

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4175 OF 2024
IN
CRIMINAL APPEAL NO. 1192 OF 2024

Kiran s/o Premji Patel

...Applicant

Versus

The Union Territory of Daman And Diu And ...Respondents
Dadra And Nagar Haveli And Ors.

Mr. Pawan Mali, for the Applicant.

Mr. Ashwin Thool with Archishmati Chandramore and Ayush Singh
for the Respondent No.1.

Mrs. Suvarna Yadav, Appointed Advocate, for the Respondent No.2.

Mr. Arfan Sait,APP, for the Respondent No.3-State.

CORAM: R. M. JOSHI, J.

DATED: 13th FEBRUARY, 2026.

PC:-

1. In continuation to submission made by both the sides and recorded in order dated 11th February, 2026, learned Counsel for the respondent has placed reliance on the judgment of the Delhi High Court in **Court on its Own Motion vs. State**, dated 4th August, 2018, MANU/DE/2719/2018, which deals with the issue with regard to the statement recorded other than police recorded in proceeding under POCSO Act. It is his submission that having regard to the said judgment, so also, in view of the judgment of the Hon'ble Supreme Court in the case of **P. Babu and Ors. vs. State of**

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A. P., (1994) 1 Supreme Court Cases 388, the history given by the victim to the Medical Officer becomes immaterial. It is his submission that the Medical Officer is not required to consider the history given by the victim, but has to record his opinion only on the basis of the clinical findings and the injuries found on person including the genital part of the victim.

2. At this stage, this Court is required to see as to whether the appellant has a fair chance in success of appeal. Prima facie, perusal of the record indicates that there is variance in the statement made by the victim before the Medical Officer as compared the statement made before the police and even before the Court. It is pertinent to note that the victim and the accused are acquainted with each other. The victim used to visit frequently to the house of the accused. In such circumstances, the victim mentions to the Medical Officer about the incident stating that one unknown person took forcibly her to one place where the acts in question were done. It is also pertinent to note that the victim did not state anything about the penetrative sexual intercourse being committed with her by the said person.

3. The prosecution seeks to place reliance on the evidence of victim which is supported by the CCTV evidence. The CCTV footage of the incident indicates that the victim was entering the house of the accused which is contrary to the previous statement of victim. Prima facie, this Court is of the view that the entry of the victim in the house of the accused per se is not incriminating

circumstance because admittedly the victim used to regularly visit house of the accused. Similarly question arises, as to whether the statement made by the Medical Officer is to be completely ignored and kept out of consideration in a criminal trial. The Medical Officer is expected to record his opinion with regard to the assault not only on clinical examination but also on the basis of history recorded by the victim to the Medical Officer. Independently, it might be not possible for the Medical Officer to record an opinion with regard to the sexual assault in each case, however, if it is supported by the history given by the patient, such opinion can be given. If any case the statement of victim with regard to the manner in which crime has been committed made to the Medical Officer could not be completely discarded. This Court, at this stage, at least does not find any substance in the contention of learned Spl. P. P. in this regard. It is, however, clarified that all issues are kept open for argument at the time of hearing of the appeal

4. Suffice it to say that there are material contradictions in the previous statement made by the victim as to the person who had committed the sexual assault or even with regard to the sexual assault by itself. In view of the same, it can be said that the appellant has a fair chance of success in the appeal. Hence, the following order.

ORDER

(a) The Interim Application is allowed.

- (b) The substantive sentence imposed against the Applicant/ Appellant by Judgment and Order dated 26th March, 2021, passed in Special Criminal Case No. 05 of 2020 stands suspended till decision of the Appeal.
- (c) The Applicant/Appellant be enlarged on bail on furnishing PR. bond of Rs.15,000/- with one surety in the like amount.
- (d) The Applicant/Appellant not to contact the victim or his family members in any manner whatsoever.
- (e) Any breach of aforestated condition shall result into forthwith cancellation of bail.

5. In view of the above, Interim Application stands disposed of.

6. It is clarified that the above observations are made on *prima facie* consideration of the material on record and the same shall not bind the parties during the final hearing of the Appeal.

(R. M. JOSHI, J.)