

Neutral Citation No. - 2024:AHC-LKO:5764

RESERVED ON 16.1.2024

DELIVERED ON 19.1.2024

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14702 of 2023

Applicant :- Sameer Saraf

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko.

Counsel for Applicant :- Ishan Baghel

Counsel for Opposite Party :- G.A.

Hon'ble Karunesh Singh Pawar,J.

1. Heard Shri I.B.Singh learned Senior Advocate assisted by Shri Ishan Baghel and Shri Nishchal Verma, learned counsel(s) for the petitioner and Shri V.K. Shahi, learned Additional Advocate General assisted by Shri G. D. Bhatt, learned A.G.A. and Shri Shivendra Shivam Singh Rathore, brief holder, learned counsel(s) for the State. as well as perused the record.

2. The present bail application has been filed by accused-applicant seeking bail in FIR No. 0017 of 2022, Section: 420,467,468,471,304 of IPC & 7,8,9,13,14, P.C.Act, PS: SAIFAI, District: Etawah. The informant Dr. Adesh Kumar has lodged the F.I.R. against the applicant and one another person making allegations of financial irregularities and corruption done by Dr. Sameer Saraf like unnecessary arbitrage, pacemaker fraud and unauthorized foreign trips. As per the F.I.R. version, a report was submitted by the five-member committee, in which the complainant was also a member, that unnecessary purchase

was done to the tune of Rupees One Crore by the applicant even though sufficient stock for approximately 1 year was available at the Cath Lab of the University and lakhs of rupees was duped by him. The rigorous investigation has been done by the university at different levels, by former Vice Chancellor Dr. D Rajkumar and at the end it was found that the purchases of consumables items done by the applicant was already stoked in the University stores since January 2020 and are about to expire and have never been used in the past 2 years. In this regard letter no. 853/MS/UPUMS/2021-22 dated 15/11/2021 has been sent by the complainant to the Vice Chancellor, in which the proceedings are still pending.

3. It is also alleged in the F.I.R. that the applicant has defrauded many suffering patients admitted under Ayushman Bharat Yogna and charged unfairly higher price by placing wrong pacemakers. The applicant and his family have undertaken many unauthorized foreign trips which were sponsored by those private companies whose consumables and pacemakers have been used by the applicant. Several reminders have been written by the Vice Chancellor to the Registrar for registering an FIR against the applicant, till date no FIR has been lodged against the applicant and other persons. The applicant is under suspension and have been found guilty in the detailed investigation report submitted to the Disciplinary Authority by the Investigating Officer appointed by the University administration.

4. Learned counsel for the applicant submits that the applicant joined as Assistant Professor Cardiology Department, Angiography and Angioplasty in UPUMS, Safai in the year 2016. From 2016 to 2020 he treated number of patients. Before joining of the applicant

one doctor namely Amit Singh, Associate Professor (Cardiovascular and Thoracic Surgery) was the one who was duty Incharge of the Cardiology Department. After joining of the applicant he found that Dr. Amit Singh was not a qualified doctor for conducting Angiography and Angioplasty and for placing the pacemaker on any patients. The applicant further noticed unethical practices prevailing and being practiced by the erstwhile doctor in the Department of Cardiology, therefore he blacklisted some agents who were with the doctor in such unethical practices. The applicant had moved various complaints against Dr. Amit Singh for his unethical practices. Due to this Dr. Amit Singh developed grudge against the applicant. Rift between the applicant and Dr. Amit Singh escalated to such an extent that the Vice Chancellor of UPUMS had to call for a meeting of 5-member Committee to resolve the dispute between the two and vide order dated 20.03.2020 the Committee ordered to stop all the mudslinging allegations against each other and have warned both of them to act responsibly. Thereafter several letters were written by informant Dr. Adesh Kumar and Dr. Amit Singh to Vice Chancellor alleging that the applicant made unnecessary and arbitrary purchases. Again the Committee was constituted under the influence by the Vice Chancellor on 11.9.2020 for the audit enquiry of Cath Lab Consumables in which Dr. Amit Singh himself was one of the member as well as his close associate Dr. Adesh Kumar, Medical Superintendent (complainant) was head of the 5 Members' Committee. He submits that although the said Committee was constituted with limited purpose i.e. for audit enquiry of Cath Lab Consumables but instead of doing just and proper audit in the midst of Covid-19 crisis, under the influence of aforesaid two persons, the

Committee submitted its Audit Report of Cardiology Consumables on 12.11.2020, which was not the purpose of the committee. There was no Cardiologist/specialist in the committee. On 23.2.2021 on the basis of such report of the committee the applicant was placed under Suspension. Immediately after the suspension various complaints were made by the complainant and Dr. Amit Singh in order to register an FIR against the applicant. Dr. Amit Singh being the media head of UPUMS, Safai, District- Etawah used all his influence against the applicant so that the applicant is sent to jail.

5. Learned counsel for the applicant submits that the rift between the applicant and Dr. Amit Singh escalated to such an extent that SDM, Saifai, District- Etawah had to issue notice under section 107/116 CrPC to the applicant and Dr. Amit Singh. Departmental charge-sheet served to the applicant on 23.07.2021 by the Enquiry officer.

