

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3164 OF 2021

Sagar Jagmahendra Dulgaj

....Applicant

vs.

The State of Maharashtra & Anr.

...Respondents

....

Mr. Prashant Aher, a/w. Mr. Vishal Deshmukh, for the Applicant.

Mr. H.J. Dedhia, APP, for State.

Ms. Ameeta Kuttikrishnan, for the Complainant.

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CORAM : BHARATI DANGRE, J.

DATE : 20 OCTOBER 2022

P.C. :

By detailed order dated 11 October 2022, I have recorded the case of the Applicant to a larger extent, by referring to the material compiled in the charge-sheet.

2. As regards the medical case, since there was no certainty, learned APP was asked to record the statement of the doctor, who had given the opinion stating that “sexual assault cannot be ruled out”.

3. On 18 October 2022, the statement of concerned doctor was recorded, where she recorded her specific findings to the following effect:

“No external injury marks were noted to the body or private parts. The hymen was not noted intact during examination.”

4. In her further statement, dated 19 October 2022, she has reported as under:

“The hymen was not noted intact (however reasons other than sexual intercourse can be a reason for a non-intact hymen like rigorous physical exercise like cycling, swimming) hence not mentioned categorically.”

5. In terms of the Guidelines and Protocols by Ministry of Health & Family Welfare, she reported as under:-

“- No external injury marks were noted to the body or private parts.

- Urine pregnancy test was negative however last menstrual period was 01/03/2021 and she had missed her period in April 2021 and advised to repeat urine pregnancy test again after a month. No follow up after a month was done. Hence at that time of insemination, it was unknown if survivor was pregnant or not hence opinion was formed that ‘sexual violence cannot be ruled out’ as final opinion would be possible only after ruling out pregnancy after 1 month. Hence, as per history given by survivor Miss Riddhi Pravin Kanpariya, it was recorded that sexual violence occurred on 12/03/2021.

However, as the survivor presented after 1 month of assault, no evidence in the form of external injuries/bleeding were noted.”

6. In the wake of the clear statement of the doctor and on perusal of the reasoning as to why she has concluded that the sexual offence cannot be ruled out with no indications to that effect recorded in the proforma, the medical evidence need to be scrutinized with such great care and caution and this can be done during the course of trial.

However, from the chit written by the complainant, it can be seen that the victim herself has gone to the office of the complainant and since it was suspected that the two were carrying an affair, their respective parents had come to the police station, and prima facie it cannot be said with certainty, that the sexual intercourse, as alleged, took place. The truth of the prosecution case can only be unfurled at the time of the trial.

However, at the present stage, I feel appropriate that the Applicant deserve his release, subject to the condition that he shall move from the area where the prosecutrix is residing and shall not enter Vijay Kadam Chawl, P.P. Road, Ambawadi, Andheri East, Mumbai, till the conclusion of the trial.

7. Observations made above are prima facie in nature and limited for the purpose of adjudication of the present application, and shall in no way, bind the Sessions Judge while he is trying the Applicant for the offence with which he is charged.

: **ORDER** :

- (a) Application is allowed.
- (b) Applicant – Sagar Jagmahendra Dulgaj shall be released on bail in connection with C.R.No.175 of 2021

registered with MIDC Police Station, Mumbai, on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount and provisional cash bail within period of six weeks.

- (c) The Applicant shall move from the area where the prosecutrix is residing and shall not enter Vijay Kadam Chawl, P.P. Road, Ambawadi, Andheri East, Mumbai, and till the conclusion of the trial, shall not be seen in the said area.
- (d) The Applicant shall mark his attendance before the concerned police station on first Monday of the December between 3 to 5 p.m.
- (e) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant shall not tamper with evidence.
- (f) On being released on bail, the Applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

7. This Court place on record appreciation for Ms. Ameeta

Kuttikrishnan, who have represented the Complainant and assisted this Court.

The Legal Services Authority is requested to makeover her legal remuneration within period of four weeks from today.

(SMT. BHARATI DANGRE, J.)