

IN THE HIGH COURT OF BOMBAY AT GOA.

LD-VC-BA-45 OF 2020.

Mr Jaldeep Singh Yadav ...Applicants.

Vs

State of Goa and anr. ...Respondents.

Shri S. G. Desai, Senior Advocate with Shri Pavithran A. V, Advocate for the applicant.

Shri P. FAldessai, Addl. Public Prosecutor for the respondents.

Coram:- DAMA SESHADRI NAIDU, J.

Date:14 December 2020.

P.C.

The applicant is a truck driver from Rajasthan. On 15.11.2019, he started from Rajasthan with a consignment of goods to be delivered at Goa. He reached Goa on 19.11.2019. All along, he had been accompanied by the accused no. 2, his co-driver.

2. When the applicant and the second accused delivered the consignment at Goa, they were instructed to wait for a return consignment. Therefore, they stationed themselves at a place near Ponda bypass. As they were trying to while away their time, the applicant received a call from another truck driver from Uttar Pradesh. That driver, along with his co-driver too, came over to Goa with a consignment from Haridwar. They were also asked to wait for the return consignment. So those drivers of the second consignment wanted to spend time with the applicant and his co-driver, waiting for the return consignment.

3. Once the applicant messaged the information about their whereabouts, the second batch of drivers also joined them. Then, all the four drivers of the two trucks decided to have liquor and food prepared by themselves, as the second batch of drivers had utensils with them. Then,

a couple of them went out and brought liquor. As they were preparing their lunch, simultaneously they also started consuming liquor. It went on from noon until about 4.00 p.m. As the prosecution story reveals, after having his quota of liquor, the applicant got into his lorry and started resting in the cabin. In the meanwhile, perhaps, thinking that he must have fallen asleep or resting, the other three people started taking lunch.

4. Then the applicant came out of his truck and started abusing his co-driver, the second accused, for leaving him out while their having the lunch. He rushed out of the vehicle and kicked the second accused from behind. At that time, one of the drivers of the second vehicle, the victim, intervened and questioned the applicant why he was aggressive. That led to a drunken brawl, involving all four of them. Suddenly, the applicant went back to his vehicle, brought out a knife, and stabbed the victim on the chest, that blow proving fatal. Besides, he also stabbed the victim's co-driver, who sustained grievous injuries and fell. It emerges that even the second accused, who later turned an approver and who confessed under section 164 of Cr.P.C. also received injuries. When the victim was lying dead and his co-driver seriously injured, the applicant had allegedly pulled the body of the deceased under the truck, took the cell phones and wallets from both the victims and fled the scene, along with the second accused. On route, the police captured them.

5. The above crime led the Ponda PS to register Crime No.244/2019 for the offences under sections 302, 307, 394, and 201 read with section 34 of IPC. Both the accused arrested, they were remanded in judicial custody. After completing the investigation, the police filed a chargesheet on 16.2.2020. Thereafter, the case was made over to the Additional Session Judge at Ponda, in Sessions Case No.10/2020.

6. As the record reveals, the applicant had not applied for the bail until the police filed the chargesheet. Thereafter, he applied for bail before

the trial Court but could not succeed. Then he has filed this application under section 439 of Cr. PC.

7. Shri Surendra Desai, the learned Senior Counsel, along with instructing counsel Shri Pavithran A.V., has submitted that the alleged incident, though unfortunate, happened under the influence of alcohol. To elaborate, he has emphasized that the applicant had no prior acquaintance, much less previous enmity, with the deceased. In fact, they belonged to two different states. Only as a matter of coincidence, they met in Goa and were waiting for the return consignment from the employer they both worked for. They started indulging in drunken revelry, and that had led to the unfortunate incident.

8. In this context, the learned Senior Counsel points out that when the applicant was subjected to medical examination, he told the doctor how he sustained the injuries: when the second accused was trying to stab the victim, he intervened and received the injuries. Even the second accused too was subjected to the medical examination. About his injuries, he told the doctor that to answer the nature call, he was trying to climb a hillock, when he slipped and sustained injuries.

9. According to the learned Senior Counsel, the applicant has been truthful, but not the second accused, who later turned an approver though. It is a verifiable fact, he stresses, that at the place where these drivers camped, there was no hillock for the second accused to sustain any injury.

10. As to the nature of the offence, the learned Senior Counsel submits that it is, at best, culpable homicide not amounting to murder. Therefore, the severity of section 302 of IPC cannot be applied even, *prima facie*, if this Court wants to believe the entire prosecution version. He has laid particular emphasis on the accidental nature of the event and the fatal consequences which had never been foreseen, much less premeditated.

11. In the end, the learned Senior Counsel has urged this Court to enlarge the applicant on bail because his entire family, including young children, has been dependent on him. He also wants the Court to impose any conditions which it deems fit.

