

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No. 40893 of 2015 (O&M)

Date of decision: 16.08.2016

Dr. Rajesh Aggarwal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate
for the petitioner.

Mr. K.S. Nalwa, Addl. A.G., Punjab
assisted by Inspector Nirmal Singh.

Jitendra Chauhan, J. (Oral)

By filing the present petition under Section 438 of the Code of Criminal Procedure, the petitioner has sought anticipatory bail in case FIR No.123, dated 30.07.2015, registered under Sections 465, 467, 468, 471, 420 IPC and Sections 18, 19 and 20 of Transplantation of Human Organs and Tissues Act, 1994 (for short 'the Act'), at Police Station Division No.7, Jullunder, District Jalandhar City.

2. It is submitted that the petitioner is a reputed urologist performing surgeries for the last 25 years. The petitioner is the Chief Surgeon of the National Kidney Hospital, Jalandhar wherein his wife

Deepa Aggarwal has 50% share. The hospital is duly licensed to perform transplant operations under TOHO Act, 1994.

3. The present FIR was registered on the basis of a Ruqa sent by ASI Zail Singh regarding information received that certain persons involved in illegal trade of kidneys could be apprehended near Baaj Hotel, Jalandhar. Information was received qua Junaid Ahmed Khan, Kuldeep Kumar, Sabur Ahmed Khan and Vardan Chander Rao only. There were no allegations against the petitioner, his wife or even the hospital. In fact, they were not even named in the FIR.

4. During investigation, all the four persons named above were arrested and subsequently they suffered separate disclosure statements to the effect that they had allured people in the illegal trade of selling their kidneys for a hefty amount in return. In his disclosure statement before ASI Zail Singh, accused Junaid Ahmed named Sadhna @ Ms Neena, who was working as coordinator at the hospital, as their accomplice who used to charge Rs. 50, 000/- for each transaction. It was further disclosed that Harvinder Singh who was working at Dr Lal Path Labs used to change the blood samples of the donor with that of the relative of the recipient in order to show that the donor was a blood relative of the recipient when in fact that was not the case. Harvinder Singh suffered confessional statement wherein he stated that for each changed sample, he used to charge a

sum of Rs. 1,50,000/-.

5. It is contended that present petitioner had applied for anticipatory bail to the Id Additional Sessions Judge, Jalandhar but his application was denied keeping in view the fact that the alleged operations had been conducted by him in a hospital which was partly owned by his wife and the fake identity cards and changed blood samples were procured with the help of Sadhna and Harvinder Singh from the hospital. The petitioner was neither named in the FIR, nor in the disclosure statements suffered by the accused persons. Moreover investigation did not disclose that the petitioner had received any financial benefit out of the said transactions.

6. It is further contended that in fact the kidneys were removed by co-accused Dr. Puneet Grover and the petitioner being the main surgeon, transplanted the same upon the recipients. The wife of the petitioner has been granted anticipatory bail vide order dated 12.01.2016. Moreover, co-accused Harvinder Singh, Junaid Ahmed and Sadhna @ Neena have all been granted the concession of regular bail. The investigation is complete and challan has been presented, therefore, custodial interrogation of the petitioner is not required.

7. On the other hand, the learned State counsel submits that petitioner is the main accused and all seven operations under consideration were conducted by the petitioner without adhering to

the procedure prescribed under the Act. During the course of investigation, the documents seized from the National Kidney Hospital were all found to be fake and fabricated. The transplants were done on the basis of fake documents that were prepared by accused Harvinder Singh and were verified by Sadhna, acting in her capacity as coordinator of the hospital.

8. It is further submitted that SIT was constituted to conduct detailed inquiry into all seven transplants. It emerged in the investigation that co-accused Dr. Deepa Aggarwal, wife of the present petitioner was owner / original licence holder of M/s Lal Path Labs where the blood samples were changed by Harvinder Singh. Moreover, all the transplants were conducted by the petitioner, being the main Transplant surgeon at the hospital. Out of the said seven recipients, three have expired and the others are stated to be in a critical condition.

