

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4350 OF 2021

Dr.Shivraj Chhotulal Pataria .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
BAIL APPLICATION NO.1632 OF 2022

Dr.Shivraj Chhotulal Pataria & Anr. .. Applicants
Versus
The State of Maharashtra .. Respondent

WITH
BAIL APPLICATION NO.1536 OF 2022

Dr.Shivraj Chhotulal Pataria & Anr. .. Applicants
Versus
The State of Maharashtra .. Respondent

WITH
BAIL APPLICATION NO.1628 OF 2022

Neeta Shivraj Pataria .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
BAIL APPLICATION NO.1629 OF 2022

Dr.Shivraj Chhotulal Pataria & Anr. .. Applicants
Versus
The State of Maharashtra .. Respondent

WITH

BAIL APPLICATION NO.1971 OF 2022

Dr.Shivraj Chhotulal Pataria & Anr. .. Applicants

Versus

The State of Maharashtra .. Respondent

WITH

BAIL APPLICATION NO.2119 OF 2022

Dr.Shivraj Chhotulal Pataria & Anr. .. Applicants

Versus

The State of Maharashtra .. Respondent

WITH

BAIL APPLICATION NO.3043 OF 2022

Dr.Shivraj Chhotulal Pataria & Anr. .. Applicants

Versus

The State of Maharashtra .. Respondent

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Mr.Ponda, Senior Advocate with Mr.Jugal Kanani for the Applicants in all the Applications.

Ms.Anamika Malhotra, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

RESERVED ON : 29th MARCH, 2023

PRONOUNCED ON : 05th APRIL, 2023

ORDER :-

1. In the group of eight applications listed before me, Dr.Shivraj Chhotulal Pataria and Mrs.Neeta Shivraj Pataria

are the applicants, who are charge-sheeted in the offences registered with distinct police stations, largely attributing an identical role, of active participation in the whole episode, of administering fake vaccines.

The charges levelled against the accused persons in connection with distinct CRs filed with different police stations in Mumbai, are more or less the same and suffice it to note that the subject CRs invoke Sections 268, 270, 274, 275, 276, 308, 419, 420, 465, 468, 470, 471, 188 read with Section 34 of IPC, Sections 43 and 66(C) of Information Technology Act, Section 3 of Epidemic Diseases Act, Section 52 of the Disaster Management Act & Section 27 of the Drugs and Cosmetics Act.

2. For the sake of avoidance of repetition, I would refer to the case of the prosecution in C.R.No.591 of 2021, registered with Kandivali Police Station against Dr.Shivraj Pataria, who has moved Bail Application No.4350 of 2021. The subject CR came to be registered on complaint of one Mr.Kartik Rajesh Shah and on it's completion, charge-sheet came to be filed. The case of the prosecution as per the charge-sheet can be culled out as under :-

“(a) On 27/05/2021, the management committee of Hiranandani Heritage Society decided to organise a vaccination camp with a view to vaccinate the society members of Hiranandani Heritage. One of the members of the Hiranandani Heritage Society, namely Ashish Mishra, volunteered to assist in this process of arranging the said vaccination camp.

(b) Subsequently, Ashish Mishra contacted one Rajesh Pandey who claimed to be the representative of Kokilaben Hospital, Andheri and negotiated for providing 400 vaccine doses of COVISHEILD at the premises of Hiranandani Heritage

Society. It was agreed that the vaccination camp would be held on 30/05/2021 and that each person willing to register himself for the vaccination would be required to pay Rs.1260 at the time of registration.

(c) On 30/5/2021, a vaccination camp commenced at 10:00 a.m. at the club house of Hiranandani Heritage Society. At that time, the society members were surprised to see one Sanjay Gupta, claiming to be the coordinator for the vaccination camp, arriving at the society premises. Sanjay Gupta was accompanied by 5 people to assist him (3 nurses & 2 assistants). Mr.Rajesh Pandey, who had organised the vaccination camp arrived at 10:30 a.m.

