

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-36675-2020 (O&M)

Date of decision : 09.12.2020.

Mukarram Khan

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Rajesh Lamba, Advocate, for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

ALKA SARIN, J. (ORAL)

Heard through video conferencing.

The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.168 dated 25.06.2020 under Sections 304, 34 of the Indian Penal Code, 1860 registered at Police Station City Nuh, District Nuh, Haryana.

As per the FIR, the cousin of the complainant suffered a fracture in his right hand which was thereafter plastered. Since the cousin of the complainant developed pain, he contacted Ashok s/o Bhagat who was working as a Doctor at Jeevan Hospital, Nuh. The said Ashok s/o Bhagat advised him to come to the hospital for treatment. The complainant and his brother-in-law, Shivnan, took the injured cousin to Jeevan Hospital but the Surgeon was not available immediately. The cousin was got admitted and the complainant was told that the doctor would be available by 9:00 PM. At about 7:00 PM, the complainant left

the hospital leaving behind his brother-in-law, Shivnan. At about 9:30 PM he received a call from Shivnan that the doctor had not yet come. Another phone call was received at about 4:00 AM and the complainant was informed that the health of his cousin was deteriorating and he was unable to speak. Upon reaching the hospital, the complainant learned that his cousin has been taken to Life Hospital, Faridabad where he was declared brought dead. It is further the allegation that the complainant was informed by his brother-in-law that a doctor had come at about 1:30 AM and had operated upon the cousin. At about 3.30 AM the brother-in-law, Shivnan, was called into the Operation Theatre and was told that the condition of the cousin had deteriorated and he was not responding. An Ambulance was thereafter called and the cousin was taken to the Life Hospital, Faridabad where he was declared brought dead.

Learned counsel for the petitioner has contended that the only role played by the petitioner in the present case was that he had gone and cut the plaster and he, as per the Medical Board, was present in the O.T. only for five to six minutes and hence he would contend he has falsely been implicated in the case. Learned counsel for the petitioner would also contend that he has been implicated only on the basis of the disclosure statements of the co-accused.

A status report has been filed by way of affidavit of Sudhir Taneja, HPS, Deputy Superintendent of Police, Head-Quarters Nuh, District Nuh on behalf of the respondent wherein it has been stated that during investigation the CCTV was taken into possession and thereafter the case file was transferred to CIA, Nuh vide the memo number 3055/

Reader dated 07.08.2020 and the investigation was being carried out by ASI Rajesh Kumar CIA, Nuh. It has further been stated that during the course of investigation, accused Ashok Kumar s/o Bhagat and Yoginder Kumar s/o Ajaib Singh were arrested in the present case on 07.09.2020 and they were interrogated by the Investigating Officer on which they suffered their disclosure statement and admitted to the commission of the crime. They specifically admitted that Ashok Kumar Khair s/o Dhan Singh and Dr. Arvind @ Mukarram Khan @ Mukarram i.e. the present petitioner and one more lady Manisha, who impersonated as Dr. Pooja, were fully involved in the commission of crime, who operated upon the deceased Hoshiar Singh without any qualification and knowledge. It has further been stated that the operation was performed by the petitioner herein. The petitioner also suffered a disclosure statement and based on the said disclosure statement the cutter machine used for cutting the plaster was also recovered.

Learned State counsel has pointed out that the anticipatory bail application filed by Manisha, one of the co-accused, being CRM-M-30761-2020 has been dismissed by this Court vide order dated 01.10.2020.

I have heard learned counsel for the parties.

Very serious allegations have been made against the accused persons in the present case. The allegations in a nut-shell are that the accused, who are not qualified doctors, had operated upon the deceased thereby leading to complications and eventually his death. The petitioner and the co-accused admittedly are not qualified doctors, however, they are alleged to have operated upon the deceased. The opinion of the

Medical Board, which has been annexed as Annexure R-1, also clearly reveals that O.T. notes have been prepared under the name of some doctors. Both the doctors, Dr. Pardeep and Dr. P.K. Shrivastva, were called to appear before the Board and both the doctors submitted their replies. In their replies, they had admitted that they were neither present at the time of the operation nor any intervention was done by them. Dr. Pardeep, the Orthopedic Surgeon, has also stated that the O.T. notes provided in the case-sheet of patient Hoshiar Singh are fake. However, Dr. P.K. Shrivastva did not comment upon the anesthesia note in the case-sheet.

The allegations in the FIR prima facie speak volumes of the conduct of the accused inasmuch as the deceased who was admitted is alleged to have been operated in the middle of the night and that too by people who are admittedly not qualified to perform the surgery. Not only the accused in the FIR were not qualified to perform the surgery, they have also prima facie prepared fake O.T. notes. A precious life was lost because of the accused who chose to play doctors though they possessed no qualifications. The role of the petitioner would be a matter of trial however at this stage it cannot be overlooked that as per the status report the operation itself was conducted by the petitioner.

In view of the above, I do not find this to be a fit case for grant of regular bail.

Dismissed.

It is, however, made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

December 09, 2020
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Yes/No
 Whether reportable: Yes/No