

IN THE HIGH COURT OF BOMBAY AT GOA.
LD-VC-BA-83/2020

Mr. Harmeet Singh ...Applicant.

Vs

State of Goa and anr. ...Respondents.

Shri S. Saudagar, Advocate for the Applicant.

Coram:- DAMA SESHADRI NAIDU, J.

Date:16th December 2020.

P.C.

The applicant is an accused (B-6) in Crime No.152/2020, registered by the Calangute Police Station. The alleged offence attracts sections 143, 144, 147, 148, 307, and 302, read with Section 149 of IPC. The incident is said to have occurred on the night of 3.5.2020, and the crime was registered in the early hours of 4.5.2020. Initially, the applicant was not among the accused. Later, based on the supplementary statement, he was made an accused and arrested on 6.5.2020. He has been in judicial remand ever since.

2. After completing the investigation, on 31 July 2020 the police filed the chargesheet. Then, the case was made over to the Additional Sessions Judge, Mapusa, in Sessions Case (302) No.13/2020.

3. As the chargesheet had been filed, the applicant applied to the trial Court for a regular bail but could not succeed. Therefore, he has invoked Section 439 of Cr.P.C. and come to this Court.

4. Shri Salil Saudagar, the learned counsel for the applicant, has advanced his arguments on three aspects:(i) there is no evidence of whatever nature to connect the applicant with the crime; (ii) the applicant deserves bail on the principle of parity, too; (iii) the CCTV footage does

not qualify itself to be called electronic evidence under section 65-B of Indian Evidence Act.

5. To elaborate, Shri Saudagar has submitted that no witness has implicated the applicant in the crime either by the name or by description. The chargesheet contains no reference to the applicant, except treating him as part of a group. Even the CCTV footage, however defective it is, has not established that the applicant was present at the scene of the offence. There are 17 accused, most of them unidentified; the prosecution ought to have had an identification parade. But so far it has not done that. In this context, Shri Saudagar submits that the surviving victim is in Delhi, and he has refused, according to the prosecution, to come down to Goa to participate in the test identification parade—given the pandemic and travel restrictions. In the meanwhile, until that happens, letting the applicant suffer without any prima facie material, Shri Saudagar insists, offends his fundamental rights.

6. After narrating the sequence of events, Shri Saudagar submits that the applicant's name was added two days later merely on the premise that a Punjabi was involved in the crime. Though the applicant hails from Punjab, that cannot be a ground to rope him in the crime. In addition, the learned counsel has pointed out that the CCTV footage showed two women at the scene of the offence, but their statements were not recorded. In fact, no witnesses have implicated the applicant at any stage. On the mere suspension, the police have added the applicant's name and arrested him. And with that, he has been in judicial custody for the last eight months. Under these circumstances, especially as a semblance of evidence is available against the applicant, he deserves bail.

7. As to the parity, earlier this Court enlarged another accused, B-4, on bail. It was through order, dt.29.10.2020, in bail application no.LD-VC-BA-62/2020. According to Shri Saudagar, this applicant stands on a better

footing than the other accused who had been granted bail. So he wants the Court to maintain parity.

8. Eventually, Shri Saudagar has submitted that the CCTV footage does not get qualified as the evidence in terms of section 65(b) of the Evidence Act. According to him, it is not a primary source. In fact, someone connected with the investigation, on the superior officer's instructions, allegedly played the CCTV footage the monitor screen and then videographed through his mobile phone whatever had been played on the monitor screen. Thus, it is at best a copy of a copy, which cannot be treated as electronic evidence.

9. In response, Shri Pravin Phaldessai, the learned Additional Public Prosecutor, has reminded me that the offence is grave, and it has resulted in the loss of innocent life. So he wants the Court to take a strict view of the matter. At any rate, when I queried with the learned APP about the material based on which the applicant had been arrayed as an accused, he did submit that the CCTV footage provided to the Court is a copy of a copy as the applicant has contended.

10. The only evidence that linked the applicant to the crime was a reference by one of the witnesses to a Punjabi being present at the scene of the offence. Nevertheless, he has stressed that each accused need not have a role to play. As offence attracts section 34 of IPC, too, the applicant cannot take advantage of any technicalities.

11. Heard Shri S. Saudagar, the learned counsel for the applicant; and Shri Pravin Faldessai, the learned APP, for the respondents.

12. Undoubtedly, the crime is appalling and an innocent life has been lost. Initially, to ascertain the role of the applicants in this bail application and another, which is yet to be disposed of, I watched the CCTV footage provided by the prosecution. In fact, the assault was brutal and seemed to be unprovoked. Even when the victim was lying dead, some of the perpetrators, presumably from the group of the accused, went on beating

him and even trampling on him. That said, the CCTV footage has not been clear enough to identify the accused.

13. As the crime involves 17 accused, I could see only 7 to 8 people taking an active part. Of course, with Section 34 of IPC, I could not at this stage exonerate the others who have not indulged in a direct attack.

14. Now, I will confine the discussion to the applicant's role. First, CCTV footage is said to be a copy of a copy, without a very low clarity. It cannot, prima facie, qualify as an acceptable piece of electronic evidence under Section 65(b) of the Indian Evidence Act. Of course, it is for the trial Court to rule on this aspect. It is only a prima facie opinion—I repeat. More importantly, no witnesses spoke about the applicant or about the role he has played. Admittedly, there was a reference to a Punjabi in the statements the police recorded. That apart, the police have not yet conducted any test identification parade because the surviving victim, who is in Delhi, could not come down to Goa.

15. Therefore, we ought to conclude that there is no material worth the name for us to be certain about the applicant's guilt. He has answered the description of being a Punjabi. Nothing more. The applicant's very presence being doubtful, I reckon he is entitled to the bail, of course, subject to conditions.

16. As a result, I allow this bail application 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 Additional Sessions Judge, Mapusa.
- (iii) The applicant should not leave the State of Goa, without prior permission of the learned Additional Sessions Judge, Mapusa.
- (iv) The applicant shall attend the hearing of the case on the date 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's failure to abide by these conditions will entail prosecution to apply for the cancellation of bail now granted to the applicant.
- (vii) The Bail Application stands disposed of.

DAMA SESHADRI NAIDU, J.

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