

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CR. ANTICIPATORY BAIL APPLICATION NO.83 OF 2020

Hemlata Purandas Hassani

....Applicant

V/s.

The State of Maharashtra

....Respondent

**WITH
CR. ANTICIPATORY BAIL APPLICATION NO.2769 OF 2019**

Shabu Mathew

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Hrishikesh Mundargi i/b. Madan Gupta, for the Applicant in ABA No.83 of 2020 & ABA No.2769 of 2019.

Smt. Veera Shinde, APP for the Respondent-State.

Mr. Ramesh More, PI, Byculla Police Station, Thane- Mumbai, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 15th January, 2020

P.C.:

1. These are applications for Anticipatory Bail in connection with C.R.No.425 of 2015, registered with Byculla Police Station, Mumbai, for the offences punishable under Sections 409, 420, 467, 468, 471, 120B r/w 34 of the Indian Penal Code.

2. The prosecution case is that, the First Informant is working with State Hospital Commissioner office to check bills related to the ESIC scheme. It is alleged that the State Hospital Commissioner office, Lower Parel, Mumbai has entered an agreement with Balaji Hospital, Byculla for ESIC scheme for a period from 2008 to 2012. Thereafter, Balaji Hospital submitted the cashless bills for the aforesaid period to Senior State Hospital Commissioner office, Lower Parel, Mumbai. The Balaji Hospital has submitted the bills of ESIC scheme beneficiaries. Used stent and balloons, forged 23 bills worth Rs.12,03,649/-. The hospital also fabricated bills of Rs.36,79,713/-, Rs.39,95,000/-, Rs.39,88,132/-. The total amount in fabricated documents was Rs.28,66,494/-. The first information report was lodged on 01st December 2015.

3. Initially C-Summary report was submitted by the investigating machinery to the Court in 2016. It was stated that the dispute is of civil nature. The complainant had initiated complaint against Balaji Hospital. Initiating criminal prosecution is not in scope of agreement with hospital. C-Summary be granted to the case. The report was pending in the Court. The senior Inspector of Police, Byculla Police Station preferred application before Metropolitan Magistrate on 24th October 2018. The said report was submitted without obtaining permission from Deputy Police Commissioner Zone – 3, hence the

DCP has directed to re-investigate the offences. Therefore, for the purpose of re-investigation, original case papers be provided to Police.

4. The learned Magistrate granted permission by order dated 1st November 2018. Investigation proceeded. Accused Nos.1 and 2 were arrested on 1st November 2019. Accused No. 1 is Dr. Ramesh Kumar Kagzi and accused No.2 is Dr. Gurunath Bankapure. Accused No.1 was director of Balaji Hospital. They were remanded to Police custody till 05th November 2019. Police custody was extended to 08th November 2019. Both the accused preferred application for bail before the Metropolitan Magistrate. They were granted bail by order dated 13th November 2019. Bail was granted to the accused on condition that, they will deposit the amount of Rs.1,28,66,494/- within a period of four weeks. The said amount has been deposited by the accused.

5. The prosecution case is that the applicant in Anticipatory Bail Application No.83 of 2020 was working as Administrative Head and the applicant in Anticipatory Bail Application No. 2769 was working as Cathlab Technician. The applicants had preferred an application for Anticipatory Bail before the Sessions Court which has been

rejected by order dated 13th November 2019 and 06th December 2019 respectively.

6. The learned counsel for the applicant submitted that the first information report was registered in 2015. Investigation was conducted. Subsequently, C-Summary report was submitted to the Court. The C-Summary report indicates that both applicants were cited as witnesses. The C-Summary report was pending in the Court. However, the letter/application was submitted by the police before the learned Magistrate on 24th October 2018, for seeking re-investigation. It is submitted that the learned Magistrate had allowed the said application. The Court has no power to direct re-investigation. Since C-Summary report was submitted the Court could have accepted/rejected report or could have directed further investigation. The said report was submitted to the Court in 2016 and the order was passed on 24th October 2018. It is further submitted that in any case the applicants were working as Administrative Head and Cathlab Technician. Their role was investigated during the course of investigation. They were cited as witnesses. There is no material on record to change the stand of prosecution and to implead the applicants as accused. Accused Nos. 1 and 2 were arrested in 2019. They were subjected to custody. In the remand application no role was attributed to

applicants. The Accused were granted bail on condition to deposit the amount and the said amount has been deposited by the co-accused. It is submitted that in fact, Balaji Hospital was entitled to recover money from ESIC. He tendered letters dated 28th April 2014 and 12 January 2018, in support of his submission that the said hospital was entitled to recover money from the ESIC. The applicant in Anticipatory Bail Application No. 83 of 2020 had joined Balaji Hospital on 09th April 2005 and her duties were to address all admissions, inquiry relating to that, attend patients, explain patients about possible treatment options, accommodation facility etc. She has resigned on 29th June 2016 from Balaji Hospital. The applicant in Anticipatory Bail Application No.2769 of 2019 was working as Cathlab Technician. His duty is to assist all physicians in performance of cardiac and angiographic procedure, scrub and assist cardiologist, maintain quality of technical duties and adhere to department and hospital policies etc. Apart from salary, he has no any other benefit from Balaji Hospital.

