

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10 of 2021**

Arising Out of PS. Case No.-93 Year-2020 Thana- VISHNUPAD District- Gaya

1. Rajesh Kumar son of Bhuneshwar Yadav Mohalla Panchayti Akhara Ps Kotwali Distt Gaya
2. Rajan Kumar Son of Pawan Chandravanshi Resident of village - Sidhiyaghat, P.S. Kotwali District- Gaya
3. Sheeba Fatima wife of Z. Hasimi Resident of Village - Gewalbigha, P.S. Rampur District- Gaya
4. Sarita Kumari @ Sabita Kumari @ Sarita Devi wife of Jitendra Prasad Resident of Mohalla- Nabab Colony, P.S. Delha, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shailesh Kumar

For the Opposite Party/s : Mr. A.P.P

**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER**

2 29-10-2021 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard Sri Shailesh Kumar, learned counsel for the petitioners and learned counsel for the State.

Petitioners seek anticipatory bail in Vishnupad P.S. Case no. 93 of 2020 registered for the offence punishable under sections 304(a) and 420/34 of the Indian Penal Code.

Learned counsel for the petitioners at the outset submits



that petitioners are persons with clean antecedent and petitioner no.1 is Homeopath doctor and has passed Bachelor of Medicine and Surgery in Electro Homeopathy (MBEH/BEM), petitioner no.2 is said to be staff of Shiv hospital, petitioner no.3 Sheeba Fatima has passed her BEMS in 1996 as Ayurvedacharya and petitioner no.4 is alleged to be nurse of Shiv hospital. Learned counsel for the petitioners submits that petitioner no.1 and petitioner no.3 together are running Shiv hospital but in reality it is a clinic and petitioner no.2 and petitioner no.4 are staff of the clinic. He further submits that from bare perusal of the allegation as alleged in the FIR, it would manifest that the informant has alleged that his wife Lucky Kumari had labour pain on 01.06.2020 at 4-5 O' clock and thus, she alone went to the hospital of the petitioners for check up. Further, delivery was to take place on 08.06.2020 but petitioners in absence of the doctor and in greed of money got baby delivered as a result of which infant died. On receiving information when informant along with family members reached the hospital and started enquiry then they came to know the names of petitioner nos.1 and 3 who had already fled away from there. Further one tout whose name is Rajan Kumar i.e. petitioner no.2 had also fled away from the place of occurrence. Further one doctor disclosed



her name as Sheeba Fatima i.e. petitioner no.3. It is further alleged that on enquiry, it was found that hospital is not a registered hospital. Further, on account of negligence committed by the accused persons, her infant daughter died.

Learned counsel for the petitioners submits that petitioner no.1 is Homeopath doctor and petitioner no.3 is Ayurvedacharya and as such are not competent to perform cesarean operation. Learned counsel further submits that from bare perusal of the allegation as alleged in the FIR, it would manifest that wife of the informant was having labour pain as a result of which she had come to the clinic of the petitioners in order to take some homeopathic medicine for relaxing the pain. Further seeing the situation, wife of the informant was asked that it would be better to admit in hospital for getting cesarean operation done. Wife of the informant in such critical condition, delivered baby in the clinic itself as a result of which infant could not survive. Learned counsel for the petitioners submits that from bare perusal of the allegation as alleged in the FIR, it would manifest that the informant who is husband of Lucky Kumari had not accompanied his wife to the clinic when she was in pain. Further, it is submitted that had it been alleged in the FIR, baby was to deliver on 08.06.2020 then condition of the



labour pain would not have worsen to the extent that she had delivered to the child without having accompanied any family member.

Learned counsel for the petitioners further submits that petitioner no.1 is Homeopath doctor and petitioner no.3 is Ayurvedacharya and they are aware of the responsibility and the learned Addl. District Judge while rejecting anticipatory bail application has made an error of record by recording that they operated wife of the informant when the allegation in the FIR does not even remotely suggest that wife of the informant was operated rather it is alleged that petitioners in connivance and in greed of money delivered child. Learned counsel for the petitioners submits that the informant and his wife are aware that petitioners are not MBBS doctors rather they were taking medicine from the clinic/ hospital whenever any complication regarding pregnancy had occurred and on that day also, wife of the informant had come for the same. As she was in danger, she delivered child in presence of the petitioners.

Learned APP vehemently opposed the prayer for anticipatory bail.

Considering the facts that petitioner no.1 is Homeopath doctor and petitioner no.3 is Ayurvedacharya while



petitioner nos. 2 and 4 are staff of the clinic/hospital as alleged, in the event of arrest/surrender within ten weeks from today, petitioners are directed to be released on anticipatory bail on furnishing bail bonds of Rs 25,000/- (twenty five thousand) each with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Gaya in Vishnupad P.S. Case no. 93 of 2020 subject to the condition under section 438(2) Cr.P.C.

(Satyavrat Verma, J)

s.hassan/-

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