

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL MISCELLANEOUS APPLICATION(BAIL) NO. 242 OF
2015 , 243 OF 2015 AND 244 OF 2015.

Mr. Rupesh Samant,
S/o Mr. Gurudas Samant,
Age 40 years, H. No:D-12,
C Govt. Quarters, Altinho,
Panaji Goa.

..... Applicants.

Versus

1. State,
Through Officer Incharge/
Police Inspector, C.I.D. CB,
Police Station, Ribander, Goa.

2. The Public Prosecutor,
Altinho, Panaji, Goa.

.....Respondents.

Mr. Shirish Gupte, Senior Advocate with Mr. G. Agni, Mr. K. Poulekar,
and Mr. V. Noronha, Advocates for the applicant in all the applications.
Mr. S. R. Rivankar, Public Prosecutor for the respondent in all the
applications.

Coram:- K. L. Wadane, J.
Reserved on: 29th October, 2015.
Pronounced on: 30th October, 2015.

COMMON ORDER

All these three application are filed by the
applicant/accused Rupesh Samant in connection with the Crime Nos.
9/2015 registered for the offences punishable under Sections 354,
354(A) and 509 of IPC; Crime No. 10/2015 registered for the offences
punishable under Sections 354(A), 354(D), 509 of IPC and under
Section 67(A) of the Information and Technology Act and Crime No.
11/2015 registered for the offences punishable under Sections 354 and

509 of IPC before the Women Police Station, Panaji. All these complaints/FIRs were submitted by different Women/victim. Therefore, it is necessary to mention the substance of the allegations made against the present applicant, by each of the informant.

2. In the first complaint i.e. FIR No. 9/2015, the complainant/victim has alleged that after joining her services in August, 2012 in Herald Cable News ("HCN" for short), she exchanged phone numbers with the applicant, who was reporting at HCN. Initially, their SMS chats were normal on the lines of greeting each other like "Good Morning" or meeting intimations etc. However, one day in the office, the applicant suddenly commented on her looks and said "You are looking sexy' upon such comment the victim was shocked and felt her outrage by nature of the comment.

3. Another instance was occasioned when the complainant was having food in a small cabin at her work place, at that time the applicant entered into the cabin he came close to the complainant pulled her facial checks and left the cabin. Due to which, the complainant completely shocked by his unwarranted physical touch.

4. In the second complaint regarding crime no. 10/2015, the complainant alleges that during the period from June 2014 to June, 2015, she was working at HCN during that period the applicant kept texting her inappropriate, disturbing, sexual messages every now and

then, inspite of her repeated attempts to thwart it. There was an occasion that the applicant also checked her out in a vulgar and indecent way and passed lewd comments about her body and dress. Such comments created a grave sense of discomfort.

5. On 27.5.2015, the applicant asked the complainant to meet him under the pretext of discussing some office matter and he took the complainant to a dinner at "River Lounge" and forced her to drink a beer. After speaking for a few minutes, the applicant stated that if the complainant agrees to indulge in an act of fornication with him then he would arrange her a marriage with a wealthy industrialist or a businessman.

6. In the third complaint relating to FIR No. 11/2015, the complainant has alleged that she was working with HCN from 2009 to 2011. From June, 2011 she joined "Viva Goa" and worked till 2013.

7. In the month of August, 2013, the applicant messaged the complainant on whatapp to come out for coffee. When reached at the entrance of Shiordao beach, the applicant stopped the car. He turned towards the complainant and came over her body and pushed her front seat behind and started kissing her on lips, due to such acts of the applicant, the complainant shouted on him and told him to drop her to house.

8. FIR No.9.2015 was registered on 23.9.2015, FIR NO. 10/2015 was lodged on 25.9.2015 and FIR No. 11/2015 was lodged on 1.10.2015 before the Women Police Station, Panaji. After registration of the crime, the applicant moved an application for anticipatory bail before the learned Sessions Judge, Panaji. However, the learned Sessions Judge has rejected all the applications holding that the offences committed by the applicant are serious against several women and it had impact on the society. Therefore, the applicant approached this Court for anticipatory bail.

9. I have heard Mr. Shirish Gupte, learned Senior Counsel appearing for the applicant and Mr. S. R. Rivankar, learned Public Prosecutor for the respondents.

10. During the course of arguments Mr. Shirish Gupte, learned Senior Counsel has concentrated the arguments mainly on the point that there was delay in filing the complaints. Secondly, on the ground that on the face of the FIRs/complaints no offences can be said to be have been committed by the applicant as there is no material on record to constitute the offences levelled against the applicant. Thirdly, the applicant is ready to produce the mobile, which the investigating officer wants to seize. Further, Mr. Shirish Gupte, learned Senior Counsel has argued that when the personal liberty of a person is to be restricted then the Court has to see whether there are sufficient grounds to arrest or whether custodial interrogation of the applicant is

required or not. If without custodial interrogation, the investigation can be done, then, the custody of the accused is unnecessary.

11. During the course of arguments, Mr. Shirish Gupte, learned Senior Counsel has relied upon the judgment in the case of ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra reported in (2011)1 SCC 694*** at para 112 and based upon the guidelines/parameters framed by the Apex Court, Mr. Shirish Gupte, learned Senior Counsel argued that the accused/applicant is entitled for anticipatory bail.

