

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18136 of 2018

Arising Out of PS.Case No. -16 Year- 2018 Thana -OBRA District- AURANGABAD

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Surendra Singh @ Dr. Surendra Kumar @ Surendra Kumar Son of Sohrai
Singh Resident of Village- Bhadur Bigha Chaknwa, P.S. Indrapuri, District-
Rohtas, at Present Kharari, P.S. Obra, District Aurangabad.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Sanjay Kumar Tiwary

For the Opposite Party/s : Mr. Bishwa Jeet Pandey

For the State : Mr. Ajay Kumar-2

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 31-05-2018 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The petitioner seeks bail in connection with Obra P.S.
Case No. 16 of 2018 for the offences punishable under Section
304 of the Indian Penal Code.

The allegation is regarding the petitioner having operated
the deceased Rekha Devi on 09.11.2017 and during the course
thereof it is alleged that the patient developed certain
complications whereafter the petitioner was treated elsewhere and
finally she died at another place, while being treated, i.e. at
B.H.U., Varanasi on 17.01.2018.

The learned counsel for the petitioner has submitted that
the petitioner is not a doctor, hence there is no question of him



having operated the deceased Rekha Devi. The fact is that the petitioner runs a treatment centre namely Sai Hospital Private Limited and the petitioner is engaged in its administration where various doctors are attached and they treat the patient. It is further submitted that the present case has been lodged with mala fide intention and oblique motive which is apparent from the fact that the deceased is said to have been treated in the aforesaid Sai Hospital Private Limited on 09.11.2017 but her death took place at B.H.U., Varanasi on 17.01.2018.

It is a trite law that negligence in civil law may not necessarily be negligence in criminal law and it is the amount to damages incurred which is determinative of the extent of liability in Tort but in criminal law it is not the amount of damages but the amount and degree of negligence i.e. determinative of liability. It is equally a well settled law that negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution. Thus in nutshell the settled law is that in order to prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances, no medical professional in his ordinary senses and prudence would



have done or failed to do. In the present case, the aforesaid ingredients necessary to attract criminal prosecution under section 304-A of the Indian Penal Code is clearly missing. The petitioner is stated to be having a clean antecedent and he is languishing in custody since 10.02.2018.

Having regard to the facts and circumstances of the case, the petitioner, above named, is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Aurangabad in connection with Obra P.S. Case No. 16 of 2018.

(Mohit Kumar Shah, J)

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