(d) While receiving the vaccination dose at the vaccination camp, the First Informant noticed that the seal of the vial containing the vaccine was broken. A total of 390 members of the said society received their vaccine doses at the said vaccination camp. However, despite the members making their payment for receiving the vaccines, Sanjay Gupta was not able to give receipts for the payment, and instead directed the society members to make the payment to one Mahendra Singh. Collectively, the members at Hiranandani Heritage Society paid a sum of Rs.4,56,000/- to Mahendra Singh towards the vaccination.

(e) Thereafter the members of Hiranandani Heritage Society enquired about their vaccination certificates from Sanjay Gupta, who informed them that the same would be generated in about 3 to 4 days. Sanjay Gupta also requested for the details/data of the vaccinated members. Accordingly, Mr.Sachin Vichare (Society Manager) and staff of Hiranandani Heritage Society collected the said details/data of the members who got vaccinated and send it to Sanjay Gupta.

(f) From 8/6/2021, some of the members who got vaccinated started receiving SMS messages on their mobile numbers in which a link was provided to download their vaccination certificate. At that time, the members were shocked to note that the vaccination certificates were generated from the different hospitals, namely, Nanavati Hospital, Lifeline Hospital, NESCO Covid camp, etc. These certificates were sent as PDFs by Sanjay Gupta and Mahindra Singh to Sachin Vichare. Further, the certificates contained dates different from the date on which the vaccination camp was held.

(g) When the society members verified their vaccination status on the COWIN portal, they found that the portal

reflected that these people had not received any vaccination doses. Thereafter on 13/06/2021, the members of Hiranandani Heritage Society held a meeting with Mahindra Singh at the society premises. During this meeting, Mahindra Singh informed the society members that :

- (i) Rajesh Pandey was contacted by Ashish Mishra (member of the society), who subcontracted the vaccination job to Mahendra Singh;
- (ii) Mahendra Singh purchased the vaccines from Dr.Manish Tripathi from Shivam Hospital;
- (iii) Mahendra Singh was not able to provide any satisfactory answers on the batch number of vaccines or original receipts of his purchase from Dr.Manish Tripathi.
- (h) Based on the meeting held on 13/06/2021 it became evident to the society members that during the vaccination camp held at Hiranandani Heritage Society on 30/05/2021, the society members were administered vaccines from bottles that had their seal broken and were subsequently issued fake vaccination certificates. By doing so the members of the society were cheated to the tune of Rs.4,56,000/- under the pretext of payment for vaccination doses.”

3. Identical accusations are faced by the Applicants in distinct CRs, in respect of camps organised in the jurisdiction of different police stations, and I need not repeat the contents of each of them.

On being arrested, the bail applications of the applicants were rejected by the Sessions Court and this has resulted in the present applications being filed, seeking their release on bail.

4. I have heard learned senior counsel Mr.Ponda appearing for the applicants and Ms.Anamika Malhotra, the learned A.P.P. for the State.

The learned senior counsel would submit that applicant-Dr.Shivraj Pataria is a Doctor by profession and applicant-Mrs.Neeta Pataria is a Pharmacist and they are respectable members of the society, being the owners of Shivam Hospital situated at Kandivali (W), which has nearly completed 27 years and he would emphasis upon the long medical practice of 35 years of applicant Dr.Shivraj Pataria.

The learned counsel would submit that Shivam Hospital was authorised to administer vaccines i.e. Covishield and Covaxin and it received 32,790 doses of vaccines (Approx.) from Brihanmumbai Municipal Corporation (BMC) and it also procured vaccines from other sources. Out of this, around 17,100 doses were of Covishield vaccine and 15,690 doses were of Covaxin vaccine were administered through Shivam Hospital. It is submitted that there were no complaint in respect of vaccines, which were administered in Shivam Hospital, but the accusations that are levelled against the present applicants are in respect of fake vaccines, being administered at different vaccination camps, which were conducted under the aegis of other co-accused Mahendra Singh, Manish Tripathi and Rajesh Pandey and they are accused of replacing the contents of the vaccine and administering some liquid to the patients, which was not a genuine vaccine and monies were collected from them.

