

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**LD-VC-BA-78/2020 & 79/2020**

**LD-VC-BA-78/2020.**

Shubhankar Janak alias  
Shub alias Shubjankar Jana ...Applicant.

Vs

State of Goa. ...Respondent.

**WITH**

**LD-VC-BA-79/2020.**

Ronny Jana @ Rani Jana ...Applicant.

Vs

State of Goa. ...Respondent.

Shri R. Menezes, Ms. G. Almeida and Shri N. Fernandes, Advocates for  
the Applicant.

Shri M. Amonkar, Add. Public Prosecutor for the respondent.

**Coram:- DAMA SESHADRI NAIDU, J.**

**Date:-21 December 2020.**

P.C.

The applicants are accused nos.2 and 3 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. Arrested and sent remanded on 4.5.2020, the applicants have been in judicial custody ever since. His efforts before the trial Court failing to secure a regular bail, the applicants have filed these applications under Section 439 of Cr. PC.

2. As the prosecution version unfolds, in the evening of 3.5.2020, the deceased along with two others went in search of accused no.B-7. It was to recover the money he had paid to B-7 for purchasing a used cell phone. As the accused B-7 did not deliver the product as promised, the

accused wanted to confront him. He was said to have carried a danda (club) and a knife.

3. On his way, he met CW13 and inquired with him the whereabouts of B-7. In that process, the deceased is said to have picked up a quarrel with CW13 and beat him. Later, he went ahead and found B-7 at some other place. As they started quarrelling with each other, seven or eight persons suddenly came on to the scene and assaulted the deceased, besides beating one of the pillion riders. Given the severity of the blows the deceased received, he dropped dead. The other pillion rider ran for his life. All this had been caught on the CCTV at a nearby restaurant. Crime registered, the police secured the CCTV footage and, aided by other evidence, arrested 15 persons in two phases. Thus, they have registered a crime as I have noted above.

4. Shri R. Menezes, the learned counsel for the applicants in both the bail applications, draws my attention to the fact that the police completed the investigation and already filed the chargesheet in Sessions Case No.13/2020, before the Additional Sessions Judge, North Goa, at Mapusa. According to him, the police examined six witnesses, and none of them spoke about the applicants—not even remotely.

5. Finally, Shri Menezes points out that except CW2 no one else spoke about the incident as an eye witness. Though the police registered the crime based on his complaint, he left for Delhi soon after the incident. When the police wanted to conduct a test identification parade, he could not make himself available under the pretext that the prevailing pandemic had prevented him from coming down.

6. Shri Menezes has drawn my attention to the CCTV footage. According to him, the prosecution has admitted in another connected bail application about the copy of the footage was secured. In fact, a police officer went to the restaurant, asked them to play the footage on the monitor, and recorded the visuals on the monitor screen with his cell

phone. In this context, Shri Menezes stresses that the CCTV footage the police secured does not qualify to be electronic evidence under Section 65(b) of the Indian Evidence Act.

7. Then, Shri Menezes has referred to three panchanamas. The first one is the incident-panchanama, which only recorded the injuries on the bodies of the deceased and CW2. The second panchanama concerns the site conditions. It too does not help the prosecution. The third one is arrest-panchanama. It only records how the accused have been arrested. To conclude, Shri Menezes points out that there is no material either ocular or oral available even *prima facie* to connect the applicants even remotely with the crime. Besides, he has also pointed out that under identical circumstances, this Court has already enlarged two other accused on bail. So, even on the principle of parity, according to him, the applicants deserve bail.

8. In response, Shri Mahesh Amonkar, the learned Additional Public Prosecutor, has vehemently opposed the application. According to him, CW2, the eye witness and injured victim, could not come down to take part in the test identification parade only because of the pandemic. Once the situation improves, the identification parade will take place. About the electronic evidence, Shri Amonkar has made strenuous efforts to impress on the Court that it is primary evidence or, at least, secondary evidence. He does not, however, dispute that the footage was recorded with a cell phone camera, as was played on the monitor. Shri Amonkar, nevertheless, insists that it is too premature for the Court to discard that piece of evidence. Given the gravity of the offence, the learned Additional Public Prosecutor wants the Court to dismiss the bail application.