7. Learned APP submitted that the offence is of serious nature. It was realized that the applicant has played vital role in the crime. The applicant in Anticipatory Bail Application No. 2769 of 2019 was Lab Technician. The applicant in Anticipatory Bail Application No.83 of 2020 was Administrator. The bills forwarded were forged. Huge

amount was claimed from ESIC Corporation on the basis of false and fabricated documents. The complicity of the applicants was established during the course of investigation. The amount which was deposited by the co-accused was for specified period, (October 2011 to March 2012). However, the investigation is in progress to determine the irregularities committed by the accused, submitting false and fabricated documents of claiming the amount in respect of earlier period. There was no investigation into documents tendered by applicant viz letter dated 28th April 2014 and 12th January 2018. The applicant Hemlata Hassani was Administrator. Information was provided that, on 11th July 2013 the computer was sold in scrap. At that time she was working as Administrator. This would show that, on her instructions computer containing vital information was sold in scrap to destroy evidence. It is revealed that, hard disk was not sold. The medical bills and other documents were concealed in hard disk which has been hidden and required to be investigated. The offence relates to sanctioning forged bills for a period from 2011 to March 2012 by recovering amount of Rs.1,28,66,494/- from ESIC. The said applicant was Administrator during said period. The other applicant is also involved in the offence. Learned APP submitted statements of witnesses recorded during investigation under Section 164 of Criminal Procedure Code refers to the manner in which

accused had committed offences by forgery of documents. Vigilance investigation into super speciality hospital, bills received of SSMC office Mumbai / Report on bills of Balaji Hospital concludes that, hospital has indulged in forgery, breach of trust, cheating and defrauding corporation in addition to creation of documents with intention to commit crime. The custody of applicants is required for interrogation.

8. I have perused the documents on record. The alleged misappropriated referred amount in the First Information Report was sum of Rs.1,28,66,494/-. It is pertinent to note that, Dr. Ramesh Kagzi and Gurunath Bankapure, were subjected to custody. Subsequently, they were granted bail. Accused No.1 volunteered to deposit amount under protest. While granting bail to both accused, they were directed to deposit Rs.1,28,66,494/- within four weeks. The direction is complied. The First Information Report was registered in 2015. Admittedly, C-Summary Report was submitted in 2016 stating that, the offences are not made out. The applicants were cited as witnesses in the said case. C-Summary report was pending in the Court from 2016 onwards. In 2016, the application was preferred for providing original documents for re-investigation. The said application was allowed on 1st November 2018, one year thereafter, accused Nos. 1 and 2 were arrested. While granting bail

to arrest accused it was observed that, accused No.1 is ready to deposit the amount. Remand application dated 05th November 2019 do not attribute any role to applicants. It is mentioned that, specimen of handwriting of arrested accused was obtained. Agreement dated 18th November 2010, between ESIC and M/s Balaji Hospital is obtained by police. Statements of witnesses were recorded. Vigilance investigation report is considered. The accused No. 1 and 2 were arrested on 01st November 2019. They were in Police custody for eight days. Vigilance investigation report is dated 01st August 2012. C-Summary report was submitted in 2016. Vigilance investigation report was brought to notice of Court during remand. Thereafter, accused were granted bail. The statements of witnesses relied by learned APP refer to alleged irregularities/forgery. The said statements do not attribute any role to applicants. The letter dated 28th April 2014 was forwarded by Asst. Director Vigilance to Senior State Medical Commissioner states that, report was submitted to ESIC was not complied and denovo scrutiny cannot be considered. Letter dated 12th January 2018 was forwarded by Deputy Medical Commissioner to ESIC by referring to representation of Balaji Hospital dated 22nd November 2017 regarding outstanding payments of Rs. 7 crores due to Balaji Hospital and the ESIC was called upon to follow Hqrs. and furnish

comments and to take necessary action for immediate clearance of long pending SST bills as per Hqrs. instructions and submit latest status of pendency. The legality of the said order would be open to the challenge by the respective parties in appropriate proceedings. In these circumstances, the custodial interrogation of the applicants is not necessary. They can be directed to co-operate with the investigation by attending the Investigating Officer.

ORDER

- (i) The Anticipatory Bail Application Nos. 83 of 2020 and 2769 of 2019 are allowed.
- (ii) In the event of the arrest of the Applicants in connection with C.R.No. 425 of 2015 registered with Byculla Police Station, Mumbai, the Applicants be released on bail on their executing P.R bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) Applicants shall report to the Investigating Officer on 20th, 21st, and 22nd of January 2020 between 11:00 a.m. to 01:00 p.m. The Applicants shall cooperate with the investigation.
- (iv) The Anticipatory Bail Application Nos.83 of 2020 and 2769 of 2019 stand disposed of.

(PRAKASH D. NAIK, J.)