



**IN THE COURT OF THE SESSIONS JUDGE,
SOUTH GOA, MARGAO.**

(Before: Ms. Sharmila Patil, Sessions Judge, South Goa,
Margao.)

Sessions Case No. 5/2023

State
Colva Police Station. ... Complainant

v/s

Simanchal Parida and Ors. ... Accused.

ORDER BELOW EXHIBIT 68

(Delivered on this the 20th day of the month of July of the
year 2026)

1. This is an application for bail under Section 483 of
BNSS filed by accused no.1.

Case of accused no.1 :-

2. That accused no.1 is a law abiding, peaceful citizen of India with no previous criminal antecedents. That accused no.1 was arrested in crime no. 21/2023 on 10.2.2023 u/s. 302, 392, 120-B, 201 IPC. That the Colva police filed the charge sheet in crime no. 21/2023 on 08.05.2023. That the accused no.1 continued to remain in judicial custody for more than three years and such prolonged delay violates the right to speedy trial guaranteed under Article 21 of the Constitution. That there is considerable delay in the trial and not a single witness is examined since the commencement of the trial

3. That accused no.1 is innocent and the allegation made against him is baseless, unmotivated and without any cogent evidence and will prove his innocence during the course of his trial. That no further custodial interrogation is required and hence further detention of the accused in judicial custody would not be required. That accused no.1 undertakes not to tamper with the evidence for the prosecution and to attend future dates of hearing. That he shall

abide by all the terms and conditions imposed by this Court if released on bail. That the co-accused , i.e. accused no. 3 is released by the Hon'ble High Court of Bombay at Goa and accused no.2 is granted bail by this Court. Hence prayed that bail application be allowed.

Reply of P.P. :-

4. That accused no.1 is mastermind of the present crime and that accused no.1 alongwith other accused committed offence of murder of employer of accused no.1 and then fled with car and other valuables of the deceased. That the present accused is non goan and there is every possibility that he will jump bail if released. That the records of file show details of the prosecution witness present on several occasions and bound over as the Court was busy in other matters. There is ample evidence on record to prove the guilt of accused. Hence it is prayed that the application be dismissed.

5. Heard arguments.

SUBMISSIONS

Arguments of Ld. Chief LADC for accused no.1:-

6. That accused no.1 is arrested in October 2023 and since then is in long incarceration. PW1 is in the witness box and not a single witness evidence is concluded. PW1 was examined on 04.09.2024 and till date his evidence is yet to be concluded. There are total numbers of 50 witnesses and that there is no direct evidence against accused no.1. There are expert witnesses, police witnesses from Goa and Rajasthan to be examined and therefore trial cannot be completed in near future. The entire evidence against accused no.1 is circumstantial evidence. Accused no.1 is the cook of the deceased, however there is nothing on record to that effect and the objection raised by the prosecution is that he is non Goan and will jump bail which can be met with conditions.

7. There is no delay on part of accused no.1. From the charge sheet it is seen that initially the complaint is registered and thereafter to improve the complaint, supplementary statement of the complainant is recorded in which he has improved his case. There is no record that accused no.1 was a cook working with the deceased. There is no agree-

ment to that effect with accused no.1 on record. In the original complaint, the name of accused no.1 is not mentioned however deposition of PW1 he mentions that the name of the cook was Manchu.

8. There is no hash value of CCTV footage produced and in the CCTV footage only movements of the people are seen but accused no. 1 entering the flat is not seen. The investigating officer has conveniently not shown the presence of other persons entering into the building. There is nothing on record to show that accused no.1 moved along with the car in Rajasthan. There is delay of more than 3 years and accused no.1 cannot be kept in detention as pre trial detention. This is the first bail application before this Court. The ground of parity is also available to accused no.1 as accused no.2 and 3 have been released on bail and prayed that the bail be allowed.

9. The Ld. Chief LADC has placed reliance on **(1) Run Babu Sigata v/s State and another [Criminal Application (Bail) No. 23/2026, Kiran V/s. State of Himachal Pradesh [Cr. M.P. (M) No.784 of 2023],**

(2) Vaibhav Singh V/s State of Uttar Pradesh [Petition for Special Leave to Appeal (Cri) No.7416/2026, (3) Sahil Manoj Machare V/s The State of Maharashtra [Petition for Special Leave to Appeal (Cri) No.7502/2026], (4) Shaish Thapa presently in Judicial Custody Colvale thr. Next friend/mother Shakuntala Thapa V/s State of Goa through Police Inspector, Vasco Police Station and Anr. [Criminal Application (Bail) No.484 of 2023(F)], (6) Akash Satish Chandalia V/s The State of Maharashtra [Criminal Bail Application No.1779 of 2023], (7) Javed Gulam Nabi Shaikh V/s State of Maharashtra and another [Criminal Appeal No.2787 of 2024 (Arising out of SLP (Cri) No.3809 of 204)], (8) Mohd Muslim @ Hussain V/s State (NCT of Delhi) [2023 SCC Online SC 352], (9) Gudikanti Narasimhulu and Ors. V/s Public Prosecutor, High Court of Andhra Pradesh [Criminal Misc. Petition No.1443 of 1977] and (10) Sagar V/s State

