

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83406 of 2019**

Arising Out of PS. Case No.-146 Year-2019 Thana- IMAMGANJ District- Gaya

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RAM LAKHAN PRASAD @ DR. RAM LAKHAN PRASAD S/o Late
Radhey Prasad Resident of Village- Raniganj, P.S.- Imamganj, Dist- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Adv. Mr. Ramashish, Adv.
For the Opposite Party/s	:	Ms. Anita Kumari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

4 29-06-2020 Heard learned counsel for the parties.

2. This application for anticipatory bail arises out of Imamganj P.S. Case No. 146 of 2019, disclosing the offence under Sections 304, 420, 506 of the Indian Penal Code (hereinafter referred to as ‘the Code’).

3. The petitioner, admittedly, does not have any qualification to practice medicine. It is alleged in the FIR that he runs a medical clinic and admits patients in his clinic for surgical operations. It is alleged in the FIR that the informant’s wife was pregnant and for delivery of baby she was to be taken to Gaya. Noticing existence of a clinic on way to Gaya, the informant enquired in the clinic whether there was any facility of delivery of babies of a pregnant woman or not. The



petitioner, was though not qualified, admitted the informant's pregnant wife in his clinic and fraudulently/ dishonestly induced the informant to pay initially a sum of Rs. 10,000=00, for the said purpose. He, subsequently, told the informant that a major surgical operation had been carried out for delivery of the baby. The condition of the informant's wife deteriorated and finally she died in the next morning. An information to the aforesaid effect was given to the local police by the informant but before the police could reach the petitioner's clinic, he had stealthily left the place. This is precisely the case of the prosecution as disclosed in the FIR. Sections 304, 420 and 506 of the Code have been mentioned in the FIR, which offences, according to the police, the aforesaid allegation makes out.

4. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the petitioner has submitted that the petitioner is merely the owner of the house, in which the clinic is located, run by one qualified medical practitioner, namely, Dr. Barun Kumar Sharan who had conducted the operation in question. According to him, the petitioner holds a diploma qualification and does only basic treatment.

5. Case diary has been called for, which is there on record, from which it appears that the petitioner has been found



to be running the said clinic on the basis of evidence collected in course of investigation, despite having no qualification in Medicine. The witnesses have supported the case of the prosecution to the extent that the informant's wife was treated in the petitioner's clinic. The witnesses have also supported the fact that the petitioner had received training as a 'Compounder' under some qualified medical practitioner and he is the person who runs the clinic.

6. If what is alleged in the FIR is treated to be correct at its face value, a question, in my opinion, arises as to whether the same constitutes an offence punishable under Section 304 of the Code or under Section 302 of the Code. This is required to be addressed since in the light of the Supreme Court's decision in case of *Jai Prakash Singh vs. State of Bihar and others* reported in **(2012) 4 SCC 379**, anticipatory bail should normally not be granted in a case constituting an offence punishable under Section 302 of the Code. This is the reason why I have proceeded to examine and address whether levelling of Section 304 of the Code in the FIR is, *prima facie*, correct or not.

7. Section 299 of the Code defines the act of 'culpable homicide' and encompasses an act causing death by a person with (i) the intention of causing death or (ii) with the intention



of causing such bodily injury as is likely to cause death or (iii) the knowledge that he is likely by such act to cause death. The petitioner was not qualified to undertake surgical operation on a human being. He had the knowledge that his act of undertaking such surgery was likely to cause death because of the lack of expertise and essential qualification. Section 300 defines murder and states that a 'culpable homicide' is a murder except in the cases excepted therein. A culpable homicide is murder, if, *inter alia*, "the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid". There are three exceptions when a culpable homicide is not a murder, as stipulated in Section 300 of the Code, which are as under :

"Exception 1.- When culpable homicide is not murder.- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

First.- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing



harm to any person.

Secondly.-That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.-That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.-Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.”

8. I am of the tentative view that if a person having no requisite qualification undertakes surgical operation on a living human being of the nature, as alleged in the FIR, such act comes within the expression “so imminently dangerous that it must, in all probability cause death or such bodily injury as is likely to cause death”. I am, thus, of the view that the FIR could have been registered for offence punishable under Section 302 of the Code on the basis of what has been alleged in the FIR instead of Section 304. Whether an offence under Section 302 of the Code is made out on the basis of materials collected in course of investigation is an aspect to be examined by the Investigating Agency. It is clarified that the observation, which I have made in the present order, should not be treated as the Court’s finding and are only for the purpose of considering the petitioner’s



application for grant of anticipatory bail.

9. After having observed thus, I am not inclined to grant the petitioner privilege of anticipatory bail, considering the gravity of the allegation against the petitioner and in the light of the Supreme Court's decision in case of ***Jai Prakash Singh*** (supra).

10. This application is accordingly rejected.

11. However, the petitioner is directed to surrender before the Court below within four weeks from today and seek regular bail, if so advised. If he does so, his application for regular bail shall be considered on its own merit without being prejudiced by rejection of the present application for grant of anticipatory bail by this Court.

12. Let a copy of this order be communicated to the Director General of Police, Bihar for the needful.

(Chakradhari Sharan Singh, J)

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