

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.62645 of 2017

Arising Out of PS.Case No. -3229 Year- 2016 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Dr. Pranay Kumar Sinha, Son of Late Parmeshwar Sinha, Resident of DS-33 (Manas Nursing Home), Opposite Kankarbagh Police Station, P.s.- Kankarbagh, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar Through Senior Superintendent of Police, Patna.
2. Prabhat Kumar Singh, Son of Late Pramod Prasad Singh, Resident of Lakhanchand Kothi, Rajendra Path, P.S.- Kadamkuan, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. P. N. Shahi, Senior Advocate with
Mr. Vikash Kumar, Advocate

For the Opposite Party/s : Mr. Shailendra Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 05-01-2018 Heard learned counsel for the petitioner and learned

Additional Public Prosecutor of the State.

The petitioner is apprehending his arrest in connection

with Complaint Case No. 3229 (C) of 2016 registered for offences

punishable under Sections 304 and 316/34 of the Indian Penal

Code.

The allegation against the petitioner is regarding the

daughter of the complainant, namely Pallavi Kumari, who was



pregnant, and under treatment of the co-accused, namely, Dr. Prabha Kumari being given wrong diagnosis upon pathological tests being conducted by the petitioner. However, later on it transpired that the victim was suffering from Dengue disease as found from the pathological test done at another place. It has further been alleged that the baby died in the abdomen of the daughter of the complainant and she became serious, where after, she was brought to Kurji Holy Family Hospital and there it was detected that the victim was suffering from dengue and subsequently, the victim died. It has been further alleged that on account of wrong report given by the petitioner, proper treatment could not be under taken and therefore, it resulted in the death of the daughter of the complainant.

Learned Senior Counsel for the petitioner submits that as far as the petitioner concerned, he is a partner of Manas Nursing Home, Patna where Manas Lab is situated, hence, he can not be made solely liable for negligence. It is further submitted by the learned counsel for the petitioner that in such cases, where the opinion of the pathologists is given, no criminal liabilities would



lie and in this connection, learned Senior counsel refers to a case **reported in 2005 Vol-6, SCC, page-1 (JCOB Mathew Vs State of Pubjab and Another)**. It is thus submitted that no offence is made out under Sections 304 and 316 /34 of the Indian Penal Code.

It has been contended that as far as Pathological examination report is concerned, there can be difference of opinion from one Pathologist to another, as well as the opinion may vary from time to time when the patient is examined independently.

It is the contention of the learned senior counsel that it is a trite law that for an act to amount to criminal negligence, the element of mensrea must be shown to exist. In order to prosecute a medical professional for negligence under Criminal law, it must be shown that accused doctor did something or failed to do something, which in the given facts and circumstances, no medical professional in his ordinary senses ordinary senses and prudence would have done or failed to do, hence hazard taken by accused doctor should be of such a nature that injury, which



resulted was most likely imminent. However, none of the said factors are in the present case in as much as, no such allegation has been made in the F.I.R.

Having regard to the facts and circumstances of the case, more particularly in view of the judgment of the Hon'ble Apex Court referred to herein above, I find the present case to be a fit case for grant of anticipatory bail to the petitioner.

Accordingly, above named petitioner is directed to be released on anticipatory bail in the event of his arrest/surrender before the Court below within six weeks from today on furnishing bail bond of Rs. 10,000/-(Rs. Ten thousand) on furnishing bail bond of Rs. 10,000/-(Rs. Ten thousand) with two sureties of the like amount each to the satisfaction of Smt. Sangita Rani, learned Additional Chief Judicial Magistrate, Patna in connection with Complaint Case No. 3229 (C) of 2016, subject to the conditions enumerated under Section 438 (2) of Code of Criminal Procedure.

(Mohit Kumar Shah, J)

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