

Brahmprakash @ Brhamprakash Dalchand vs State Of Gujarat on 20 April, 2021

Author: Gita Gopi

Bench: Gita Gopi

R/CR.MA/5447/2021

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION NO. 5447 of 2021

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BRAHMPRAKASH @ BRHAMPRAKASH DALCHAND Versus STATE OF GUJARAT
===== Appearance:

M R P P MAJ M U D A R (5 2 8 4) for the Applicant(s) No. 1 M S
JIRGAJHAVERI, ADDL. PUBLIC PROSECUTOR (2) for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE GITA GOPI Date: 20/04/2021
ORAL ORDER

1. This application has been preferred under section 438 of the Code of Criminal Procedure seeking anticipatory bail in connection with the first information report No.11196016210232 registered with Makarpura Police Station, Vadodara for the offences punishable under sections 354 A 1 (i) (ii) (iii), 294 (b), 506 (2) and 114 of the Indian Penal Code.

2. Learned advocate, Mr. Panthil Majmudar appearing for the applicant submitted that the FIR has been filed under the allegation of sexual harassment by the present applicant, who at the relevant time was working as a Chief Medical Superintendent and the complainant was serving as a Assistant Divisional Medical Officer, Pratapnagar in Railway Hospital, who had joined the service on 30.08.2018.

2.1 Learned advocate, Mr. Majmudar has submitted that the allegations are made against the applicant of harassing the

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complainant by pressurizing her to indulge in sexual

relationship with him since December, 2018 and the allegations are of passing sexual remarks on 11.08.2019 which is stated to be the birth date of the present applicant. Learned advocate, Mr.Majmudar has further submitted that on 11.08.2019 which falls on Sunday, all offices remained closed, so prima facie the allegation of passing sexual remarks is false on record. He has further submitted that the said alleged date is not date of birth of the present applicant, who is a senior citizen aged 61 years. He has submitted that the applicant served 25 years as Lieutenant Colonel in Indian Defence and after retiring he had joined as Assistant Divisional Medical Officer in Western Railway and since 03.06.2016, he was working as a Chief Medical Superintendent, Western Railway Hospital, Vadodara. At present, he is transferred to Dahod.

2.2 Mr.Majmudar referred to the observations made in Special Criminal Application No.2875 of 2021, which is a quashing petition preferred by the present applicant to submit that it was because of the transfer of the original complainant on 30.07.2020 by the General Manager, Mumbai, which subsequently came to be cancelled on her request, the complainant had grudge against the present applicant as she was under the impression that the present applicant was behind the said transfer.

2.3 Learned advocate, Mr.Majmudar has also referred to the observation and conclusion arrived at by the Internal Complaints Committee at Vadodara, Gujarat and submitted that the complainant had approached to Internal Complaint Committee alleging physical, mental and social abuse by the present R/CR.MA/5447/2021 ORDER applicant-accused and the Internal Complaint Committee observed that the connected chain of evidence between their relationship to sexual harassment as required under SHWW (PPR) Act was not established in the case. Therefore, the Internal Complaint Committee observed that the complaint was not maintainable and dismissed the complaint considering that there was no evidentiary value and the accusation made by the ADMO against the CMS shows that she was in the company of others and neither the complainant nor others raised any complaint at the time of the incident. Therefore, the Internal Complaint Committee strongly felt that no inference could be drawn against the alleged accused.

2.4 Learned advocate, Mr.Majmudar has further submitted that no allegation of threat was made before the Internal Complaint Committee and in the FIR the complainant has improved the version and has falsely incorporated the fact of threat administered by the present applicant. He has further submitted that the applicant has unblemished career and as to the facts and circumstances and the report of the Internal Complaint Committee and taking into consideration the punishment prescribed for the offences alleged in the FIR, learned advocate, Mr.Majmudar has submitted that anticipatory bail may be granted to the applicant.

