

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1343 OF 2017**

Dr. Varsha Shivaji Lahade

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. A. P. Mundargi, Sr. Counsel I/b Mr. Jayant Joseph Bardeskar for the Applicant

Mr. S. S. Pednekar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 14th JULY, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks her enlargement on bail in connection with C.R. No. 125 of 2017 registered with the Sarkarwada Police Station, for the alleged offences punishable under Sections 312, 313, 315, 316, 201 r/w 34 of the Indian Penal Code and under Sections 3, 4(b), 5 of the Medical Termination of Pregnancy Act, 1971.
3. Learned Senior Counsel for the applicant submitted that the applicant was in-charge of the MTP Ward of the Civil Hospital, Nashik and

has dedicated 22 years in this field. He submitted that the applicant was employed as a Medical Officer, Class-I in the Gynecology and Obstetrics Department of the Civil Hospital, Nashik and that after the aforesaid case was registered, she was posted to Jalgaon. He submits that no offence as alleged under Sections 312 and 313 of the Medical Termination of Pregnancy Act, are disclosed *qua* the applicant. He submitted that the applicant has been in custody since 20th April, 2017.

4. Learned A.P.P opposed the application. He has tendered the statements of the witnesses as well as the 164 statements.

5. Perused the papers. The complaint is lodged at the instance of one Vijay Dekate, a Medical Officer attached with the Nashik Municipal Corporation. He has alleged that he received information from Dr. Aarti Chirmade that in the MPT Ward of Civil Hospital, Nashik, the applicant had terminated pregnancy of 24 weeks of one patient, by name-Seema. It is also alleged that the applicant had accepted a sum of Rs. 20,000/- from the said patient- Seema, for terminating her pregnancy by getting her admitted in the Civil Hospital. Pursuant to the said information, the

complainant along with other Medical Officers raided the Civil Hospital, Nashik on 23rd February, 2017 at about 4:30 p.m. along with the panchas. On inquiry with one nurse-Preeti and on perusal of the records of the MPT Department, it was revealed that the said patient whose pregnancy was terminated in the 24th week, was already discharged. Thereafter, opinion of two Gynaecologists was sought. As per the report of Dr. Sanjay Ahire, the foetus was suffering from a complex heart disease and had three holes and needed cardiac intervention. The foetus also showed that the growth of brain was not as desired. According to Dr. Kamlakar Jadhav, at about 10:00 p.m. that night, he had called the relatives of the patient and had handed over the foetus to the parents, without getting the post-mortem done. According to the prosecution, the procedure adopted by the applicant was against the Rules of Medical Termination of Pregnancy Act.

6. Initially, the patient-Seema and Dr. Kamlakar Jadhav were arraigned as accused, however, as of today, only the applicant has been arraigned as an accused and that Dr. Jadhav and Seema have been made witnesses. The 164 statement of Seema shows that her one kidney was removed. Her statement also shows that she was informed by Dr. Shelke

that her pregnancy could be dangerous, as she had only one kidney. However, she started her treatment and in September, 2016, she became pregnant. Thereafter, she was undergoing regular treatment. When Seema was about 6½ – 7 months pregnant, again sonography was done, to find out, whether the child's growth in the womb was normal. Seema has stated that, it was disclosed to her, that there were three holes in the child's heart. She has further stated that she was sent to Dr. Chavan, for getting the sonography done again and that Dr. Chavan also disclosed the same to her i.e. about holes in the heart and that the brain of the child was not growing as desired. Dr. Chavan showed the sonography report to Dr. Shelke, who suggested that the report be shown to the applicant. Accordingly, they went to the Civil Hospital to meet the applicant, however, she was not there. According to Seema, when she learnt about the child's condition, she was disturbed and started bleeding and hence, got herself admitted in the Civil Hospital and her treatment started. Seema has stated that on the next day, the doctor on duty, informed her about the danger to the child. She has stated that on the same day, she gave birth to a dead child.

7. It appears that the investigation is almost complete and the statements of witnesses, including the 164 statements have been recorded.

8. Considering the aforesaid, continued custody of the applicant is not required. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) The applicant shall stay out of jurisdiction of Nashik City, 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;
- (iv) The applicant shall inform her 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;
- (v) The applicant to cooperate with the conduct of the trial.

9. The application is accordingly disposed of.
10. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.
11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.