

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.499 OF 2019

Navneet Rajendra Malviya Appellant

versus

State of Maharashtra & Anr. Respondents

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- Ms. Swarali Joglekar i/b. Abhishek Yende, Advocate for Appellant.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.
- Ms. Rebecca Gonsalves (Appointed Advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 18th OCTOBER, 2022

P.C. :

1. The Appellant has challenged the order dated 19/03/2019 whereby the Appellant's anticipatory bail application was rejected by the Additional Sessions Judge, Pune, in Criminal Bail Application No.1404 of 2019. By the same order the co-accused Shiny Jennifer Nadar was granted protection of anticipatory bail.

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2. The Appellant is seeking anticipatory bail in connection with C.R.No.412/2019 registered with Hinjewadi police station u/s 354 of the Indian Penal Code and u/s 3(1)(w)(i) and 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The FIR was lodged by the first informant on 09/03/2019 u/s 354 of the Indian Penal Code and u/s 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is mentioned in the FIR that in the year 2016 she was studying as an Engineering student. She got a job on 31/07/2017 in the company where the Appellant was also working. She has given names of the team members who were working with her. The Appellant was one of them. It is alleged in the FIR that since November 2017, the others from her team came to know that she was belonging to a scheduled caste and after that her team members started harassing her. The team leader was not giving her any job and used to ignore her. The present Appellant was a team member. He was not the team

leader. It is her allegation that the Appellant and co-accused Shiny used to look at her and used to laugh at her. They did not include her in their group. According to her, they had boycotted her. There are specific allegations against the Appellant that in June 2018, the Appellant approached her and pressed her hand. He asked her when she was going to get married and also asked her why she was not waiting in the office after 7 p.m. It is her allegation that since July 2018 she went into depression and when she came back after recovering, her mother was called and she was asked to stay at home. Getting fed up with this harassment, she lodged her FIR.

4. Heard Ms. Swarali Joglekar, learned counsel for the Appellant, Mr. S. R. Agarkar, learned APP for the State and Ms. Rebecca Gonsalvez, learned counsel for Respondent No.2.
5. Learned counsel for the Appellant submitted that the co-accused Shiny is granted anticipatory bail by the same order. Apart from that co-accused, the two other accused are also

granted anticipatory bail by the trial Court. Therefore on the ground of parity, the Appellant may also be protected.

6. Learned counsel relied on the ICC (Internal Complaint Committee) report dated 28/02/2019. In that report, the allegations made by the first informant are reflected and they are materially different. She has alleged that the Appellant touched the informant's hand on the mouse of the PC when he was taking control of the PC while explaining some piece of work. On another occasion, the Appellant allegedly held her hand purportedly reading her palm and pressed her hand. In the complaint she had named 17 employees. But she had also blamed Bhaskar and Pranav. Learned counsel submitted that these allegations are materially different from the FIR. She further submitted that the Appellant was on interim protection since April 2019 and more than 3 years have passed. The allegations against him do not exactly make out the case under Atrocities Act and u/s 354 of the IPC and therefore protection be granted.

7. Learned counsel for the Respondent No.2 submitted that the offence punishable u/s 3(1)(w)(i) is clearly made out and therefore considering bar of granting anticipatory bail u/s 18 of the Atrocities Act, protection cannot be granted to the Appellant. She also submitted that even otherwise the offence u/s 354 IPC is also made out. According to her, the allegations will have to be looked out as a whole and considering the nature of harassment at the work place, no sympathy should be shown to the Appellant.
8. Learned APP submitted that considering the nature of the allegations, no case for anticipatory bail is made out.
9. I have considered these submissions. The Appellant is on interim protection since April 2019. There are no allegations that he has misused this liberty. As far as the allegations of touching her inappropriately are concerned, whether section 354 of IPC is attracted or not, will have to be finally decided

during trial. But the important ingredient of that section is use of criminal force. At this stage, the FIR does not refer to any criminal force used by the Appellant.

10. As far as offence u/s 3(1)(w)(i) is concerned, there is difference in the allegations in the FIR and the allegations which are reflected in the ICC report of the said company. Therefore at this stage, there is some doubt about the exact nature of the allegations. Therefore at this stage, the Appellant can be protected by an order of anticipatory bail. It is made clear that all the questions raised in this application as well as the contentions on behalf of the Respondent No.2 are specifically left open to be decided at the appropriate stage. In this view, following order is passed :

ORDER

- (i) In the event of his arrest, in connection with C.R.No.412/2019 registered with Hinjewadi police station, the Appellant is directed to be

released on bail on his furnishing PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only), with one or two sureties in the like amount.

- (ii) The Appellant shall not cause harassment, in any manner, to the Respondent No.2. He shall not influence any of the witnesses or shall not tamper with the prosecution evidence.
- (iii) He shall co-operate with the investigation and shall attend the concerned police station as and when called.
- (iv) Appeal stands disposed of accordingly.

(SARANG V. KOTWAL, J.)