9. Heard Shri Ryan Menezes, the learned counsel, for the applicants and, Shri Mahesh Amonkar, the learned APP, for the respondent.

10. Indeed, under identical circumstances, this Court enlarged two other accused on bail. I may have to examine the applicants' request for

bail on three factors. One is the statements of the eye witness—CW2. He is one of the pillion riders who is said to have sustained injuries. He has not spelt out any names. Though the police later gathered some names from the people around, the applicant's name does not seem to have been revealed by them either.

11. To elaborate, I may note that CW2 is the first person who had been examined. But he did not name any person. CW9, the manager of the restaurant where the deceased worked, is another witness. And his statement to the police is that CW14 and CW2 came back to the restaurant and reported to him about the incident. Therefore, he is not an eye witness. His statement is at best hearsay.

12. CW14 is another witness who has stated to the police that he saw the victim assaulting CW13. Thereafter, he left the scene. That means, he was not present at the scene of the offence, because where CW13 was assaulted was different from the deceased was beaten to death. The next witness is CW13. When the deceased assaulted him, he fell down. Later, he gathered himself up and went to the police station to lodge a complaint against the deceased. From there, he went to his house. In fact, his brother is said to have informed him about the incident. That means, he too has no personal knowledge. Now we may come to CW15 and CW16. They, too, did not speak about the incident. According to them, when CW13 was assaulted, they went to his house and informed his father. Thus, they were away from the scene of offence at that material time.

13. The panchanamas does not help the prosecution cause because they are meant to serve a technical purpose.

14. Other circumstantial evidence, that is, any object used has not been traced to the applicants. Nothing has been recovered from the applicants under section 27 of the Indian Evidence Act. No fingerprints

at the scene of the offence, as the applicants' counsel contends, relate to the applicants.

15. The only piece of evidence that could have been of help at this stage to determine the prima facie guilt of the accused is the CCTV footage. Strangely the police have not taken hold of the CCTV camera; nor have they taken the footage from the restaurant. At least, they could have electronically copied the CCTV footage onto another device digitally. But that too has not happened. In fact, the police personnel who secured the electronic evidence, if we called it so, did state that he asked the restaurant people to play the footage on the monitor and shot that monitor display on his cell phone. As I have already observed, it cannot even remotely pass itself as any piece of electronic evidence—either primary or secondary. Indeed, the offence is grave; there is no denying it. I need to take the prosecution version on its face value at this stage. But the fact remains that the police have completed the investigation and filed the chargesheet. None of the six witnesses that have been examined under Section 161 Cr.P.C. speaks about the applicants' role in the crime. No material object found connected to them. And the CCTV footage is a botched piece of evidence if any. Perhaps, the test identification parade may throw light on the crime.

16. In the last eight months, no identification parade has taken place. Of course, the prosecution does proffer pandemic as a reason for the delay. But without any material on record, on mere suspicion and with a remote possibility of CW2 identifying the applicants as the accused in the future identification parade cannot, in my view, affect the substantial constitutional right of the applicants to freedom, besides the presumption of innocence they enjoy.

17. Under these circumstances, I am constrained to allow this bail application subject to the following conditions:-

**ORDER**

- (i) The applicants are directed to be released on bail on their executing P.R. Bond for ₹25,000/- each and on their furnishing two sureties each, for the like sum, to the satisfaction of the learned Additional Sessions Judge, Mapusa.
- (ii) The applicants shall visit the Calangute Police Station once in a week at about 11.00 a.m.
- (iii) The applicants should not leave the State of Goa, without prior permission of the learned Additional Sessions Judge, Mapusa.
- (iv) The applicants shall attend the hearing of the case on the date fixed by the trial Court.
- (v) The applicants shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.
- (vi) The applicants' failure to abide by these conditions will entail prosecution to apply for the cancellation of bail now granted to the applicants.
- (vii) The Bail Applications stand disposed of.

**DAMA SESHADRI NAIDU, J.**