

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3641 OF 2023

Dr. Digvijay Abhay Patil

...Applicant

Versus

State Of Maharashtra, through Kagal Police Station,
Kagal, Dist. Kolhapur

...Respondent

Mr. D.A. Nalavade a/w. Mr. Dilip Bodake i/b. Mr. Dilip Bodake,
Advocate for Applicant.

Mr. Y.Y. Dabke, APP for Respondent/State.

Mr. R.D. Gacche, PSI, attached to Kagal Police Station, Kolhapur is
present.

CORAM : M.M. SATHAYE, J.

DATED : 16th NOVEMBER, 2023

(VACATION COURT)

P.C. :

1. The Applicant/Accused No. 5 is a 31 years old M.B.B.S. doctor with diploma in Gynaecology & Obstetrics C.P.S. Mumbai. This is his application for regular bail u/s. 439 of the Code of Criminal Procedure, 1973 (for short “**the Cr.P.C.**”) in connection with C.R. No. 452 of 2023 registered with Kagal Police Station, District Kolhapur, for the offences punishable u/s. 377, 313, 420, 506 r/w. 34 of the Indian Penal Code. Other co-accused Nos. 1 to 4 are husband, mother-in-law, brother-in-law and relative (mama) of the husband of the complainant / victim.

2. The Applicant was arrested on 13/10/2023 in connection with the aforesaid crime (section 313 of the IPC) and is presently in judicial custody and his bail application No. 1002 of 2023 has been rejected by the learned Additional Sessions Judge-1, Kolhapur by Order dated 04/11/2023.

3. At the outset, it must be noted that the matter was urgently moved by the Applicant, pursuant to liberty granted to him to move the vacation Court by Order dated 10/11/2023.

4. On 12/11/2023, the Applicant has been allotted / secured an admission to a post-diploma course in Obstetrics and Gynaecology seat in Civil Hospital, Aizawl, Dawrpui, Mizoram-796001 through mop-up round of DNB Centralized Merit Based Counseling for 2023 Admission Session. A letter dated 12/11/2023 issued by the National Board of Examinations in Medical Sciences to concerned Head of the Institution, confirming the same, has been placed on record by Mr. Nalavade, the learned counsel for the Applicant. It is taken on record and marked 'X' for identification. It is submitted that the Applicant is required to report for the same today i.e. on 16/11/2023. However, the Applicant's family has been given to understand by the Institute that a week's extension may be considered. It is further submitted that if the Applicant does not report to the said institute within a week from 16/11/2023, he will be dis-entitled from claiming that seat. Considering that even the extended period will expire during the present Diwali-vacation of this Court, the matter is urgently taken up for hearing.

5. Heard Mr. Nalavade, learned counsel for the Applicant and Mr. Dabke, the learned APP for the Respondent/State.

6. Perused the FIR dated 09/10/2023. From the FIR, it is the allegation of the Complainant, that without her permission, an abortion of her fetus was carried out at the instance of Accused Nos. 1 & 2 who are her husband and mother-in-law. Perusal of the FIR further shows that neither specific date is given of the alleged abortion nor the Applicant is named therein. Involvement of a doctor is alleged only where a reference is made to her attending the hospital (PHC Radhanagari) where she was allegedly taken by her husband alongwith mother-in-law. It is alleged that she was accompanied by her mother-in-law/Accused No. 2 for medical check-up, when 'a medicine was inserted' inside her and the abortion was carried out. The FIR, per se, does not disclose any particular date or any other material particular. In the FIR, the name of the Applicant does not appear. In the statement of the Complainant subsequently recorded u/s. 164 of the CrPC, she has stated that the alleged abortion has taken place on 11/03/2023. It further appears that in the police station, she has identified the Applicant as the concerned doctor who allegedly conducted abortion and therefore he has been arrested.

7. Mr. Nalavade, the learned counsel for the Applicant submitted that in the first place, there is no whisper in the FIR about the date on which the alleged incident has taken place. He further submitted that averments in the FIR, so far as the Applicant is concerned, are as vague as it could be. He submitted that in the FIR itself, the Complainant has stated that on 28/12/2022, her sonography was conducted at S.M. Diagnostic Centre, Kolhapur, where it was reported that she was already 1½ months (six weeks) pregnant then. He submitted that even going by the date which is

narrated by the Complainant in her statement u/s. 164 Cr.P.C. i.e. 11/03/2023 as date of alleged abortion, then it can be discerned that on that date, the Complainant was at least 16 weeks pregnant, considering the date of sonography report. He submitted that if these dates are considered then medically, it is not possible to carry out the abortion by simply inserting any medicine, and abortion at such advanced stage is possible only by a procedure / operation which would require necessary preparation, which can not go without record. He submitted that there is no such medical record available regarding the admission of the Complainant for undertaking the alleged procedure for alleged abortion at the Public Health Centre, Radhanagari. He submitted that PHC Radhanagari is situated in semi-rural area and it's a 150 bedded government hospital with a heavy patient load, running under a Medical Superintendent and the Applicant was a visiting doctor there twice a week.

