

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

CRIMINAL APPEAL NO. 803 OF 2021

Capt. Gopal Nambiar

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Murtaza Nazmi a/w. S. Shamim i/b. S. Shamim and Co. for Appellant.

Mr. P. H. Gaikwad, APP for State/Respondent No.1.

Mr. Ayaz Khan for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 3rd OCTOBER 2022

PC :

1. The Appellant is basically seeking relief in the nature of anticipatory bail in connection with C.R.No.9 of 2021 registered with Airport police station, Mumbai, under sections 354, 354-A, 354-D, 509 and 506 of I.P.C. Initially, the F.I.R. was lodged under these sections. The Appellant preferred an application for anticipatory bail before the Court of Sessions at Dindoshi, Greater Mumbai vide A.B.A.No.546 of 2021. That application was rejected by the Additional Sessions Judge, Dindoshi vide his order dated 06/04/2021. On that very day, the statement of the first informant

was recorded U/s.164 of Cr.p.c. before the Metropolitan Magistrate, 54th Court, Mazgaon, Mumbai. There, for the first time she made allegations that in August 2020 on one occasion the Appellant had threatened her that he would cause harm to her career prospects and at that time, he had told her that she was belonging to a backward caste and that he belonged to an upper caste. After recording of this statement U/s.164 of Cr.p.c. the offences U/s.3(1)(W)(i), (ii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC & ST Act') were added. The appellant is, therefore, seeking relief in connection with these offences.

2. The F.I.R. was lodged by the first informant on 30/03/2021. It is her case that the Appellant was 10 years senior to her in Air India. The Appellant used to look at her in objectionable manner and the first informant used to avoid him. It is mentioned in the F.I.R. that, in August 2016 when she was alone for attending simulator training, before the other pilots could reach there, the Appellant kept his hand on her shoulder and then touched her back and breast. She got scared and went away. In the

meantime, the second pilot came there. The Appellant went away. The first informant did not tell about this incident to anybody out of fear and embarrassment. Even thereafter the appellant used to look with ill-intentions towards her and used to make some objectionable proposals. In May 2020, under influence of liquor the appellant had made a phone calls to the Crew Schedule officer and made inquiries about the first informant. For that the said officer had given complaint in their department, but there was no improvement in his behaviour. On 08/01/2021, 14/01/2021, 15/01/2021 and 20/01/2021 the appellant made phone calls to her at odd hours between 3.00a.m. to 4.45a.m. and also during night hours at around 10.00p.m. She did not pick up those calls. She got disturbed. She was fed up with the appellant and, therefore, she lodged this F.I.R.

3. Learned counsel for the appellant submitted that the appellant is being falsely implicated because of internal politics. The first informant had made a grievance in writing before the internal committee on two occasions i.e. on 25/01/2021 and 04/03/2021. In both these applications, there was no reference to

the incident that had allegedly taken place in October 2016; when he had allegedly touched her inappropriately. Therefore, these allegations on the face of it are false allegations. He submitted that the allegations of commission of offence under SC & ST Act are obviously made to give serious colour to the allegations and they are made as an afterthought. He submitted that the appellant's career is at stake and, therefore, based on these false allegations, relief of anticipatory bail should not be denied to him.

4. Learned counsel appearing for the Respondent No.2 fairly submitted that, except for the allegation regarding the incident of August 2016, the other allegations pertain to bailable offence. He, however, left the question of attracting the offence under SC & ST Act to be argued by learned APP because he did not have investigation papers with him.

5. Learned APP produced the investigation papers before the Court. The papers contain the informant's statement recorded U/s.164 of Cr.p.c. on 06/04/2021, her supplementary statements dated 22/05/2021, 03/07/2021 and 27/09/2021. In all these

statements, she had made a reference to the allegations that the appellant had referred to her as a person belonging to lower caste.

6. I have considered these submissions and those statements. As far as, causing harassment to the informant is concerned, those allegations cannot be ignored. However, as is accepted by Shri. Khan, except for the incident of August 2016, the other allegations pertain to bailable offences, therefore, the main issue which needs to be decided in this appeal is about allegations of the offences under SC & ST Act. In that connection, as rightly submitted by learned counsel for the appellant, there is no reference to such allegations either in the F.I.R. or in the two written complaints given to the internal committee. Those allegations have surfaced much belatedly on 06/04/2021, for the first time, after the appellant's anticipatory bail was rejected by the Sessions Court. There is scope to argue that they are made as an afterthought. However, it would not be proper to observe conclusively at this stage that those allegations are made as an afterthought and that they are not true. I am only considering that, those allegations are made belatedly and, therefore, at this stage,

benefit of doubt can be given to the appellant to protect him from custodial interrogation. The main allegations pertain to the incident which had taken place in August 2016. More than 6 years have passed since then, therefore, for that particular incident, custodial interrogation of the appellant after 6 years will not serve any practicable purpose.

7. The rest of the allegations about making phone calls at an odd hours can be taken care of by imposing suitable strict conditions on the appellant. As far as, phone calls are concerned, the investigating agency has recorded statement of one Capt. Behram Kolha. His statement to a certain extent helps the submission of the appellant that, when on that particular day i.e. on 08/01/2021 those calls were allegedly made by the appellant, he was in the control of Aircraft (Push back) at U.S.A. and it was not possible to make any phone call. This statement does help the appellant's case. However, this will have to be considered at the trial. Therefore, considering this discussion, the Appellant can be granted protection in the nature of anticipatory bail with certain conditions.

8. Hence, the order:

O R D E R

- a) In the event of his arrest in connection with C.R.No.9 of 2021 registered with Airport police station, the appellant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- b) The Appellant shall attend the office of the investigating agency on 14/10/2022, 15/10/2022, 17/10/2022 and on 18/10/2022, between 1.00p.m. to 5.00p.m. and shall cooperate with the investigation. In addition, the appellant shall attend the office of the investigating agency as and when called, subject to the necessity of attending to his services.
- c) The Appellant shall not in any manner directly or indirectly cause harassment to the first informant.

- d) If there is breach of any of the conditions, the State of Maharashtra, as well as, the first informant is at liberty to make an application for cancellation of this order.
- e) All these observations made in this order are made only for the purpose of deciding this Appeal and the trial Court or any other authority shall not be influenced by any of these observations at the stage of trial or in any other proceedings before any authority. .
- f) With these directions, the Appeal is disposed of.

(SARANG V. KOTWAL, J.)