3. Learned Additional Public Prosecutor, Ms.Jirga Jhaveri, has stated that the allegations against the applicant-accused are of sexually abusing the complainant with the offensive, filthy and

unwanted remarks at the work place and exploitation. The complainant had, along with the list of documents, forwarded the complaints to the various authorities of the Railway R/CR.MA/5447/2021 ORDER Department. The report of the Internal Complaint Committee is internal document, which would have no bearing to the FIR lodged by the complainant.

3.1 Learned APP has further submitted that the affidavit of the I.O. was produced before the Sessions Court, Vadodara at the time of hearing of the anticipatory bail, wherein it was stated that there are other incidents of complaints preferred by the person apart from the present applicant and the complainant lady physically handicapped has undergone heavy pain owing to the harassment of the applicant at the work place. Any concession, by way of the anticipatory bail, to the applicant would give courage to others to humiliate and & sexually abuse the women at work place and thus vehemently contended to reject the application. Learned advocate, Mr.Majmudar countering the argument stated no other complaint has been filed against the applicant before police, or Internal Complaint Committee.

4. Vide order dated 01.04.2021, the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, the statement of the victim recorded by the police and doctor's report indicating the victim's history was called for in a sealed cover which was opened during the course of arguments. The statement recorded under Section 164 of the Code of Criminal before the 5th Additional Sessions Judge and Judicial Magistrate First Class is a true copy . It appears that the complainant has reiterated the facts as alleged in the complaint. She has also referred to online hearing on 14.10.2020 before the Internal Complainant Committee in relation to the sexual harassment.

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5. The fact finding inquiry report by the Internal Complaint Committee under Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 is by six members, who were nominated to inquire into against the alleged sexual harassment of working women at workplace at Zonal Head Quarter level and because of the COVID-19 pandemic situation, the inquiry was undertaken through the video conferencing on 14.10.2020, all the committee members were present. The complainant was asked to narrate the facts leading to the complaint, she reiterated the facts narrated in the complaint and gave information and narrated the facts before the committee that she was working as ADMO at Divisional Railway Hospital, Pratapnagar under Vadodara Division from last two years. The complainant stated about the abuses with offensive, foul and filthy language comments on sleeveless outfit. She has stated about the malicious intention of the applicant and therefore avoiding the applicant. The complainant also alleged that the petitioner made adverse remark in ICR, was interfering in her OPD duty and calling for explanation in presence of others. She was extremely disturbed by the action of the CMC and had decided to take transfer. She had requested her friends to help her with the transfer and was having suicidal thoughts and thereafter stated that she has left for Dubai to find peace with the change of people. She has further stated about the continuance of the harassment after coming back to work.

6. The complaint committee having heard all the allegations of the complainant did not find them to bear any substance. They found them to be devoid of any evidentiary value and therefore, the committee did not draw any inference against the R/CR.MA/5447/2021 ORDER present applicant.

7. Heard the learned advocates for the parties and perused the material on record. Taking into consideration the facts and circumstances on record, the observations made by the Internal Complaint Committee, there is a prima facie case made out by the applicant for grant of anticipatory bail, this Court is inclined to grant anticipatory bail to the applicant.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors., reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, reported at (1980) 2 SCC 565. This Court has also taken into consideration the recent decision of the Apex Court in the case of Sushila Aggarwal and others Vs. State of (NCT of Delhi) and Another, reported in (2020) 5 SCC 01.

9. In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of his arrest in connection with the first information report No. 11196016210232 registered with Makarpura Police Station, Vadodara on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions that he:

(a) shall cooperate with the investigation and make available for interrogation whenever required;

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(b) shall remain present at concerned Police Station within a month between 11.00 a.m. and 2.00 p.m.;

(c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade from disclosing such facts to the court or to any police officer;

(d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

(e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change his residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week; and

10. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate for police remand of the applicant. The applicant shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted, and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

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11. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

(GITAGOPI, J.) M.M.MIRZA