Mr.Ponda would vehemently submit that it is not the case of the prosecution that either the applicants or any of the employees of Shivam Hospital were involved in organising the camps or that they were present in the vaccination camps. According to him, even as per the prosecution case, the

monetary gain attributed to Shivam Hospital is only of Rs.25,000/-.

5. Further, according to Mr.Ponda, the chemical analysis report, relied upon by the prosecution as regards the vaccines seized from Shivam Hospital is highly unbelievable, as the vaccines were forwarded for testing after a considerable time had lapsed and they were not kept at requisite temperature, as imperatively prescribed by the protocol/guidelines provided for use of vaccines. As per the protocol, in case of open vials, it require refrigeration upto 48 hours and the guidelines prescribe that if cumulative period of 48 hours is reached, the vial must be discarded, indicating that it loses its efficacy as vaccine. The learned counsel would submit that the only incriminating circumstance, which has been relied upon, to implicate the Applicants is a confession letter given by one Rajesh Pandey, revealing the role co-accused Mahendra Singh, where he has stated that he gathered from Mahendra Singh that vaccines and other relevant items were organised through Shivam Hospital, Kandivali (W). The Applicants, however, specifically deny the said statement and assert that they are roped in, merely because of their acquaintance with Mahendra Singh and there is no other material corroborating the said statement. Apart from this, it is also urged that the Applicants are in custody since July/August 2021, though they have been shown to be arrested by different police stations on distinct dates.

Submitting that the investigation is complete and their further incarceration is not warranted, Mr.Ponda would seek their release.

6. The learned A.P.P. would strongly oppose the applications by submitting that the offence is serious in nature when, the Applicants by hatching a conspiracy with other co-accused, have administered fake vaccines, knowing it very well that they are not genuine and have received consideration for the same from the distinct persons, who were administered the said vaccines. It is her submission that Shivam Hospital played a key role in the whole conspiracy and, since, the present Applicants were in helm of affairs of the hospital, they have been rightly charge-sheeted and face serious accusations. She would submit that merely because they have been incarcerated for last two years, is no ground for their release looking to the gravity of the accusations that they faced.

7. It is not in dispute that the Applicants are the owners of Shivam Hospital and during the Covid period, the hospital had placed an order of 23,350 does of vaccines and received 2335 vials of vaccines from BMC, each vial containing 10 doses. Shivam Hospital administered these doses to several persons and admittedly, there is no complaint recorded as regards any symptoms received by any of them on administration of the said vaccines or non-receipt of vaccination certificate or that the vaccine was fake.

The Applicants are attributed a role in the various vaccination camps held across Mumbai, where it is alleged that co-accused Mahendra Singh, Manish Tripathi and Rajesh Pandey administered liquid (water), which was not genuine vaccine, to the public at large and obtained money from them. There were other accomplices also, who were involved in this whole episode.

The connect of the Applicants appeared in the wake of the circumstances, which were collated by the prosecution when it was revealed that co-accused Manish Tripathi occupied premises in Shivam Hospital to run his nursing institute in the name of KCEP Group of Institutions and an Memorandum of Understanding (MoU) does exist between Manish Tripathi and Shivam Hospital to that effect. Case of the Applicants is specific that, co-accused Mahendra Singh was known to Applicant-Dr.Shivraj Pataria, as he was a member of Malad Medical Association alongwith him.

8. The charge-sheet, filed on culmination of investigation, disclose that Mahendra Singh and Manish Tripathi acquired empty bottles of vaccines and they refilled it with some liquid and this has come on record through the statement of Dr.Haresh Shah, who stated that Mahendra Singh provided him 38 vials of genuine Covishield vaccine on 22/04/2021, and he paid sum of Rs.1,61,500/- to Mahendra Singh. The statement also disclose that Mahendra Singh instructed him to return empty vials on it's usage to him and this instruction was complied by returning the vials.