6. Learned counsel for the applicant further submitted that at the instance of the applicant an F.I.R. No. 0193 dated 27.08.2021 was registered at Police Station Safai, District- Etawah against Dr. Amit Singh & others in which Final Report was submitted by the police.

7. It is next submitted by the learned counsel for the applicant that the present F.I.R. against the applicant was registered under Sections 7,8,9,13 and 14 of the PC Act 1988 and section 420 of the IPC, 1860 with malafide intention of the complainant on the basis of the report of the enquiry Committee in which the informant was the Chairman. First Information Report has been registered by the complainant and not by the Vice Chancellor. Although, in the past, several letters were written by the complainant to the Registrar for lodging the F.I.R.,

however, since there was no material for lodging the F.I.R. therefore no F.I.R. was lodged by the Registrar.

8. Learned counsel for the applicant further submitted that since the audit enquiry report dated 12.11.2022 was contrary to the principle of natural justice, the Working Committee of the UPUMS, Saifai, the supreme body of the UPUMS Saifai while considering the representation of the applicant decided to constitute three-members' Committee to submit its report regarding the legality of enquiry committee along with the representation of the applicant and remove the suspension of the applicant. The applicant was reinstated by the Registrar vide letter dated 11.8.2022 to discuss the allegation/questions relating to the ongoing investigation against the applicant. An emergent meeting of 7 Members' Committee was called upon under the chairmanship of Vice-Chancellor of the University. In the meeting no merit in the allegations against the applicant was found. The Committee also observed that the complainant cannot look into the facts and correctness of the allegations which has been leveled by the complainant himself and therefore, the report presented by the earlier committee headed by the complainant is biased.

9. Learned counsel for the applicant further submitted that the entire basis of the FIR is based on the audit report. Later the said audit report has been set aside by the working Committee and even the higher Committee of the university has approved the final decision of the working committee.

10. Learned counsel for the applicant has invited attention of the Court towards the minutes of the meeting, which is Annexure-12 and has submitted that on 20.09.2023 a meeting of Executive Body was

held under the chairmanship of Vice Chancellor of the University whereby in the majority of opinion it was held that the allegation related to arbitrary purchase and use of wrong pacemaker are not substantiated against the applicant. Dr. Amit Singh being the media head of the University, used all his influence to tarnish the image of the applicant. The Investigation Officer has recorded the statement of some relatives of patients, who died precisely 4-5 years back but at that time no such complaint was made by any patients or relatives.

11. Learned counsel for the applicant in support of his submissions has relied upon the judgment of Hon'ble Supreme Court in the case of Jacob Mathew vs. State of Punjab and another reported in (2005) 6 SCC 1 as well as M.A. Bivji vs Sunita and others reported in 2023 SCC OnLine SC 1363.

12. Per contra, learned Government Advocate has opposed the bail application and has submitted that the applicant who is a qualified Doctor having precise knowledge and served as the Head of the Department Cardiology at Uttar Pradesh University of Medical Sciences (UPUMS) Saifai, Etawah (U.P.) is actively found involved in implantation of a non-MRI-compatible pacemaker in place of an MRI-compatible pacemaker by fraudulently deceiving the patients and by providing false information by illegally charging from the patients for the MRI- compatible pace makers in patients which includes patient belonging to the economically weaker sections.

13. He has invited attention of the Court towards the statement of the dependent of the deceased, which is annexed as Annexure 10 to the Counter Affidavit. He has also provided the list prepared by Dr.

Subhash Chandra containing the patients name, date of implantation etc. to the Circle Officer Safai in the present crime number.

14. On due consideration to the submissions advanced; perusal of the record and the facts that the applicant has no previous criminal history; reply given by the Vice Chancellor dated 10.12.2022 to the point wise query made by the Circle Officer Safai Nagendra Chauhan relating to the present crime number (Annexure-12), I am of the opinion that the applicant, who has no criminal antecedents, nothing has been brought to the notice of the Court that in case the applicant is released on bail his presence cannot be secured before the trial court or he will influence the investigation merely on apprehension without there being anything substantial on record, the applicant cannot be detained for indefinite period only on the apprehension that he might temper with the prosecution evidence.

15. In view of the discussion made herein-above, so also considering the judgment of Hon'ble Supreme Court in Jacob Mathew vs. State of Punjab and another reported in (2005) 6 SCC 1 as well as M.A. Bivji vs Sunita and others reported in 2023 SCC OnLine SC 1363, and without expressing any opinion on merits of the case, the bail application is allowed.

16. Let the applicant Sameer Saraf be released on bail in aforesaid case crime number subject to his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:

(i) The applicant will not tamper with the evidence during the trial.

(ii) The applicant will not pressurize/ intimidate the prosecution witness.

(iii) 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 such facts to the Court or to any police officer or tamper with the evidence.

(iv) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(v) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vi) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

Order Date :- 19th January, 2024

Madhu