

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 2134 OF 2015**

Dr.Mandar s/o Shrinivas Kale

.... **APPLICANT**

**V E R S U S**

The State of Maharashtra & Anr.

.... **RESPONDENTS**

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Mr. V.J.Dixit, Senior Counsel i/b

Mr. L.V.Sangit, Advocate for Applicant.

Mrs. S.G.Chincholkar, A.P.P. for R.No.1 – State.

Mr. Girish Nagori, Advocate for first informant.

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**CORAM : V.M.DESHPANDE, J.**

**DATE : 22<sup>nd</sup> JULY, 2015**

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**PER COURT :**

1. This is an application for grant of anticipatory bail since the applicant is apprehending his arrest in connection with Crime No. 29/2015 registered with Zilla Peth police station, District Jalgaon for the offences punishable u/s 304 (part II), 338, 465, 468 read with 34 of the Indian Penal Code.

2. Heard Mr. V.J.Dixit, learned Senior Counsel instructed by Mr. L.V.Sangit, learned counsel for the

Applicant, Mrs. S.G.Chincholkar, learend A.P.P. for Respondent No.1 – State and Mr. Girish Nagori, learned counsel for the first informant in extenso.

3. F.I.R. is lodged consequent to the order passed by the learned Chief Judicial Magistrate, Jalgaon on 16/03/2015 in Criminal Misc. Application No. 53/2015. By the said order, learned Chief Judicial Magistrate directed the police officer to investigate the matter after having gone through the application u/s 156 (3) of the Code of Criminal Procedure and the numerous documents filed along with the said application, enquiry report of three members Committee, which was accepted by the Civil Surgeon, learned Chief Judicial Magistrate opined that it discloses the commission of cognizable offence.

4. Before adverting to the submissions made by learned Senior Counsel, it will be useful to have the basic factual matrix in the case.

5. There exist Govt. hospital at Jalgaon. Said hospital is having separate department for newly born children [pediatric] ward. Patients from different strata of the society are admitted in the said hospital.

6. It appears that there was news-paper publication in the news-paper known as “Divya Marathi” of Nashik, whereat it was high-lighted about the abnormal deaths of the newly born children in the Govt. hospital at Jalgaon. It

appears that due to the said news-paper publication, hospital authorities constituted three men Committee to look into the matter. Accordingly, Committee consisting Dr. Milind Bare, Dr. Kiran Patil and Dr. Girish Patil was constituted. Said Committee, on 06/11/2014, submitted its report to the Civil Surgeon. Prior to finalization and submission of its report, said Committee gave fullest opportunity to the present applicant. He was heard and also his written submissions and say was also taken on record by the said Committee. It appears from the report of the said Committee that present applicant agitated on the basis of his order of appointment that he was not suppose to attend 24 hours emergency calls and his duty was to take one round and thereafter to do the job as per the instructions given by the duty Doctor.

7. After considering the explanation of the present applicant, said Committee found that though in the appointment order of the applicant, there is no mention about his duty in respect of emergency call, however, there are guide-lines which are applicable to the present applicant viz. (i) it is the duty of the Doctor who was appointed on contract basis like the present applicant to examine and give necessary medical treatment to the newly born children in the out patient department [O.P.D.], (ii) he should at least take minimum two round in Special newly born Care Unit [SNCU] and (iii) as per the requirement, after getting the call, to attend the hospital and attend the patient.

According to the said enquiry report, it was found that various calls were made to the present applicant, as those

are mentioned in the call book. It is specifically noted by the said enquiry Committee that in spite of the fact that the in-charge sister called the present applicant, however not on single occasion, present applicant has attended the emergency call. Daily he used to take round of half an hour without putting any notes on the required papers and used to leave the hospital. It is also noted by the enquiry committee that the present applicant was not taking emergency call and was not examining the emergency patient. This fact was brought to the notice of his superiors by the in-charge sister, however orally.

The tenure of the applicant in the said hospital as Pediatrician is from August, 2013 to June, 2014. During this period, there are 166 deaths of in-born children, whereas 367 deaths of out-born children, who were brought to the said hospital. Said Enquiry Committee finally reached to the conclusion that the present applicant was most negligent while discharging his duties and also it was noticed that his superiors were not having any control over the present applicant.

Said report also high-lights about various other things happening in the hospital, such as short-comings in respect of various equipments, etc.

It appears that in spite of the submission of the said report to the Civil Surgeon, by which it was pointed out that during the tenure of the applicant as pediatrician, there are about total 432 deaths, however no action was taken by the higher authorities of the present applicant for the reasons best known to them.

8. Since no action was taken in spite of the fact that it was noticed by the enquiry Committee of such high number of deaths in the said hospital, a public spiritualistic person by name Deepakkumar Gupta, who is driver by profession, has took job to point out all these things. He filed Complaint u/s 156 (3) of the Code of Criminal Procedure. Along with said application, it appears that he has filed various documents which he has obtained under Right to Information Act. He tried his level best to point out before the learned Magistrate that in spite of the fact that cognizable offence is committed, higher authorities of the applicant are not taking appropriate steps to book the culprits, who are responsible for such offence. Ultimately, after examining the said application, learned Chief Judicial Magistrate stepped in by passing the order dated 16/03/2015 directing the Investigating Officer to register the offence. That is how the present offence is registered.

9. Submission of the learned Senior Counsel for the applicant is that the present applicant was appointed on contract basis. When he was appointed, that time status of infrastructure in the hospital was poor. He also painstakingly pointed out that other vacancies of other Medical Officers were not filled and it was only the present applicant who was discharging his duty as Medical Officer. He also pointed out the paucity of supporting staff, necessary emergency equipments such as Oxygen, etc. He also pointed out that during the tenure of the applicant as Medical Officer in the said hospital, he has hardly taken leave and in fact he

was required to move application with the Civil Surgeon for granting him weekly off on Sunday.