8. He further submitted that if the allegations in the FIR are seen closely, it can be seen on the face of it, that after the alleged incident, the Complainant thought that once the marriage starts working smoothly, she will bear child again and therefore nobody was informed and thereafter, the Complainant had actually gone to Kagal Police Station with her husband and mother-in-law where, she stated that she has no complaint against her husband. Mr. Nalavade submitted that therefore, it is obvious that after the alleged incident, even when she went to the Police Station, she did not find it necessary to state anything about the alleged abortion. He pointed out that in fact it is further stated in the FIR that thereafter in the month of May (2023) the complainant accompanied accused No. 1 / husband to a lodge and indulged in physical relations.

9. In view of the aforesaid circumstances, Mr. Nalavade urged that the Applicant, who is a qualified doctor belonging to a doctor's family, should not be allowed to perish in custody, especially when nothing has been found against him and he has been unnecessarily implicated in this criminal case arising out of the husband-wife-family dispute to which he has no connection. He submitted that the Applicant is ready to abide by any condition that this Court may deem fit to impose.

10. On the other hand, Mr. Dabke, the learned APP for State opposed the grant of bail. On instructions of the Investigating Officer who is present in the Court, learned APP submitted that in the statement u/s. 164 of the Cr.P.C., the Complainant/Victim has narrated the date of the alleged incident and has also identified the Applicant as the doctor involved.

11. On a specific query raised by the Court, it is informed by the learned APP that during the investigation, it was found that the CCTV footage in the concerned hospital - PHC Radhanagari of the date of the incident i.e. 11/03/2023 has been overwritten in due course of time, owing to memory constraints of the Digital Video Recorders. He fairly submitted that this is not a case of deletion of footage by any overt act on purpose. He further submitted that in the hospital record which was seized during the investigation, no medical record has been found of any procedure being conducted upon the Complainant, which can connect the Applicant to the alleged incident.

12. I have considered the rival submissions carefully. I have also perused the FIR and other record, as indicated above. I have also

perused the bail-rejection Order dated 04/11/2023. The Applicant has been in custody from 13/10/2023. In the facts and circumstances of the case, it is found that the investigation has taken place to the extent that CCTV footage is searched and hospital records are also searched but nothing is found so far, to indicate that any procedure was conducted on the Complainant on the alleged date or which can connect the Applicant to the alleged incident. Effectively, the Applicant is arrested and kept in custody solely on the statement of the Complainant. The investigation can proceed and the Applicant will face the Trial. The Applicant is a qualified doctor who has also got further opportunity to pursue an additional medical course. There are no criminal antecedents. There is no angle of any personal enmity etc. His whole career is at stake and it will only perish further, if his personal liberty is not protected. The Applicant's mother and wife, both are doctors. The Applicant is a permanent resident of Kolhapur having immovable property there. The Applicant has shown absolute willingness to co-operate with the investigation and also to abide by any conditions that may be imposed.

13. Considering the overall facts and circumstances narrated above, in my considered view, a case is made for the grant of bail to the Applicant, subject to conditions. Hence following order is passed :

- i. The Applicant – Dr. Digvijay Abhay Patil who is accused in C.R. No. 452 of 2023 registered with Kagal Police Station, District Kolhapur, be released on bail on execution of P.R. Bond of Rs.50,000/- with one or more surety in like amount and subject to the further condition that the Applicant will report to the concerned

Police Station as and when called and that the Applicant will co-operate with the investigation.

- ii. The applicant is directed not to tamper with any of the prosecution evidence. The Applicant is further directed not to influence any of the witnesses involved. The Applicant is also directed not to try to contact either the Complainant or any of the witnesses in any manner whatsoever. The Applicant is also directed to disclose to the Investigating Officer, his address and contact number / mobile number, in case he changes the same for the purpose of future job/education etc.

14. Bail Application is allowed and disposed of in above terms.

15. All concerned to act on authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)