**of UP & Anr. [Criminal Appeal No. of 2025
(@Special Leave Petition (Cri.) No.8865 of 2025)].**

Arguments of Ld. PP. :-

10. Accused no.1 was working with the deceased as a cook. CW2 and CW5 in their statements have stated that accused no.1 was working with the deceased. The CCTV footage show accused no.1 going up to the building and carrying the bag of the deceased when the deceased got down from the car. In the same car, accused no.1 is seen escaping which was apprehended in Rajasthan alongwith the co-accused. The delay is not attributed to the prosecution and the records would show that the circumstances were beyond the control of the prosecution. That the offence is grave and last seen theory is applicable to accused no.1 as he was seen with the deceased prior to the murder and therefore prayed that the bail be rejected.

11. I have gone through the records and proceedings and have duly considered the arguments advanced on record. After going through the material before me, the

point that arises for my determination alongwith its findings is given as under:-

Point for determination	Findings
Whether accused no. 1 is entitled for bail on the ground of long incarceration and parity with accused nos.2 and 3?	No.

12. I now proceed to reason out my findings.

REASONS

13. The case of the prosecution is that on 08.02.2023 the complainant Shri Amerilo Fernandes who is examined as PW1 lodged the complaint that Dr. Nirvan Bharat was found dead in his rented flat. Accused no.1 according to the prosecution was the cook of the deceased Dr. Nirvan Bharat and he alongwith other 3 accused after murdering the victim decamped with the belongings of the said doctor along with his Ford Figo car bearing registration no. MH-14-CC-2985. Accused no. 1 alongwith other accused was intercepted in the victim's car at Rajasthan by the police Staff of Raila Police Station. The statements of the police witnesses from Rajashtan corroborate this fact.

14. The records and proceedings of the charge sheet would show that accused no.1 had used the ATM card of Dr. Nirvan enroute. The CCTV footage demonstrates that accused no.1/the cook of the deceased Dr. Nirvan proceeding alongwith Dr. Nirvan after the said doctor came back home from work. As submitted by Ld. P.P. for the State, accused no.1 was the cook of the deceased and had used the ATM card and is also seen in CCTV footage with Dr. Nirvan proceeding to his flat.

15. It is seen that the prosecution has tried its best to examine the witnesses, however, the delay cannot be attributed to the prosecution. PW1 is the complainant his evidence is in progress. The manner in which, the offence is committed by accused no.1 who was known to the victim and was last seen with Dr. Nirvan proceeding up to his flat and thereafter coming down and decamping with the Ford Figo car of the said doctor which was intercepted alongwith all the accused are sufficient circumstances at this stage to show the involvement of the accused no. 1 in the offence so

alleged. These circumstances prima-facie prove the direct involvement of accused no.1 in the offence so committed.

16. The other arguments advanced with respect to the deposition of PW1 is concerned, would be an issue on merits of the case. At this stage the acquaintance of accused no.1 with Dr. Nirvan and his last seen with Dr. Nirvan prior to his death is sufficient enough to conclude at this stage the direct involvement of accused no.1. there is no explanation in the bail application with respect to the possession of the car with the accused no. 1 and in what circumstances he was in possession of the car belonging to the deceased doctor after the alleged offence, which circumstance also goes against the accused no. 1. The possession and the use of the ATM card by the accused no. 1 is also a strong circumstance against him as the card was required to be in the custody of the deceased and not with the accused no. 1.

17. It is well settled by now that long incarceration is not the only ground which needs consideration in an offence which is punishable with life imprisonment or death.

There is no doubt that there is a right of speedy trial which is a fundamental right, however, in the present case the trial has started and sufficient opportunity needs to be granted to the prosecution to conduct the trial and prove the offence as the offence is serious offence . **In Gaurav Bidre v/s State [Criminal Application (Bail) No. 66 of 2025]** the Hon'ble Bombay High Court observed that “ *it cannot be said that there is an absolute rule that because there is a long period of incarceration, bail must necessarily be granted, especially in a serious offence like the present one with which the applicant has been charged.*”

18. Considering all these factors, I am not inclined to grant bail to accused no.1 on the ground of long incarceration.

19. As far as the ground of parity is concerned, accused no.2 and accused No. 3 stand on different footing than accused no.1. Accused nos. 2 and 3 although were seen in the CCTV footage going towards the flat of the deceased, Dr. Nirvan they were not seen together with accused no.1 or

with Dr. Nirvan. The role played by accused no.1 and role played by accused nos.2 and 3 are different and cannot be put on the same footings although all the accused are charged with criminal conspiracy. Therefore the ground of parity is also not applicable to accused no.1.