9. From the investigation carried out, it became clear that accused Junaid Ahmed Khan used to obtain information about the persons in need of kidneys from other centres and then used to allure them to get the transplants done at National Kidney Hospital. Based upon the disclosure statements of accused Junaid Ahmed Khan and Harvinder Singh and the other material facts emerging from investigation, Neena Rani @ Sadhna who was shown to be transplant coordinator at the hospital, was nominated as an accused and arrested

on 10.08.2015. She suffered disclosure statement before the SIT on 11.08.2015, disclosing that Junaid Ahmed Khan prepared files of these patients with fake documents and replaced their photographs. She used to clear these files and received Rs. 50,000/ for each transaction. The documents pertaining to donors/ recipients were seized by the SIT and were found to be fake and fabricated.

10. Although these documents were prepared with the connivance of accused Neena @ Sadhna and were given clearance by her, she was an ordinary graduate who did not hold requisite qualification for such authorization and therefore, she cannot be treated as competent authority in this regard. As per requirements of the TOHO Act, the transplant surgeon was also required to record his satisfaction before performing transplants. Therefore, all the seven transplants were done on the basis of fake and fabricated documents without verification by the petitioner who was required to do so. Form 2 of the TOHO Act has to be completed by the transplant surgeon, but it was neither signed by him nor by the Authorization Committee. In a clear violation of the Rules of the TOHO Act, there was no hospital based authorization committee formed and the surgeries were conducted without any authorization.

11. Moreover, it is submitted that in all these transactions, a total amount of Rs. 89,50,000/- is involved. This amount was distributed amongst all the accused, including the present petitioner.

It has emerged during the course of investigation that the petitioner had received an amount of Rs. 1,75,000/- directly in his account in the case of recipient Ankit Arneja through Bank account No. 3093000117462833 of Anjur Arneja – brother of Ankit Arneja who is the alleged fake donor in this case. There is no plausible explanation for the payment of entire fee by the concerned patient in the bank account of the Hospital. Therefore, the prayer for dismissal has been made.

12. I have heard the learned counsel for the parties and perused the record minutely.

13. To appreciate the seriousness and magnitude of the matter, brief details of each of the surgeries under consideration is being narrated as under:-

(i) Kidney transplantation in the name of Wakar Khan was conducted on 04.07.2014 and name of the donor was shown as Manjoor Khan, resident of Kotwali Azamgarh, U.P. whereas names and addresses of both these recipient and donor are found to be fake as the original name of the recipient is Vaqar Ahmad Bhat son of Ghulam Ahmed Bhat, R/o Tail Bal, Sringer and name and address of the original donor is Juned Ahmed Khan, R/o Tehsil Madhra, District Ramipur, U.P. All the documents annexed on the file have been found to be fake and forged. The above stated recipient has died thereafter.

(ii) Kidney transplantation in the name of Shekh Qayum

R/o Sringar was conducted on 21.11.2014 and name of the doctor was shown as Maheer Nisha Mukhtiar wife of Shekh Qayum, the recipient, whereas names and address of the donor has been found to be fake as the original name of the donor is Phool Kumari @ Sudha wife of Danesh Thakur, R/o 188, Amar Colony, Village Bhamia, PS Sahnewal, Ludhiana. All the documents annexed on the file have been found to be fake and forged. The above stated recipient has died thereafter.

(iii) Kidney transplantation in the name of Mohd. Asim R/o Kanpur Rural, UP was conducted on 24.01.2015 and name of the donor was shown as Tariq Sadique, brother of the recipient Mohd. Asim, whereas name and address of the donor has been found to be fake as the original name of the donor is Satya Parkash Trivedi @ Ashu Trivedi @ Vicky S/o Naresh Chandra Trivedi, R/o 993-E, Gujan Vihar, Kanpur (Rural) UP. All the documents annexed on the file have been found to be fake and forged. The above stated recipient has died thereafter.

(iv) Kidney transplantation in the name of Mahinder Khurana R/o Lucknow was conducted on 01.04.2015 and name of the donor was shown as Sujata wife of the recipient Mahinder Khurana, whereas address of the recipient and identity of the donor were fake and forged as original address of the recipient has been found as H.NO.J-103, Main Bazaar Kalka Ji, New Delhi and original identity of the donor has been verified as Durga wife of Sanjay @ Suraj Pal R/o Ramayanki Mandir, near Bank Colony, PS Barara,

Kanpur, UP. All the documents annexed on the file have been found to be fake and forged.