Further, it is the submission of the learned Senior Counsel that, in fact during the applicant's tenure, death ratio was scale-down. According to the learned Senior Counsel, during the applicant's tenure, there were total 1909 admissions in the said hospital and out of that 1346 patients were successfully discharged, 228 patients were sent for higher examination and there were 335 deaths. Learned counsel further submitted that there is no allegation against the present applicant that he has not properly extended the medical aid to the needy newly born children. It is his further submission that the custodial presence of the applicant is not necessary in as much as the entire record is seized in the matter. The record is with the Investigating Officer or it is with the hospital authorities. In that view of the matter, learned Senior Counsel submitted that no fruitful purpose will be served by allowing the Investigating Officer to have the custodial presence of the applicant and, therefore, he prayed that the interim order granted by this Court be confirmed.

10. In so far as the deaths during the tenure of the applicant in the Govt. hospital at Jalgaon is concerned, it is not at all denied by the applicant. According to the prosecution and according to the enquiry report, total deaths are 432, whereas according to the applicant, total deaths are 335.

Three men committee has specifically recorded finding that the applicant was most negligent while

performing his duties. From the enquiry report, it appears that the applicant is trying to take advantage of not mentioning the condition in his appointment order that he should attend emergency patients. Such plea is highly misplaced. Profession of Doctor is not only noble profession, but said profession also requires 24 hours attendance when called by needy patient. Doctor can not absolve his duty on such flimsy ground that there is no condition in his appointment order that he requires to attend the emergency call. Further, even the Committee has also negated the said contention of the present applicant when it was put-forth before the said Committee.

11. It is noticed by the said fact finding Committee that various emergency calls were made to the present applicant, which are recorded in call book. Said call book was called by the sister/nurse in-charge at the time of hearing before the Committee. At that time, said sister/nurse pointed out various calls made to the present applicant. She not only pointed out that the emergency calls were made to the applicant, but also pointed out that none of the said call was attended by the present applicant.

In this behalf, learned Senior Counsel for the applicant has submitted that during the applicant's tenure, he has received total 94 calls and he has attended 82 calls. However, there is no reference of his attendance in pursuance to the emergency calls made to him by the concerned sister/nurse. Further, from the enquiry report it is crystal clear that the present applicant was unable to meet the said charge

before the Committee, as nothing is mentioned in the said enquiry report that the applicant has attended 82 calls.

12. In so far as custody of the present applicant is concerned, his custody will be absolutely necessary looking to the seriousness in the matter. Court can not forget that 432 newly born children were required to cut-short their lives for want of necessary medical aid. No doubt true it is that death is sure in everyone's life, however, only on that ground, Doctor can not avoid his responsibility. The submission of the learned Senior Counsel is that the statements of the sisters/nurse are recorded at belated stage. Court is afraid of accepting such submission on behalf of the applicant, for the reason that in spite of the submission of the report on 07/11/2014, for the reasons best known to the higher authorities, no prompt action against the culprits was taken requiring the public spiritualistic person to knock the door of the Court and only after the registration of the crime, if the statement of concerned sister/nurse is recorded, it can not be contended that as their statement is recorded at belated stage, it can not be looked into.

13. Learned A.P.P. pointed out statements of different sisters/nurse, who were working with the present applicant at the relevant time. Perusal of their statements shows very disturbing facts. Every nurse has stated in her statement that on various occasions when the calls were made by pointing out that the indoor newly born child is gasping for his/her life and Doctor should attend immediately, at no point of time,

present applicant shown curtsy to attend the hospital, leave apart offering any medical aid. No doubt true that the record is already seized by the Investigating Officer and/or is available with the hospital authorities, however, that can not be the reason for not granting custodial presence of the applicant looking to the gravity of the matter. Further, even according to the present applicant, he has attended 82 calls. Therefore, it would be just on the part of the Investigating Officer to confront the record to the present applicant and that can be done effectively only when the applicant is in custody.

14. Further, the act on the part of the present applicant can not be branded only as an act of negligence. When the emergency calls were made to the present applicant, that time it was made known to him that the condition of patients is serious one. They are battling for their lives. Therefore, applicant being the expert, it was his duty to attend said call immediately and give best possible medical aid to such needy patients, irrespective of its ultimate result. It was well within his knowledge that he is required at the hospital for giving treatment and in spite of such knowledge about the condition of the patients, applicant has willfully not attended the said calls, thereby caused deaths of newly born children.

15. All this require detail investigation at the hands of the Investigating Officer, not only in respect of present applicant but also in respect of other Doctors who are responsible for such untimely deaths of newly born 432

children. That leads me to pass the following order.

- (i) Present Criminal Application is hereby dismissed. Interim order granted by this Court in favour of the present applicant on 21/04/2015 stands vacated.
- (ii) Needless to mention, the observations made in this Order are purely *prima facie* in nature and for the purpose of deciding the present Criminal application.
- (iii) At this stage, learned Senior Counsel for the present applicant submits that the interim protection granted in favour of present applicant be continued for the period of four weeks. Said request is opposed by the learned A.P.P.

To challenge the order before the superior Court is the right of litigant. Further, even before the Court below the applicant was protected and this Court has also protected the applicant vide Order dated 21/04/2015. Therefore, the interim order passed by this Court in favour of the applicant on 21/04/2015 shall remain in operation till 19/08/2015. On the said date, interim order shall automatically seized to be in operation.

- (iv) With these observations, present Criminal Application is disposed of.

**[V.M.DESHPANDE, J.]**

KNP/Cr.Apln. 2134.2015