

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1110 OF 2019

Prakash Vijay Salve ...Petitioner

Versus

The State of Maharashtra ...Respondent

Mr. Vijay J. Shiktode, for the Applicant.

Mr. Arfan Sait, APP for the State/Respondent.

Mr. B. P. Sandbhor, PI, Dadar Police Station, Mumbai,
present.

CORAM: N. J. JAMADAR, J.
DATED: 29th MAY, 2019
(Vacation Court)

PC:-

1. This is an application for pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973.

2. The applicant apprehends arrest in CR No.63 of 2019 registered with Dadar Police Station for the offences punishable under Sections 354, 354A and 380 of Indian Penal Code for allegedly having used criminal force to the first informant with intent to outrage her modesty, sexually harassed the first informant and also for having committed theft of cash amount of Rs.50,000/- and two gold bangles of the first informant, from the drawer of her office table.

3. The gravamen of indictment against the applicant is that the applicant is working as an office in-charge of a company Mun Health Products Private Pvt. Ltd.; the office of which is situated at 302, Visawa Building, Dadar (West), Mumbai – 28. The first informant is working as an Accountant in the said company. Since the year 2016, the applicant started to make unwelcome advances and explicit sexual overtures towards the first informant. The applicant used to inappropriately touch the person of the first informant with intent to outrage her modesty. The applicant also made sexually coloured remarks and asked the first informant to meet him outside the office and have relations with him. The first informant did not disclose the sexual harassment at the hands of the applicant as she was in dire need of the employment. Emboldened by the mute sufferings by the first informant, the applicant threatened the first informant on 12th August, 2018 to behave to the liking of the applicant lest she would be removed from the employment. As the first informant did not succumb to the demands of sexual favour of the applicant, the later started to harass the first informant in her official work. The applicant did not join her duty from 29th September, 2018 to 3rd October, 2018 on account of leave and holidays. When the applicant joined

office on 4th October, 2018, she found the drawer of her table broken open. It transpired that in the absence of the first informant the applicant had broken open the drawer of the table of the first informant and removed the cash amount of Rs.50,000/- and two gold bangles therefrom.

4. The first informant initially addressed a complaint to the Assistant Commissioner of Police (Crime) on 25th September, 2018. As the crime was not registered, the first informant filed a Writ Petition No.5698 of 2018 before this Court. Pursuant to the order passed by this Court on 18th March, 2019, the report of the first informant came to be recorded on 19th March, 2019 and Crime No.63 of 2019 came to be registered against the applicant for the offences punishable under Section 354, 354A and 380 of IPC.

5. The applicant avers that the first informant has falsely implicated him to wreck vengeance as departmental enquiry was initiated against the first informant for the misconduct in discharge of her official duties. The informant has not submitted the internal audit report despite specific intimation by the Head Office. Several warnings were issued to the first informant. Ultimately, a domestic inquiry was initiated against the applicant vide communication dated 11th October,

2018. A legal notice was also served upon the first informant on 15th October, 2018. To give a counter-blast to the action initiated against the first informant, for the misconduct and failure to discharge official duties, the first informant has lodged the FIR. The applicant has roots in the society. Arrest of the applicant will have serious repercussions on the personal and professional life of the applicant. Hence, the applicant be released on bail, in the event of arrest.

6. An Affidavit-in-reply sworn by Mr. Vijay Kadam, Police Inspector (Crime) is tendered on behalf of the Respondent. The State has resisted the prayer for pre-arrest bail on the ground that there is sufficient material to indicate that the applicant had subjected the first informant to sexual harassment at the workplace. The departmental action against the first informant has been initiated subsequent to the lodging of the complaint by the first informant. The departmental action is initiated to blunt out the grave charges of sexual harassment made against the applicant. There is a strong possibility of tampering with evidence and threatening the witnesses in the event the applicant is enlarged on bail, in the event of arrest. Custodial

interrogation of the applicant is necessary. Therefore, the prayer for pre-arrest bail may not be granted.

7. I have heard Mr. Shiktode, the learned Counsel for the Petitioner and Mr. Sait, the learned APP for the State.

8. An endeavour was made on behalf of the applicant to demonstrate that the FIR has been lodged by the first informant to wriggle out of the situation wherein she was found to have committed default in the discharge of her official duties. For the acts of omission and commission, a decision to initiate domestic enquiry was taken, and accordingly the notice dated 11th October, 2018 came to be issued by the Director of the Company to the first informant, followed by a legal notice dated 15th October, 2018. The learned Counsel for the applicant pressed into service certain communications wherein it was pointed out that the first informant has not submitted the account statements and monthly reports, and she was reprimanded for the default in submission of the accounts and reports.

9. *Prima facie*, the sequence of events provides a legitimate answer to the question as to whether the FIR against the applicant or the domestic enquiry initiated against the first informant is by way of a counter-blast. It is imperative to

note that the allegations of sexual harassment at the hands of the applicant were made by the first informant on 25th September, 2018 itself when she had addressed a complaint to the Assistant Commissioner of Police (Crime). It is a matter of record that the first informant had preferred a Writ Petition No.5698 of 2018, alleging that no action was being taken by the authorities on the said complaint. Pursuant to the order of this Court on 18th March, 2019, the FIR came to be registered. Thus, before the domestic enquiry for the alleged misconduct and default in performance of the official duties was initiated against the first informant, in the month of October – 2018, the first informant had already lodged a complaint with the Assistant Commissioner of Police (Crime), with the allegations of harassment at the hands of the applicant. Thus, the edifice of the submission on behalf of the applicant that the FIR was lodged as a counter-blast to the domestic enquiry initiated against the first informant falls through.

10. From the perusal of the FIR it becomes evident that the first informant has made specific allegations of outraging of her modesty and sexual harassment by unwelcome physical advances, comments and explicit sexual overtures. There are

specific allegations of demand of sexual favours by the applicant and the threats given by the applicant in the event his demands were not met. A continuous course of sexual harassment at the workplace over a period of time is attributed to the applicant. There is contemporaneous material which, *prima facie*, lends support to the claim of the first informant, at this stage.

11. In the backdrop of aforesaid specific allegations, which were made much prior to the initiation of the domestic enquiry against the first informant, custodial interrogation of the applicant seems necessary for a fare and effective investigation. A direction for release of the applicant on bail, in the event of arrest, at this stage, would impede an effective investigation. The apprehension on the part of the prosecution of tampering with the prosecution evidence and threatening the witnesses, in the backdrop of the nature of the allegation, cannot be said to be totally unfounded.

12. In view of the above, I am not persuaded to exercise the discretion in favour of the applicant.

13. The application stands rejected.

[N. J. JAMADAR, J.]