These 38 vials were used by co-accused Mahendra Singh in carrying out the twelve vaccination camps across Mumbai, which administered some liquid other than the genuine vaccine.

9. Though the prosecution allege that Mahendra Singh acquired these vials from Shivam Hospital, it's case has to be

cross-checked through the statement of Dr.Haresh Shah, who states that the empty vials were returned to Mahendra Singh.

The statement of Dr.Haresh Shah recorded by the police disclose that he runs a clinic by name 'Acupuncture' and he was acquainted with Mahendra Singh, who made a disclosure to him that vaccine is distributed through Shivam Hospital and, accordingly, he delivered him 38 vials of Covishield vaccine on 22/04/2021. As a consideration for receipt of the vaccine, he paid a sum of Rs.1,61,500/- (at the rate of Rs.4,250/- per vial) to Mahendra Singh. He disclosed him that vials are procured from Shivam Hospital and instructed to Haresh Shah to administer the vaccine and prepare the data. He was also instructed to deliver him back the empty vials and, accordingly, Dr.Shah returned 38 vials alongwith the data of the people, who had taken the vaccine. However, no certificate was issued by Shivam Hospital in respect of the said vaccine.

10. The prosecution has relied upon one circumstance of the conspiracy i.e. a dinner party held on 25/05/2021 at 'Retreat Hotel', at Malad, where the Applicants were seen in the company of Mahendra Singh and Manish Tripathi and other staff members of Shivam Hospital. However, all the persons coming together itself cannot lead to an inference of conspiracy of administrating fake vaccine, particularly when this meeting took place when one of the camps had already taken place on the said date.

When the material compiled in the charge-sheet is perused, the prosecution does not allege that the Applicants

had participated in organising and planning the vaccination camps or at any time, were found to be present in these camps.

It is on the statement of one Rajesh Pandey, who claims to be the Marketing Manager of Kokilaben Hospital, who had organized various camps and received money towards administration of vaccines and who on 16/06/2021, addressed a letter to Kokilaben Hospital, confessing his involvement in the fake vaccination camps. In his statement, he confessed that he was personally involved with Mahendra Singh of Malad Medical Association alongwith one Sanjay Gupta in the activity. This clearly reflect the role of Mahendra Singh as kingpin of the entire scam, who was found to be involved in arranging the camps and it is he, who given an impression to Rajesh Pandey that the vaccination camps were organised by Shivam Hospital and the vaccines were procured through it.

11. Apart from this, there is no material in the prosecution case, which would prima facie, reflect them to be a part of the conspiracy of arranging vaccination camps, where the fake vaccine is administered.

It appears that the empty vials were procured by Mahendra Singh from Dr.Haresh Shah, who had disclosed that on supply of 38 vials of genuine Covishield vaccine, he paid a sum of Rs.1,61,500/- and even returned the empty vials, which appear to have been used in subsequent camps, reflecting that it's contents are genuine, with the batch number being reflected on the vials. It can thus be assumed that these 38 vials, which were produced by Mahendra Singh were refilled

with some liquid, which was administered in the camps situated at all locations.

12. The recovery of the vials of vaccines from Shivam Hospital on 28/06/2021, which were subjected for analysis, also suffers from a defective procedure. The vials found in open condition were seized from Shivam Hospital on 28/06/2021 and on 02/08/2021, they were forwarded to Haffkine Institute for Training, Research and Testing for testing. On 27/08/2021, Haffkine Institute issued a report and concluded that the contents forwarded to it for testing revealed that it is highly unlikely that the contents of the seized vials are Covishield Vaccine.

