

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPTORY BAIL APPLICATION NO. 450 OF 2017**

Rajaram Raosaheb Lawate	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Arun D. Mishra for the Applicant

Mr. Deepak Thakare, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 26th APRIL, 2017

P.C.

1. Heard learned Counsel for the applicant.
2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No. 90 of 2017 registered with the Sangola Police Station, for the alleged offence punishable under Section 304 of the Indian Penal Code.
3. Learned Counsel for the applicant submitted that the applicant is a B.A.M.S Graduate, who is allowed to practice Allopathy in Maharashtra and as such is a trained doctor. He submitted that the

applicant has several Certificates to show that he had taken training at different Hospitals. According to the learned Counsel, the applicant was competent to give blood transfusion. He further submitted that taking the prosecution case as it stands, no offence under Section 304 of the IPC is disclosed and that at the highest, the offence, if any, would be one under Section 304A of the IPC.

4. Learned A.P.P submits that the applicant had taken the patient to the ICU Unit, in his Hospital, which was shut down. Learned A.P.P does not, however, dispute the fact, that the applicant being a B.A.M.S, was qualified to do blood transfusion. Learned Counsel relied on the report of the Civil Surgeon, Solapur, that the patient might have died due to wrong treatment. He submitted whether the applicant could be liable for an offence under Section 304 or 304A, is a matter which will be decided by the trial Court.

5. Perused the papers. According to the complainant-Umesh Khandagale his wife Ujjvala was unwell on 16th November, 2016. Ujjvala had body-ache and fever and hence, was taken to a doctor. After Ujjvala's

pathological examination was done, it was diagnosed that her blood count had come down. Hence, she was asked to go to the applicant's hospital, where there was provision for blood platelet transfer. Pursuant thereto, on 17th November, 2016, Ujjvala was admitted to the applicant's hospital i.e. Vitthal Hospital at Sangola. On 17th November, 2016, in the evening, the applicant asked the complainant to bring 10 packets of blood platelets as Ujjvala's blood count had come down. Ujjvala was thereafter given platelets. On 18th November, 2016, at around 7:00 p.m., the applicant is again alleged to have told the complainant to bring 5 packets of platelets. On the very same day, at about 11:00 p.m., in complainant's presence, platelets were again administered to Ujjvala. In the intervening night between 18th and 19th November, 2016, at about 2:30 to 3:00 a.m., Ujjvala started feeling uneasy and suddenly became unconscious, pursuant to which, the applicant examined and advised the complainant to shift her to a better hospital. The applicant accompanied the complainant and Ujjvala to Dr. Inamdar's hospital i.e. Ashwini Hospital at Akluj at about 5:45 a.m. During Ujjvala's CT-scan, Dr. Inamdar informed that Ujjvala had expired.

6. Perused the papers. As far as the prosecution case, that the applicant being a B.A.M.S Graduate, was not qualified to do blood transfusion is concerned, learned A.P.P does not dispute the fact, that B.A.M.S Graduates are allowed to practice Allopathy in Maharashtra. As far as the submission of the learned A.P.P that the applicant was running an ICU without authorisation is concerned, the same is vehemently disputed by the learned Counsel for the applicant. According to the learned Counsel for the applicant, the applicant's hospital had received a notice dated 27th November, 2015, asking them to shut down the ICU, pursuant to which, the same was shut down. He submitted that the ward was thereafter called a Special Care Ward and not used as an ICU.

7. Blood transfusion/platelets does not necessarily have to be given in an ICU and that the same would depend on the condition of the patient at the relevant time. *Prima facie*, it is doubtful, if an offence under Section 304 of the IPC is disclosed, in the facts of this case. Having regard to the nature of allegations, custodial interrogation of the applicant is not necessary. The applicant has attended the concerned Police Station as

directed vide order dated 16th March, 2017, pursuant to the interim protection granted by this Court.

8. Considering the aforesaid, the application is allowed and the applicant is granted pre-arrest bail on the following terms and conditions :

ORDER

(i) In the event of the arrest, the applicant be enlarged on bail on executing P.R. Bond in the sum of Rs. 50,000/- with one or two solvent sureties in the like amount ;

(ii) The applicant shall report to the Investigating Officer of the concerned Police Station as and when called, till the filing of the charge-sheet;

(iii) The applicant shall not tamper with the evidence or attempt to influence the complainant, witnesses or any person concerned with the case.

(iv) The applicant shall not leave India without the prior permission of the trial Court;

(v) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile

details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vi) The applicant to cooperate with the investigating agency.

9. The application is allowed in the aforesaid terms and is accordingly disposed of.

10. It is made clear that the observations made herein are *prima facie*, for the purpose of deciding this application.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.