

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.736 OF 2017

Amin Chand Shikalgar

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr.U.R.Mankapure, Advocate, for the Applicant

Mr.Deepak Thakare, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 25.04.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks pre-arrest bail in connection with C.R.No.30 of 2017 registered with the Islampur Police Station, District – Sangli, for the alleged offence punishable under Section 316 of the Indian Penal Code (For short “IPC”).

3. Learned counsel for the Applicant submitted that the Applicant is a qualified Doctor having completed his M.B.B.S. degree and is registered with the Maharashtra Medical Council. He submitted that the Applicant and his wife are running a

hospital by the name 'Shikalgar Hospital', under the Bombay Nursing Home Act. He submitted that the Applicant has been practising as a Doctor for 24 years. He submitted that taking the prosecution case as it is, no offence as alleged under Section 316 of the IPC is disclosed. He submitted that the only allegation against the Applicant is that either he should have performed Pallavi's caesarean operation or should have atleast informed the Complainant and others earlier, that Pallavi should be taken to some other hospital, for further treatment.

4. Learned APP is unable to justify the allegations made against the Applicant under Section 316 of the IPC.

5. Perused the papers.

6. The incident in question has taken place on 04.08.2016. According to the Complainant, his daughter - Pallavi was to deliver in the Applicant's hospital. He has stated that the Applicant had disclosed that Pallavi would have a normal delivery. According to him, Pallavi was in great pain, however, the Applicant was not available at the relevant time and when he came, he saw Pallavi's condition and asked the

Complainant to take her to Krishna Charitable hospital at Karad. At Krishna hospital, the Doctors opined that the unborn child was dead and that it was necessary to perform a caesarean operation. According to the Complainant, had the Applicant either performed Pallavi's caesarean or had referred her to another hospital in time, the unborn child could have been saved. The Complainant has alleged that by the said act, the Applicant has been negligent, as a result of which, the unborn child died in the womb. Pursuant thereto, Pallavi's father lodged the aforesaid complaint. The said complaint was lodged on 21.01.2017. It also appears that pursuant to the said incident dated 04.08.2016, the Complainant and others had gone to the Applicant's hospital i.e. 'Shikalgar hospital' and damaged the hospital and made the Applicant write on his letter pad that he is ready to pay compensation for the treatment and got him to issue a cheque of Rs.5,00,000/-. Pursuant to the same, the Applicant lodged an FIR dated 07.08.2016 alleging offences punishable under Sections 386, 452, 323, 427, 142, 147, 149, 506 of the IPC as against the Complainant and others.

7. In the peculiar facts of this case, considering the nature of allegations, it is prima facie doubtful, if an offence

under Section 316 of the IPC is disclosed. Accordingly, the Application is allowed and the Applicant is granted pre-arrest bail on the following terms & conditions:-

O R D E R

- (i) In the event of arrest, the Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;
- (ii) The Applicant shall report to the investigating officer of the concerned police station as & when called for till the filing of the charge-sheet;
- (iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear, that the observations are prima facie only for the purpose of deciding this Application.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)