20. In **Sagar (supra)**, the accused was released on law of parity. It was held that *“In an examination of a given case, it transpires that the case of the applicant before the Court is identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail.”*

21. In **Kiran (supra)**, the Hon’ble Himachal Pradesh High Court was considering Bail Application of *the* accused for the offences punishable under Sections 302, 201 and 120-B of IPC and after discussing various precedents, granted bail holding that *“there is no eye witness. The Forensic Science Laboratory Report also prima facie does not opine the connection between the blood stains found on the sickle, chopper and knives allegedly recovered from*

the house of petitioner with the deceased. In fact, sufficient material has not been found for further analysis and therefore the circumstantial evidence collected by the investigating agency to prove the above noted circumstances, cannot be said to suggest a strong inference against the petitioner. The petitioner is already in custody since 22.07.2022 and her further detention in judicial custody is not going to serve any fruitful purpose. Pre-trial incarceration cannot be ordered as a matter of rule. A co-accused in the case namely Devi Dass has already been released on bail by this Court vide Order dated 17.03.2023 passed in Cr.M.P.(M) 380 of 2023 and the case of the petitioner is also similar to the case of accused Devi Dass and therefore the bail was allowed.”

22. In **Vaibhav Singh (supra)**, the Hon’ble Apex Court considered that the petitioner was languishing in jail as an under trial prisoner for past nine years and granted bail.

23. In **Sahil Manoj Machare (supra)**, the Hon’ble Apex Court considered the long incarceration of the petitioner and thus granted bail which was also a case of mur-

der and it held that *“howsoever serious the crime may be, if the right of speedy trial is infringed, then Court must consider the plea for bail appropriately”*.

24. In **Shaish Thapa (supra) and Akash Satish Chandalia (supra)**, the Hon’ble Bombay High Court considered the long incarceration and granted bail. The offences were under the POCSO Act and under Sections 302, 364, 342, 201, 120-B of IPC. It was held as under:-

“7. The seriousness of an offence and its heinous nature may be one aspect, which deserve a consideration while exercising the discretion to release an accused on bail, but at the same time, the factor of long incarceration of an accused as under-trial prisoner also deserve its due weightage. Pending the trial, a person cannot be kept in custody for an indefinite period of time and it clearly violate the fundamental right enshrined in the Constitution and time and again, has been considered to be a justifiable ground to exercise the discretion to release an accused. Various orders/judgments from the highest Court are placed before me which have directed release of an accused on the ground of long incarceration and the impossibility of conclusion of trial in a time bound manner.

9. Deprivation of personal liberty, without ensuring speedy trial is not in consonance with Article 21 of the Constitution. Access to justice and speedy trial has been well recognized as hallmark of liberty guaranteed in Part III of the Constitution and when a timely trial is not possible, the accused cannot be made to suffer further incarceration, if he has already undergone significant period of the proposed sentence and in such circumstances, the Court would ordinarily be obligated to enlarge him on bail, keeping aside the seriousness of the accusations faced by him.”

25. In **Javed Gulam Nabi Shaikh (supra)**, the Hon’ble Apex Court also considered the right of a under trial for speedy trial and granted bail. Similar is the precedent in **Mohd Muslim @ Hussain (supra)** wherein the Hon’ble Apex Court also considered that the Courts have to be sensitive with respect to under trial languishing in jail. It held that “laws which impose stringent conditions for grant of bail, may be necessary in public interest yet, if trials are not concluded in time the injustice wrecked on the individual is immeasurable”

26. In **Gudikanti Narasimhulu and Ors (supra)**, the Hon'ble Apex Court way back in the year 1978 considered that the refusal of the bail causes injury to a right of personal liberty guaranteed by Constitution and held that *"bail is a rule and jail is an exception for pre-trial accused"*.

27. The ground of the long incarceration needs to be weighed alongwith the gravity of the offence so alleged. No doubt, the accused has a right of speedy trial and in the present case the evidence has started and is taken up on priority basis. The offence alleged against the accused no. 1 is serious in nature and this factor cannot be ignored. In view of the above, accused no.1 is not entitled for bail and hence this point is answered as No.

28. Viewed thus, the bail application stands dismissed.

Pronounced in the open Court.

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(Sharmila A. Patil)
Sessions Judge,
South Goa, Margao.