12. As against these, Mr. Rivankar, learned Public Prosecutor argued that the accused/applicant not only committed single offence but committed series of offences that too assault on a women's with intend to outrage their modesty. Cumulative effect of all the complainants if taken together then it can be said that the offences committed by the applicant are serious. Mr. Rivankar, learned Public Prosecutor further argued that the custody of the applicant/accused is required for the purpose of recovery of the mobile/electronic device through which vulgar messages were passed/transmitted on the mobile phone of the victim's.

13. Keeping in the mind the arguments advanced by both the sides, the averments of the FIRs and the statements of witnesses, it is material to mention here that the applicant is a Senior Journalist

working with new's channel namely HCN and the alleged offence is against Women, who were working under the control of the applicant. According to the prosecution, the accused had taken undue advantage of his position, he has tried to outrage modesty of various women.

14. From the contents of the FIRs which, it appears that each of the woman, in clear terms, has stated what applicant/accused had done with them. Furthermore, delay in lodging the FIR is explained. Such explanation prima facie appears to be probable because of the victims were unmarried girls at the time of incident.

15. One of the victims has stated that she would have buried these bitter feelings till the issue of sexual harassment was openly discussed amongst the journalist community in State of Goa and on the social media, and then she realised that keeping quiet further would only defend her guilt. One of the victim has clearly stated that she could not complain the management as she had no faith in the management and the management had protected applicant in similar incident in the past. According to one of the victims, after the months of deliberation and discussion with family and friends, she finally decided to disclose the truth and the acts committed by the applicant, mainly because the applicant was sexually harassing other girls also. Thus, from the averments in the three FIRs, it is clear that the applicant/accused was in spree of sexually harassing women who worked under him.

16. In my opinion, the alleged act of the applicant/accused is serious crime against the women. It cannot be expected from the female/women to lodge the complaint immediately because very reputation or honour of the women was at stake. It is common knowledge that whenever such incident has taken place with the girls/women before filing the complaint or matter being public, they think 100 times and then they decide, whether complaint is to be lodged or not.

17. The next contention of Mr. Shirish Gupte, learned Senior Counsel is that one of the complainants has only stated that the applicant had pulled her facial checks, another victim has stated that the applicant had kissed her on lips and the applicant had asked for third women to have sexual intercourse. According to Mr. Shirish Gupte, learned Senior Counsel any of the acts as alleged, do not attract the provisions of Sections 354 or other offences levelled against the applicant. By referring to the contents of the FIRs Mr. Shirish Gupte, learned Senior Counsel has argued that there was no assault or criminal force used against the women with intend to outrage her modesty. Therefore, no offences have been committed by the applicant.

18. The argument of Mr. Shirish Gupte, learned Senior Counsel leads me to know the dictionary meaning of the word "Assault" The meaning of the word "Assault" as per Concise Oxford English

Dictionary is that a violent attack; any act that threatens physical harm to a person, whether or not actual harm is done, a concentrated attempts to do something demanding.

19. Looking to the dictionary meaning it reveals that such assault does not necessarily be actual physical assault. Harm on the mind, also amounts to an assault. Therefore, I do not agree with the submissions of Mr. Shirish Gupte, learned Senior Counsel that there was no assault or criminal force used by the applicant against the above said three women/victim.

20. Second aspect which Mr. Shirish Gupte, learned Senior Counsel is that in view of the observations in a case of ***Siddharam Satlingappa Mhetre*** (supra), the applicant is entitled for anticipatory bail.

21. I have gone through the various parameters/guidelines laid down by the Hon'ble Supreme Court in the case of ***Siddharam Satlingappa Mhetre***(supra). One of the parameters i.e. at serial no.vii of paragraph 112 states that Court must evaluate the entire available material against the accused very carefully. The Court must also comprehend the exact role of the applicant in such case.

22. Here, in the present case, the exact role /act committed by the applicant has been specifically narrated by three women and

during the course of arguments Mr. Rivankar, learned Public Prosecutor has stated that recently, the investigating officer has received one more complaint of similar nature, from which, it is seen that the applicant is habitual in doing such activities against the women.

23. During the course of arguments, Mr. Shirish Gupte, learned Senior Counsel has argued that filing of the FIRs by the complainant/various women, is an outcome of rivalry/groupism in the corporate body, where the applicant works. However, I do not think any reason for the women, working under the control of the applicant, to file false complaint on the stake of reputation and honour.

24. It appears from the record that when the complaint/FIR no. 9/2015 registered then matter become public, then only another two victims came forward to disclose the offence. As already referred above, non-filing of the complaint/FIR immediately after the alleged offence, is well reasoned and well explained and one has to consider *prima facie* at this stage that there is nothing on record to suggest that there was some reason or ill motive behind the crime, by which the complainants have led to register the false FIRs/complaints.

25. The next question is of the recovery of the mobile used by the applicant during the relevant period. Mobile phone/electronic device is an instrument, through vulgar and sexual messages were

transmitted to the victims. Some of the text messages are reproduced in the complaints.

26. In such circumstances, the communication between two electronic devices has to be established after they being examined by the expert. Therefore, the instrument i.e mobile handset, coupled with the sim card used, are most important articles, to be attached, which is now in the possession of the applicant. During the course of arguments, Mr. Shirish Gupte, learned Senior Counsel has argued that the applicant is ready to produce mobile handset. I do not think that it will suffice the purpose of investigation because investigating officer has to attach sim card which was used in the mobile and such thing is not possible without custodial interrogation of the applicant.

27. There are no circumstances appearing from the record that the applicant is implicated in false cases therefore, the applicant/accused is not entitled for anticipatory bail.

28. Consequently all the bail applications stand dismissed.

K. L. WADANE, J.

vn*