

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

ANTICIPATORY BAIL APPLICATION NO.696 OF 2016

Dr.Anagha Mahesh Sontakke & Anr. ... **Applicants**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Raja Thakare with Mr.Shreeram Shirsat with Mr.Harsh Parte with Bharat Manghani, Advocate for the Applicants.

Mr.Prakash N. Wagh, Advocate for the original complainant.

Mr.Dipak Thakre, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 7th JUNE 2016.

P.C.

1. Heard the learned counsel for the parties. This application is for grant of anticipatory bail, by the applicants, who are the medical practitioners apprehending arrest in Crime MECR No.2 of 2016 registered by Saki Naka Police Station for the offences punishable under Sections 304(2), 336, 337 and 339 of the Indian Penal Code.

2. Perused the documents made available by the learned Additional Public Prosecutor. It appears that one Mahadev Nitavdekar has filed complaint before the learned Magistrate at Andheri alleging that he has taken his wife-Savita to the applicant's hospital, where his wife has referred for Sonography.

After undergoing sonography, he was informed by the applicant No.1 that the foetus in her womb was no more surviving and, as such, was suggested to be hospitalized and in fact her husband had consented the applicant to do cesarean in case no normal delivery could take place. It is the case of complainant that in spite of his saying so, the applicant did not perform cesarean and ignoring his wife left the hospital and it is only on his request that they returned back to the hospital and after examining his wife informed that she may undergo normal delivery. However, on the same day at about 3.00 p.m. to 4.00 p.m. the complainant's wife-Savita expired, of which report was initially lodged with the police, however, since no cognizance was taken, complaint was lodged before the learned Magistrate.

3. This Court had granted the interim relief to the applicant by its order dated 16/04/2016. The application for grant of anticipatory bail was rejected by the Sessions Court for want of report of Dean of J.J.Hospital, as such holding that for want of said report it was not possible to hold as to what was the cause of death of Savita and to hold whether the applicants were negligent or not.

4. In view of the directions issued by the Hon'ble Apex Court in the case of Jacob Mathew v. State of Punjab & Anr. AIR 2005 SC 3180, the learned Additional Public Prosecutor has

placed on record the report of team of five Medical Officers of Government J.J.Hospital, Bombay, who have after considering the Hospital case, PM Report, Histo Pathology report, Chemical Analysis Report, reported that the deceased was attended by the applicants properly and the applicants were not negligent at any stage. The death of patient was due to Acute Respiratory Distress Syndrom (ARDS) with pulmonary Embolism in a case of Intra-Uterine Fetal Death (IUFD) and under such situation, the patient is likely to die within a short period even before providing any medical aid. It is, thus, finally opinion that there is no negligence on the part of either of the applicants. The report is taken on record and marked as **X Collectively**, for identification. Having considered such report, the application is liable to be allowed. Hence, following order.

5. Interim anticipatory bail granted to the applicants on 16/04/2016 is confirmed on the same terms and conditions, except for modifying the same to the effect that the applicants shall attend the Investigating Officer, if called for the purpose of investigation within the period of 15 days from today.

(P. N. DESHMUKH J.)