(v) Kidney transplantation in the name of Poonam Jain wife of Pardeep Kumar Jain, R/o 224 Kailash Hills, East of Kailash, Delhi was conducted on 02.06.2015 and name of the donor was shown as Ayush, son of the recipient, whereas the identity of the donor has been found to be fake as the original identity of the donor has been found to be Iqbal Khan R/o Dubarga Chauhara, Lucknow, however, the original address could not yet been traced out and all the documents annexed on the file have been found to be fake and forged.

(vi) Kidney transplantation in the name of Ankit Arneja S/o Jatinder Arneja, R/o LL-17, Lajpat Nagar, Block-L, Lajpat Nagar-2, Delhi was conducted on 13.06.2015 and name of the donor was shown as Ankur Arneja, brother of the recipient, whereas the identity of the donor has been found to be fake as name of the original donor has been found as Mannu R/o Delhi, however, the original donor could not yet been traced out and all the documents annexed on the file have been found to be fake and forged.

(vii) Kidney transplantation in the name of Sunil Kaul S/o Nath Ji, R/o H.No.425, Ward No.6, Kotwali Bazaar, Tehsil Dharamshala, Himachal Pradesh was conducted on 27.06.2015 and name of the donor was shown as Govinda son of the recipient, whereas the identity of the donor has been found to be fake as name of the original donor has been found as Umar

Raja Khan, R/o near Military College, Lucknow, however, the original donor could not yet been traced out and all the documents annexed on the file have been found to be fake and forged.

14. The present FIR was registered on the basis of secret information as narrated in the aforementioned paras. The investigation reveals that accused, Junaid Khan had facilitated seven transplantations at National Kidney Hospital, Jalandhar which is owned to the extent of 50% by the wife of the petitioner, whereas remaining half owned by wife of co-accused, Dr. Puneet Gover who would remove the kidney of the donor to be subsequently transplanted by the petitioner. One Sadhna @ Neena of the hospital as well as lab technician Harvinder Singh of Dr. Lal Path Lab were also arrayed as accused in the present FIR. Investigation further discloses that accused Junaid Ahmed Khan in connivance with other co-accused used to allure the poor people to donate their their kidneys and prepare fake documents of the donors and the recipients. Perusal of the records would further reveal that co-accused Sadhna used to clear the files prepared on the basis of fake documents by co-accused Junaid Ahmed Khan on receipt of consideration of Rs.50,000/- for each file. All the seven cases were in her knowledge as well as co-accused Harvinder Singh.

15. The present petitioner being the main surgeon of the

hospital had performed seven transplantations in question without any verification and without adhering to the proper procedure prescribed under the Act. The petitioner was under an obligation to fill in Form No. 2, which is a mandatory requirement to be performed by the medical practitioner in order to verify the relationship between the donor and the recipient and to certify their consent for the surgery. A perusal of the record reveals that in one of the surgeries conducted by the petitioner, the Form was duly prepared but the petitioner did not append his signatures on the same. The act of the petitioner in carrying out the surgeries without complying with Form No. 2 indicates that even though the petitioner was aware of his obligation, he omitted from carrying it out for reasons best known to him. Keeping in mind his position and status in hospital hierarchy, it is very unlikely that the petitioner would not have knowledge of similar surgeries carried out by him and other co-accused in the hospital owned by his wife and wife of co-accused Dr. Puneet Grover to the extent of 50% each.

16. Considering the serious nature of allegations, the position occupied by the petitioner in the hospital hierarchy, that is, the Chief Surgeon and the crucial role allegedly played by him coupled with allegations of preparation and use of false/fabricated documents, this Court feels that no case for bail is made out at this stage.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

Dismissed.

17. Before parting, this Court feels that keeping in view the gravity and magnitude of allegations and the manner of execution, it would be in the larger interest of society that an inquiry into surgeries carried out during the last three years be conducted. This Court while exercising its jurisdiction under Section 482 Cr.P.C., directs the State of Punjab-Respondent to enquire into the matter and submit a comprehensive report before this Court indicating the number of surgeries performed, the details of the recipients and the donors and whether the surgeries performed were after due compliance of the TOHO Act, within three months from the date of receipt of certified copy of this order.

Post the matter on 21.11.2016.

The Registry is directed to send a copy of this order to the learned Chief Secretary, Punjab for due compliance of the directions issued by the Court.

16.08.2016

sumit.k

(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable:	Yes	No

