applicant's plea for bail either way, so to speak.

5. At any rate, with the uncertainty of the trial completing in the near future, I reckon the applicant has already suffered long pre-conviction incarceration. At the same time, given the gravity of offence and the allegation the applicant faces in the crime, this Court is required to take a balanced view. I reckon had it not been for the pandemic, the prosecution would have examined a few more witnesses by now. At any rate, now the learned Additional Public Prosecutor wants this Court to wait for three more months before it could decide the applicant's request for bail on merits.

6. To balance the conflicting interests and to ensure the public interest, I close this bail application without prejudice to the applicant's claim for enlargement on bail. And I hold that the applicant is free to renew his request at the end of the third month. Then, this Court may consider the issue on the merits.

**DAMA SESHADRI NAIDU, J.**

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