

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1429 OF 2018**

Dr. Babaso Appaso Khidrapure. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. A.P. Mundargi, Sr. Counsel I/b. Mr. Subir Sarkar, Advocate for applicant.

Mr. Prashant Jadhav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 1, 2018.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 7/3/2017 in Crime No. 53 of 2017 registered at Miraj Police station for offence punishable under section 304, 313, 314, 315, 316, 318, 419, 420, 201, 176, 109 read with section 34 and 120(B) of the Indian Penal Code, under section 33, 34 of the Maharashtra Medical Practitioners Act, under section 4(B), 5(2), 5(3) and 5(4) of the Medical Termination of Pregnancy Act under section 3 and 6 of Mumbai Nursing Homes Registration Act

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and 18(c) and 27(b)(ii) of Drugs and Cosmetics Act.

3 It is the case of the prosecution that one Sunil Babaso Jadhav, an unfortunate father of Swati Jamdade lodged a report at the police station on 3.3.2017 alleging therein that his daughter Swati was married to Pravin Jamdade. She was a mother of two daughters who were four years and one and half years old. His daughter had expired on 1.3.2017. It is the case of the complainant that his daughter had conceived pregnancy. That she was taken to the hospital. The scan report shows that the growth of child was fair enough. His son-in-law Pravin had specifically told his wife and father-in-law that he does not wish to have a daughter for the third time and he wants to have a son. On 26.2.2017, Swati had informed that she is going for a pre-natal diagnostic. The parents had refused. They had learnt that on 1.3.2017, they had gone to Mhaishal for pre-natal diagnostic. Her sister-in-law Seema had accompanied her on 2.3.2017. They learnt that Swati had expired. They had been to the hospital and they had learnt that in the process of terminating pregnancy in the hospital of Dr. Khidrapure, Swati had succumbed and had expired. The first informant had specifically stated that at the time of undergoing the process of medical termination of pregnancy, Swati was pregnant of more than 18 weeks. On the basis of the said report, Crime No. 53 of 2017 was registered at Miraj Rural Police

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Station against Dr. Khidrapure. Investigation is completed and chargesheet is filed.

4 It is true that Swati had been taken to the hospital of Dr. Khidrapure i.e. the present applicant. She had expired in the process of terminating pregnancy.

5 The cause of death certificate shows that death due to hemorrhagic shock due to rupture of tubal pregnancy. The post mortem notes indicates that -

Uterus measuring 10.5 cm x 6.5 cm x 3 cm. On opening cavity no injury/hemorrhages noted. Left sided fallopian tube distended at ampullary region, measuring 11.5 cm x 9.5 cm. X 8 cm. Evidence of rupture noted over posterior wall of size 1 cm x 0.5 cm with oozing of blood through rupture site. On opening the tube from anterior aspect gestational sac containing fetus along with placenta attached to posterior wall of tube noted.

Fetus-crown head length 22 cm. Weighing 165 gms. Nails identifiable. Eyes closed. Lanugo hairs present over body. Genitals - ambiguous and will be confirmed on histopathological examination.

Umbilical cord intact, length 27 cm.

No any congenital anomaly noted on gross examination.

Right side tube, both ovaries and adnexa intact.

6 Learned Senior Counsel appearing for the applicant submits that the applicant would file an undertaking in this Court within one week from the date of his release and also to Miraj Police Station that he would discontinue his medical practice till conclusion of the trial. At this stage, learned APP also submits that he would also inform to the Maharashtra Council of Homeopathy, Mumbai that the applicant has been charge-sheeted in the present case for offence punishable under section 304, 313, 314, 315, 316, 318, 419, 420, 201, 176, 109 read with section 34 and 120(B) of the Indian Penal Code, under section 33, 34 of the Maharashtra Medical Practitioners Act, under section 4(B), 5(2), 5(3) and 5(4) of the Medical Termination of Pregnancy Act under section 3 and 6 of Mumbai Nursing Homes Registration Act and 18(c) and 27(b)(ii) of Drugs and Cosmetics Act.

7 Taking into consideration the fact that the applicant has been in custody for more than one year, the applicant deserves to be enlarged on bail as it is also matter of record that the husband of Swati namely Pravin Jamdade has also been enlarged on bail by this Court vide order dated 23/7/2018. In fact, he was instrumental in taking Swati to the hospital of Dr. Khidrapure through agent. Grant of bail would not absolve the applicant of the offences punishable under section 304 and 201 read with section 34 of the Indian Penal Code.

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8 The observations are prima facie and restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration for discharge application or at the time of trial.

9 Hence, following order is passed :

ORDER

- (i) The application is allowed.
 - (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or more solvent sureties in the like amount.
 - (iii) The applicant shall given an undertaking to this Court that he would abstain from medical profession till the conclusion of the trial.
 - (iv) The applicant shall not leave district Sangali till the conclusion of the trial.
 - (v) The applicant shall surrender his passport, if any, to Miraj Rural Police Station.
 - (vi) The applicant shall not tamper with the evidence.
- 10 The application is disposed of accordingly.