

CRIMINAL MISC. APPLICATION NO.94/2003

Mr.Gurudas Topiyo Gaonkar,  
presently lodged in Judicial Custody,  
through his next friend and wife,  
Smt. Shevanti Gurudas Gaonkar,  
major of age, housewife,  
resident of Chickangal,  
Shiroda, Goa. . . . . Applicant.

V/s.

State. . . . . Respondent.

Mr. Arun Bras de Sa, Advocate for the applicant.

Ms. Winnie Coutinho, Addl. Public Prosecutor for the  
State/respondent.

CORAM : P.V. HARDAS, J.

DATE : APRIL 30, 2003.

ORAL ORDER :

The applicant is the original accused in Crime No.262/2002, registered by the Ponda Police Station, for an offence punishable under Section 302 of the Indian Penal Code. The facts, leading to the institution of the prosecution against the applicant, are :

On 17.11.2002, dead body of a child by name Soccor Vaz, was found in a lake at Chikangal, Shiroda. The death, as per the post mortem report, was due to asphyxia, as a result of drowning.

2. It appears that the accused had taken the

said Soccor Vaz along with him on 16.11.2002 at about 12 noon for catching fish and tortoise. It appears, according to the prosecution, that the applicant/accused returned back alone.

3. The applicant had filed an application for bail before the learned Addl. Sessions Judge, North Goa, at Panaji. The learned IInd Addl. Sessions Judge, Panaji, by his order dated 24.3.2003, rejected the bail application on the grounds :

(i) that there was material which pointed out that the applicant/accused had taken the deceased Soccor Vaz along with him on 16.11.2002 for catching fish and tortoise.

(ii) the deceased Soccor Vaz did not know swimming;

(iii) about six months back, the applicant/accused had threatened to kill the family of the deceased and the deceased;

(iv) the accused was not available in the evening after his return, as he had gone out ostensibly on the pretext of consuming liquor.

4. With the assistance of the learned Counsel for the parties, I have perused the statements and the other documents annexed with the charge-sheet. The post-mortem report reveals that there were no ante-mortem injuries and were only post-mortem injuries. The second post-mortem report carried out also confirms the absence of any ante-mortem injuries. The material produced in the charge-sheet only disclosed that the deceased child was last seen in the company of the accused on 16.11.2002. The material also disclosed that the applicant/accused had threatened the family of the deceased about six months back. Admittedly, there are no eye witnesses to the incident and apart from these two circumstances, there are no other circumstances to establish the prima facie involvement of the applicant in the commission of the crime.

5. I have given my anxious consideration to the rival submissions and according to me, these two circumstances do not prima facie establish the commission of the offence. Therefore, according to me, the applicant/accused is entitled to be released on bail. The learned Addl. Sessions Judge while deciding the trial, shall ignore the prima facie observations made in this order.

6. Accordingly, the Criminal Misc. Application

is allowed. The applicant is released on bail on his furnishing a Personal Bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the learned Addl. Sessions Judge, North Goa, Panaji, on the following conditions :

(1) The applicant/accused, through his Counsel has undertaken not to reside in the Village Shiroda, within the jurisdiction of Ponda Police Station and shall reside at Panaji, Goa. The applicant/accused shall furnish a detailed address of his place of residence to the Investigating Officer. In case of change of address, he shall accordingly intimate the Investigating Officer.

(2) The applicant/accused shall not influence the witnesses and attempt to tamper with the prosecution evidence.

(3) The applicant/accused shall not leave the State of Goa without permission of the Court assigned with deciding the sessions trial.

7. On the above conditions, the Criminal Misc. Application is allowed.

P.V. HARDAS, J.

ssm.