

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1248 of 2016

- Dr. Anil Kumar Kadam S/o Late B.S. Kadam Aged About 62 Years R/o Sector-9, Street-36, House No.-6 A, Bhilai, Police Station Bhilai Nagar, Tehsil, Civil & Revenue District Durg, Chhattisgarh. --- **Applicant**

Versus

- State of Chhattisgarh through Police Station Newai, District Durg, Chhattisgarh. --- **Respondent**

For the applicant : Mr. Jaideep Singh Yadav, Advocate.
For the State : Mr. Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

08.03.2016

1. Apprehending arrest in connection with Crime No. 251/2016 registered at Police Station Newai, Distt. Durg (C.G) for the offences punishable u/s 304(II) of IPC, the applicant has filed this application u/s 438 of the Code of Criminal Procedure.
2. As per the prosecution case, the applicant is a doctor and after his retirement from Indian Army, he joined Bhilai Steel Plant on contractual basis. A report was made on 17.09.2016 that a baby boy was born to one Smt. Urwasi, wife of Sunil Dewangan at about 2.30 a.m. Thereafter the infant passed urine and also cried. Subsequently in the morning the applicant examined it and placed in incubator of 200 Watt bulb. During such incubation the infant sustained burn injuries to the extent of 6-7%. It is alleged that while the baby was kept in the warmer after some time it started crying,

therefore, father of child Sunil Dewangan requested to see the infant, but despite his request the applicant did not turn up and on repeated request, when the applicant brought out the child from the warmer, it was observed that the infant sustained burn injuries and later it was referred to other hospital where despite the efforts the child has died.

3. Learned counsel for the applicant would submit that after delivery male child, it requires certain degree of warmth without which the survival of the child would be difficult and the applicant has discharged his duty as a Doctor and gave treatment according to the guidelines. He referred to a case law reported in ***(2005) 6 SCC 1 Jacob Mathew Vs. State of Punjab & another*** and would submit that the negligence cannot be attributed and a simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of medical professional. He submits that in the facts and circumstances of the case, no offence is made out and the applicant may be admitted to anticipatory bail.
4. Per contra, learned State Counsel opposes the prayer.
5. Perused the case diary. It shows that a detailed enquiry was conducted by the State through Chief Medical and Health Officer, Distt. Durg who gave report dated 28.09.2016 wherein it was found that while giving treatment on account of premature baby, 6% superficial burns were caused within 15 minutes. However, the negligence of the applicant was pointed out that despite requests of the family members, he did not go to see the

child while it was crying thereby the applicant has committed crime.

6. Considering the report of Chief Medical and Health Officer and the facts and circumstances of the case, I am not inclined to extend the benefit of section 438 Cr.P.C., to the applicant. Accordingly, the bail application is rejected.

**Sd/-
GOUTAM BHADURI
JUDGE**

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