

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-BA-46-2020**

Rajkumar Das ... Applicant

Vs

State of Goa & Anr. ... Respondents

Shri K. Poulekar, Advocate for the Applicant.

Shri Gaurish Nagvekar, Additional Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 20th OCTOBER 2020****P.C. :**

On 08.12.2017, there was an attempt by certain unidentified persons to rob a nationalised bank in Kanka, Mapusa, North Goa. Allegedly, about six people tried to rob the bank but could not succeed. When they were trying to flee, the people around caught two of them and handed them over to the police. They are A1 and A3. With their arrest, on the same day the Mapusa Police registered Crime No.403/2017 against six persons for the alleged offences under sections 395, 397 read with section 120(B) of IPC, besides sections 3, 25, and 27 of the Arms Act.

2. On 10.12.2017, the police arrested the applicant, who was arrayed as the second accused. Though he was not part of the gang that tried to rob the bank, he was arrested based on the first accused's extra-judicial confession to the police. After arresting the applicant, the police seized his mobile phone. Besides, they have recorded the statements of his wife and the landlord on the same day. After analysing the call data and also the CCTV footage at the bank, the police have *prima facie* felt that the applicant masterminded the failed robbery, with the help of the other accused, who hail from the State of Bihar.

3. The police have found that the applicant had been in constant touch with the other accused, besides lending his vehicle (Tata Tempo). That vehicle was allegedly used for transporting the gang to the bank. That apart, the prosecution also maintains that at the applicant's behest, they conducted a panchanama under Section 27 of the Evidence Act and identified the place where all the accused met and conspired to rob the bank. One last fact is that two of the accused, that is the accused nos.7 and 8, are still at large.

4. After his failed attempt to secure the bail before the trial Court, the applicant has filed this application under Section 430 of CrPC.

5. Shri K. Poulekar, the learned counsel for the applicant, has submitted that the applicant is innocent and has never played any role in the alleged crime. He stresses that the applicant was not part of the gang that tried to rob the bank. But only based on the first accused's extra-judicial confession, the applicant was apprehended. Thus, Shri Poulekar maintains that the evidence against the applicant is purely circumstantial and very flimsy, too.

6. To elaborate on his submissions, Shri Poulekar has pointed out that though the applicant may not be a native-born Goan, he has been living here for the last 17 years, at the same place, with his wife and two daughters. More importantly, he has no criminal antecedents. So he has urged this Court to consider the applicant's bail application sympathetically even with stringent conditions because he has already been in judicial remand for almost two years. It is merely based on the alleged confession of a co-accused.

7. On the other hand, Shri Nagvenkar, the learned Additional Public Prosecutor, submits that the applicant has been accused of a serious crime. According to him, all the material the investigating agency has so far gathered unmistakably points to the applicant's role. Significantly, the call data of the applicant's phone revealed that even when the gang had been

trying to rob the bank, the applicant maintained contact with them. Besides that, even the record of the traffic police and CCTV camera footage showed the vehicle standing in the applicant's name taking the gang members to the scene of the offence. Shri Navenkar has also pointed out that the applicant himself hails from another State and may flee from the course of justice if enlarged on bail. The learned APP has laid particular emphasis on the fact that still two more accused have to be arrested.

8. Heard Shri Kamlakant Poulekar, the learned counsel, for the applicant, and Shri Gaurish Nagvenkar, the learned Additional Public Prosecutor for the respondents.

9. Indeed, there is no denial of the fact that the crime is grave. And, at this stage, the Court is to be guided by the *prima facie* case pleaded by the prosecution. That said, I may also add that pitted against the prosecution version is the statutory presumption the accused enjoys. Thus, essentially, the Court has to draw a balance between the competing societal interest of safety and the individual interest of liberty.

10. Here, if we think of the aggravating factors, most of the gang members are from outside; two are still to be apprehended. As to the applicant's alleged role, the prosecution maintains that he is the chief conspirator, who has facilitated the crime. If we think of the mitigating factors, the applicant has been living for the past 17 years in Goa. And that is with no criminal antecedents, at that. He has a wife and two daughters entirely dependent on him. The evidence against him is essentially circumstantial and seems to hinge on a co-accused's confession. That apart, he has already been in judicial remand for about two years.

11. I reckon the interest of justice will be served if the applicant is enlarged on bail with stringent conditions. So 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 ₹30,000/- and on his furnishing two sureties, each for the like sum, to the satisfaction of the learned Additional Sessions Judge-I, Mapusa.
- (iii) The applicant should not leave the State of Goa, without prior permission of the learned Additional Sessions Judge-I, Mapusa.
- (iv) The applicant shall attend the hearing of the case on the dates fixed by the trial Court.
- (v) The applicant is to attend the jurisdictional police station twice in a week—11 am.
- (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.

NH