

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 1124 OF 2020

(Dr. Purushottam Wamanrao Tayade vs. State of Maharashtra thr. PSO, PS Ramdaspath,
District - Akola)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri S.P. Dharmadhikari, Senior Advocate with Shri
S.V. Sirpurkar, Advocate for the applicant.
Shri I.J. Damle, APP for the non-applicant – State.

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CORAM : PUSHPA V. GANEDIWALA, J.
NOVEMBER 26, 2020.

Heard Shri Dharmadhikari, Senior
Advocate with Shri Sirpurkar, learned counsel for the
applicant and Shri Damle, learned APP for the non-
applicant – State, through video conferencing.

2. The applicant, who was arrested for the
offence punishable under Sections 354, 376-C(d),
376(2)(1) and 377 of the Indian Penal Code in Crime
No. 405 of 2020 by Ramdaspath Police Station,
Akola, District – Akola, has moved this application.

3. It is stated that the applicant is a Doctor
by profession and since more than 25 years, he is
practising in Medicine and Surgery in Akola.

4. The informant – Kum. Meena Prabhakar Dhore, aged about 33 years, resident of Kalori, Tq. Khamgaon, District – Buldhana, lodged a report stating that she had been to the applicant's dispensary at 10.00 AM on 03.11.2020, with a complaint of abdominal pain since two years. She was advised to undergo Sonography test. After Sonography Test, she again came to the applicant's hospital along with her mother and brother with Sonography report. She alleged that during examination, the applicant pressed her breast and inserted his finger in the vagina and anus. She further alleged that as the applicant was leaning towards her, she slapped him. She came out of the cabin by shouting and informed the fact to her mother and brother. They informed the incident to the Police Station Ramdaspath, Nagpur. Police registered the offence vide Crime No. 405 of 2020. The applicant came to be arrested and at present he is in judicial custody.

5. Shri Dharmadhikari, learned Senior Advocate appearing for the applicant drew the attention of this Court to Exceptions to Section 375 of the Indian Penal Code and submitted that the case of the prosecution falls under Exception (1) to Section 375 of the Indian Penal Code. The learned Senior

Advocate also filed on record affidavit of Dr. Milind Chaukhande on the point that for the complaint of the lower abdominal mass or lower abdominal pain, the Surgen has to consider an ovarian mass before anything else and to rule out conditions of swelling in Fallopian tube and ovary. Ovarian tumor and cyst and Broad ligament cyst, vaginal examination is necessary.

6. The Court and the learned counsel on both sides are not experts in the medical field to give opinion as to whether the purported examination was necessary procedure or intervention for the treatment of the complaint of abdominal pain. Considering the seriousness of the allegations and the other attaining circumstances i.e. absence of female/nurse during examination, CCTV footage of bolting the cabin door inside by sending mother and brother of the patient outside the cabin etc., the Experts Report i.e. the Dean, Government Medical College, Nagpur, was called.

7. Today, the said report is received. A perusal of the report would reflect that the Dean, Government Medical College, Nagpur, constituted a Board having himself and Heads of Department of

Surgery, OBGY and Forensic Medicines as the Members and the following opinion is given :

“In a patient of chronic abdominal pain doing a Per rectal, Per vaginal examination is a part of complete clinical evaluation in medical practice. The treating surgeon may decide depending upon his understanding of the particular case and symptomatology to examine other systems or body parts including breast to arrive at a diagnosis.

It is also opined that while doing examination, it is conventional and ethical practice to conduct such examination in presence of female attendant/ Nurse.”

8. A perusal of medical opinion reflects that in case of chronic abdominal pain, doing a Per rectal, Per vaginal examination is a part of complete evaluation in medical practice. The question would be, whether the abdominal pain was chronic or not would be decided during trial. The second part of the opinion does not appear to be firm with regard to breast examination as it is opined that it depends upon the understanding of the particular case and symptomatology by the treating surgeon. With regard to presence of female attendant/ Nurse, it is

opined that while doing examination, it is conventional and ethical practice to conduct such examination in presence of female attendant/ Nurse.

9. In the present case, considering the serious allegations and the absence of female attendant/ Nurse while examination, appears to be deliberate lapse on the part of the applicant.

10. Considering the medical opinion, at this stage, this Court is inclined to release the applicant on bail, however, on stringent conditions. Needless to mention that the Experts opinion called for is, only for the purposes of deciding the present bail application of the applicant. The trial Court is at liberty to decide the case as per the evidence before the Court and the Medical opinion.

11. Criminal application is allowed and disposed of, on the following conditions :

(i) On the applicant executing Personal Bond of Rs.50,000/- (Rs. Fifty thousand only) with one surety in the like amount.

(ii) The applicant shall not issue threats or tamper with the prosecution witnesses.

(iii) The applicant shall attend Police Station once in a month on every first Thursday of the month.

JUDGE

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