

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISC. APPLICATION NO. 154 OF 2002.

S T A T E

through Police Inspector,
Vasco Police Station,
Vasco-da-Gama, Goa.

.... Applicant.

VERSUS

Viraj alias Tulsidas Gaunekar,
major, resident of
House No. 384,
Near Department of Tourism,
Pato, Panaji, Goa,
presently in Sada Sub-Jail,
Sada, Vasco-da-Gama, Goa.

.... Respondent.

Mr. S. N. Sardessai, Public Prosecutor for the
State/Applicant.

Mr. M. S. Sonak and Ms. Pooja Bharne, Advocates
for the Respondent/Accused.

CORAM: D. G. DESHPANDE, J.

DATE: 31ST JANUARY, 2003.

ORAL ORDER:

Heard the Public Prosecutor for the State and
Mr. Sonak for the Accused.

2. This is an application for cancellation of
bail. The accused was charge-sheeted for a serious
offence of conspiracy and attempt to murder and the
allegations against him are that he was engaged as a
contractual killing agent.

3. The learned Sessions Judge, South Goa,

Margao, granted bail to this accused and hence the State has filed this application for cancellation of bail. It was tried to be contended by Mr. Sonak that no circumstances have been brought on record for cancellation of bail and the Sessions Court has passed the Order after going through the records of the case and the same should not be lightly interfered with.

4. I am not in agreement with the submission made by Mr. Sonak. If the Court grants bail to the accused who does not deserve it, then certainly the prosecution has right to challenge the said Order and what is necessary in such cases is whether the grant of bail was proper in the circumstances of the case. It is in fact a challenge to the order of grant of bail as the Prosecution has right to challenge such orders and according to the Prosecution the bail should not have been granted.

5. So far as the facts of the present case are concerned, the allegations against the present accused are very serious. In the reply given by the Police to the Bail Application before the Sessions Court which is annexed at Exh.P-3 of this petition, it is stated that three unknown persons who were occupants of a Maruti Car assaulted one Chandra Kerkar, aged about 20 years with iron rods and choppers on his backside causing him

grievous injuries. The F.I.R. was lodged by his brother. During investigation, a gang was nabbed by the Police. This accused/respondent was one of them. It was also believed that supari was given by Mrs. Berta Lopes for the consideration of Rs.80,000/- for the aforesaid attack on the victim. This Accused/Respondent who is alleged to be a professional criminal was assigned this job. He asked for an amount of Rs.80,000/- and another accused paid him Rs.40,000/- and it is in this background that the victim came to be assaulted.

6. Though the victim could not identify the accused, there are witnesses who identified this accused as one of the assailants. It is true that the charge of conspiracy is not framed, but even then there was direct evidence. From the order of the Sessions Court, it is clear that witnesses were examined and there was no delay in the trial and, as such, in that background of the matter and looking to the serious nature of the allegations, the Order of Bail does not appear to be sound and legal. Hence it is required to be rejected.

7. It was also brought to my notice by the learned P.P. as well as by Mr. Sonak, learned counsel for the Accused, that the bail granted to the accused

was cancelled as he was in custody. However, so far as grant of bail in this case is concerned, it is to be considered independently and considering the circumstances and the serious nature of the charge, the Order granting bail to the Accused has to be cancelled and is hereby quashed and set aside.

8. Application accordingly stands disposed of.

D. G. DESHPANDE, J.

sl.