12. When queried about the applicant's criminal antecedents, the learned Senior Counsel has submitted that the applicant had earlier been convicted twice. Once when he was a minor. That was a family feud, and the crime was under sections 147, 148, 149, 323, 324, 307, and 342 of IPC. The applicant was acquitted of the charge under section 307 of IPC but was convicted for the rest of the provisions. Nevertheless, as he was a juvenile, he was released on probation with an admonition. It was in 2007. Later, as a driver he had been convicted for the offence under sections 279, 337, and 338 of IPC. It is, according to the learned Senior Counsel, an offence of rash and negligent driving. This time, too, the applicant was kept on probation without any sentence.

13. In this context, the learned Senior Counsel points out that section 437(2) of Cr. PC does not get attracted because only one of those two offences involves a crime attracting punishment of three years and above. Therefore, he urges this Court to enlarge the applicant on bail subject to conditions.

14. On the other hand, Shri Pravin Faldessai, the learned Addl. Public Prosecutor, with equal vehemence, has submitted that the applicant, in fact, admits the whole crime. He is only trying to take shelter under a specious plea that he has been under the influence of liquor. According to the learned APP, even if we were to consider section 85 of IPC, the applicant consciously and voluntarily consumed liquor. So he could blame none for his alleged loss of balance and the consequences.

15. Besides, emphasizing the applicant's criminal antecedents, Shri Faldessai has also pointed to the gruesome nature of the crime. According to him, even though he was under the influence of liquor, his knife blows

on the victim resulted in death. Shri Faldessai has also elaborated on how the applicant tried to conceal the evidence and took away the victims' cell phones and the wallet to ensure that they would not get any help, nor would the surviving victim complain to the police. According to Shri Faldessai, both the accused were nabbed when they were trying to flee the borders of Goa. In the end, as the learned Senior Counsel did, Shri Faldessai has also drawn my attention to the second accused's statement under section 164 of Cr. PC., which, according to him, could be termed as a dying declaration. For, when the second accused gave that statement, he was unsure whether he would survive.

16. The learned APP, in the end, submits that it is not a fit case for this Court to entertain this bail application because of the applicant's criminal antecedents and also the gravity of the offence.

17. In reply, the learned Senior Counsel has submitted that the applicant never admitted the crime even during his plea for bail. According to him, he only narrated the case of the prosecution and tried to explain how the offence he has been charged with does not have any basis. That is, while considering the bail application, this Court could as well examine the nature of the offence and form a prima facie opinion about the gravity. The learned Senior Counsel has relied on *Sukhbir Singh v. State of Haryana*, 2002 (3) SC 327, and *Sandesh v. State of Maharashtra*, (2013) 2 SCC 479.

18. Heard Shri Surendra Desai, the learned Senior Counsel for the applicant; and Shri Pravin Faldessai, the learned APP for the respondents.

19. Indeed, the crime was gruesome, and it led to the death of a person. The crime may have happened under the influence of liquor, but the statute had taken care of that aspect. When we examined sections 85 and 86 of IPC, the applicant could derive no benefit on account of he being inebriated when the crime took place. It was his voluntary, conscious act.

20. True, all four persons consumed liquor. While taking food, a tiff about the applicant having not been called for lunch led to a drunken brawl. But that could be no excuse for the applicant, as we go by the prosecution version, to fetch a knife from the vehicle and stab the victim. Besides, *prima facie*, the applicant had been conscious of the consequences of his act. Apart from ensuring that the dead body should not be spotted by any passers-by, he also took away the mobile phones of both the victims and tried to flee the place. There are, at this stage, no mitigating circumstances that help the applicant to earn bail. Technically speaking, section 437 (2) may not get attracted to this crime. But the fact remains that the applicant did have criminal antecedents.

21. In *Sukhbir Singh*, the Supreme Court has observed that to avail the benefit of Exception 4, the defence is required to probabalise that the offence was committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and the offender had not taken any undue advantage, and the offender had not acted in a cruel or unusual manner. The exception is based upon the principle that in the absence of premeditation and on account of total deprivation of self-control but on account of the heat of passion, the offence was committed which, normally, a man of sober urges would not resort to. Sudden fight, though not defined under the Act, implies mutual provocation.

22. Similarly, in *Sandesh*, the Apex Court has held that the court has to examine the cumulative effect of the prosecution evidence and the stand of the accused. This would include discussion on the manner in which the crime was committed, the intent and motive of the accused, situation and mental condition of the accused at the relevant time, attendant circumstances relating to the commission of the offence and the possibility of the accused being reformed if permitted to join the mainstream society. As a corollary to this, the court would have to

determine whether the accused would be a menace or an irreformable anti-social element to the society.

23. Indeed, in deep deference to the above proposition of law, I reckon the Supreme Court's observations are on the merits concerning the quantum of sentence. Not at the stage of bail were they made.

24. Under these circumstances, enlarging the applicant on bail at this juncture may not be in the interest of justice.

So I dismiss the bail application.

DAMA SESHADRI NAIDU, J.

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