Mr.Ponda has placed on record the guidelines as regards the use of Covishield Vaccine and it clearly stipulate that unopened vials will have a shelf life of six months, when stored in refrigerator at 2°C to 8°C and the vials should be kept upright in their box and away from direct sunlight to prevent prolonged light exposure. As regards the open vials, the guidelines provide that cumulative storage time of an opened vial at room temperature must not exceed 6 hours and and can be re-refrigerated upto 48 hours, but it's cumulative storage, once punctured, must not exceed 48 hours. It is not conclusively mentioned in the charge-sheet that empty opened vials seized from Shivam Hospital on 28/06/2021, were stored as per the prescribed guidelines and if not then a opened vial, after 48 hours, may not confirm to it's quality and the guidelines prescribe that it should be discarded.

The panchnama drawn on seizure of vaccine from Shivam Hospital clearly reveal that the vaccine which was seized was in unsealed/broken condition.

13. Apart from this, the case of the prosecution is, Applicant-Dr.Shivraj Pataria, received an amount of Rs.25,000/- from Manish Tripathi and this was transferred from the bank account of KCEP Group of Institutes. Unless and until the prosecution establish that this amount came as a consideration for supply of spurious vaccine, it do not take the case of the prosecution further as Manish Tripathi was running a training institute in Shivam Hospital and there is an MoU executed to that effect and this MoU find reference in the statement of one Kirti Shetty. Apart from this, Manish Tripathi's institution was engaged in providing manpower for assisting in providing medical service during the peak of Covid-19 and it also used to source medical equipments like masks, PPE kits, surgical gloves and, therefore, the defence that the amount was transferred on this account, will have to be ultimately tested during the trial.

14. Now the investigation in the case is complete and all the material collected, is compiled in the charge-sheet. It is not the case of the prosecution that on account of the alleged vaccines found to be spurious, some death had taken place or any patient suffered from any adverse effect. Though the offence registered has serious repercussions and the consequences, which reflect that innocent common man, on the pretext of an

authorised vaccine being administered to him, has shelled out his hard earned money only to find out that the vaccine was not genuine. Ultimately, this is a matter of trial and, undisputedly, if the prosecution prove it's case during trial, the Applicants will take the necessary consequences. The Applicants are the respectable members of the society, Applicant-Dr.Shivraj Pataria, being a Doctor practicing over 30 years and Applicant-Neeta Pataria, being a Pharmacist, the chances that they would not face the trial, are minuscule. Subject to the stringent condition that they will not tamper with the prosecution case, they deserve their liberty.

It is made clear that the observations made above are, *prima facie*, in nature and limited for the purpose of determination of the present Application and the learned Judge, trying the Applicant for the offences with which he is charged, shall not in any manner, be influenced by the above order.

: ORDER :

- (a) Applications are allowed.
- (b) Applicant No.1-Dr.Shivraj Chhotulal Pataria and Applicant No.2-Neeta Shivraj Pataria shall be released on bail on furnishing P.R. Bond to the extent of Rs.25,000/- each, with one or two sureties in the like amount, in each of the CRs registered with distinct Police Stations, mentioned as under :-

<u>Bail Application</u> <u>Number</u>	<u>C.R.No.</u>	<u>Police Station</u>
4350/2021	591/21	Kandivali

1632/2022	520/21	Khar
1536/2022	185/21	Navpada, Thane
1628/2022	591/21	Kandivali
1629/2022	474/21	Bangur Nagar Link Road
1971/2022	534/21	Amboli
2119/2022	252/21	Versova
3043/2022	312/21	Bhoiwada

The Applicants are directed to be released on cash bail of Rs.25,000/- each, in each of the CRs registered with distinct Police Stations, in lieu of the sureties for a period of eight weeks and, during the said period, they shall arrange for the sureties.

(c) In order to ensure the presence of the Applicants in the trial, they shall mark their attendance in Kandivali Police Station, on first Sunday of every trimester, between 10.00 a.m. to 11.00 a.m.

(d) The Applicants 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.

(SMT. BHARATI DANGRE, J.)