

15.11.2021
SI. No.29
pk
[ALLOWED]

C. R. M. 6861 of 2021 [via video conferencing]

In Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Dankuni Police Station Case No. 104 of 2017 dated 08.03.2017 under Section 304(A) of the Indian Penal Code and subsequently charge sheet has been filed under Section 304 of the Indian Penal Code.

And

In Re: ***Dr. Tapas Bakuli***

... .. Petitioner

Mr. Sekhar Kumar Basu .. Senior Advocate
Ms. Soma Chowdhury
Ms. Jhumki Mukherjee
Ms. Rima Mishra for the petitioner

Mr. Saswata Gopal Mukherjee,
Mr. Madhusudan Sur,
Mr. Dipankar Paramanick
... .. for the State

Mr. Sabyasachi Chatterjee
... .. for the de facto complainant.

Learned senior counsel appearing for the petitioner submits that the ingredients of the offence punishable under Section 304 of the Indian Penal Code are not disclosed. It is further submitted that the report by the CMOH alleging negligence on the part of the petitioner has been set aside by a learned single bench of this Court under Article 226 of the Constitution of India. It is submitted that investigation is complete and the petitioner is ready and willing to face the trial.

Learned lawyer for the State opposes the prayer for anticipatory bail and submits that the victim lady was admitted in the nursing home which did not have adequate infrastructure to manage the patient. There was a delay in seeking opinion of consulting

gynaecologist and the report of the CMOH was set aside by this Court on technical grounds.

Learned lawyer for the de facto complainant submits that the victim was not given proper treatment with regard to her precarious condition which contributed to her death.

We have considered the materials on record. We have also gone into the report of the Medical Council with regard to the incident wherein it is stated as follows :

“Dr. T. K. Bakuli should be more alert and sincere and he should be more vigilant and energetic. Only reference to Gynaecologist is not enough.

The said Arunodaya Nursing Home is not at all having proper infrastructure for such emergency patients even not having any pathological arrangements/investigations like USG nor had proper RMOs for basic treatment. Had there been USG facility in that Nursing Home, the patient could be treated properly by gynaecologist. Refd to DHS for N.A.

The Council, at its meeting dated 15.12.2017, considered the report of the concerned P & E Cases Committee and observed that the concerned medical practitioner, i.e. Dr. Tapas Kumar Bakuli should be more alert, sincere, vigilant and energetic in managing the instant cases mere referring to Gynaecologist is not enough.

In view of the above, the Council decided that a letter of caution be issued to Dr. Tapas Kumar Bakuli in line with the findings of the P & E Cases

Committee in this respect and the case be closed with intimation to all concerned.”

From the materials on record, it appears that the victim lady was admitted in the hospital due to head injury followed by fainting on the same day. The petitioner, being a general physician, treated her conservatively and upon noticing complications in her pregnancy had sought the opinion of a gynaecologist. As the gynaecologist opined for USG, which was not available in the petitioner's nursing home, the patient was referred to another nursing home. In route, she expired.

We note from the death certificate that the patient had died due to ectopic pregnancy. We have also noted the opinion of the medical council that the petitioner ought to have been more vigilant in the treatment of the patient.

However, it is to be seen whether the aforesaid facts would construe an act so egregious that could fall within part 2 of Section 304 of the IPC instead of 304(A). It is nobody's case that the petitioner/Doctor was not a qualified physician and had treated the patient on misrepresentation of facts.

In these circumstances, as investigation is complete, we are of the opinion that the petitioner may be granted anticipatory bail.

Accordingly, we direct that in the event of arrest, the accused/petitioner, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only) with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on further condition that the petitioner shall appear before the court below and pray for regular bail within four weeks from date.

The application for anticipatory bail is, thus, disposed of.

All concerned authorities shall act in terms of the copy downloaded from the official website of this court.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)