

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.63 OF 2020

Dr. Madhuri d/o Ratnakar Waghmare
Age: 38 years, Occu.: Medical Practitioner
(Homeopathist), R/o.: 'Shashiratna Niwas',
Ladgaon Road, Vaijapur,
Taluka Vaijapur, District, Aurangabad ... Applicant

Versus

The State of Maharashtra
Through the Officer Incharge,
Pundliknagar Police Station,
Aurangabad City, District Aurangabad ... Respondent

...

WITH

BAIL APPLICATION NO.364 OF 2020

Suraj s/o Suryakant Rana
Age: 45 years, Occu.: Medical Practitioner,
R/o. Flat No.0, Pratya Apartment,
Usmanpura, Aurangabad ... Applicant

Versus

The State of Maharashtra ... Respondent

.....

Mr. R. S. Deshmukh, Senior Counsel i/b Mr. D. R. Deshmukh, Advocate
for applicant in Bail Application No.63 of 2020.

Mr. S. G. Ladda, Advocate for applicant in Bail Application No.364 of
2020.

Mr. A. M. Phule, APP for respondent – State.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 4th February, 2021

Pronounced on : 16th March, 2021

ORDER :-

. Both the applicants have been arrested in connection with Crime No.319 of 2019 registered with Pundliknagar Police Station, District Aurangabad for the offences punishable under Sections 120B, 314, 203, 201 of Indian Penal Code. Both the applicants have prayed for bail under Section 439 of the Code of Criminal Procedure.

2. Before we proceed, it will not be out of place to mention here that this Court in Bail Application No.364 of 2020 had granted temporary bail to the said applicant on 30.03.2020, when it was submitted that the applicant is MBBS, MD and he undertook to serve the needy persons as per the directions of the Government and would help the people in corona virus pandemic situation. No doubt, that order was for a particular period, but it was later on extended from time to time by this Court taking into consideration the fact that the pandemic situation became worst thereafter. Similarly, the applicant in Bail Application No.63 of 2020 was granted temporary bail taking into consideration the order that was passed in Bail Application No.364 of 2020 on 30.03.2020. The applicant therein, who is also a medical practitioner, was directed to approach the Dean, Government Medical College and Hospital, Aurangabad and was directed to serve as per the directions of the Dean. The applicant in Bail Application No.63 of 2020 was initially

accommodated at District Government Hospital, Chikalthana, but by order dated 26.05.2020, it was informed that the applicant was accommodated at Government Medical College and Hospital, Aurangabad (GHATI) to render her services to Covid-19 patients. But then she informed that since she hails from Vaijapur, it is difficult for her to travel from Vaijapur to Aurangabad and, therefore, she was directed to approach the Dean, Government Medical College and Hospital, Aurangabad to accommodate her to the Sub-District Hospital, Vaijapur, District Aurangabad. The interim order in respect of granting her temporary bail thus continued on those conditions. She continued to render services at Sub-District Hospital, Vaijapur and the applicant in Bail Application No.364 of 2020 continued to serve at Government Medical College and Hospital, Aurangabad. Thereafter, by order dated 14.12.2020 in Bail Application No.63 of 2020, after passing a detailed order, this Court, taking into consideration the happenings those had taken place, was not inclined to extend the temporary bail and, therefore, extension was rejected and the applicant was directed to surrender before the Trial Court; in turn to be remanded to jail. The said order passed by this Court was challenged by the applicant before the Hon'ble Apex Court by filing Special Leave to Appeal (Crl.) No.6572 of 2020. The said Special Leave Petition came to be dismissed on

17.12.2020 and the applicant in Bail Application No.63 of 2020 was directed to surrender forthwith and was directed to pursue the present bail application. Further, the Dean, Government Medical College and Hospital, Aurangabad gave information to this Court on 19.01.2021 that since the number of patients suffering from Covid-19 have been reduced, there is no necessity of the services of Dr. Suraj Rana i.e. applicant in Bail Application No.364 of 2020 and, therefore, this Court by order dated 04.02.2021 directed the said applicant to surrender himself with the jail authority. Accordingly, he has surrendered. Thus, as on today, both the applicants are in jail.

3. Heard learned Senior Counsel Mr. R. S. Deshmukh instructed by learned Advocate Mr. D. R. Deshmukh for the applicant in Bail Application No.63 of 2020, learned Advocate Mr. S. G. Ladda for the applicant in Bail Application No.364 of 2020 and learned APP Mr. A. M. Phule for respondent – State in both applications. Hereinafter the applicants would be addressed by their name for the sake of convenience.

4. It has been submitted by learned Senior Counsel Mr. R. S. Deshmukh that there is no direct evidence in the matter. Perusal of the FIR lodged by A.S.I. Dattatray Botke of Jawahar Nagar Police Station, Aurangabad on 06.08.2019 would show that the said first information

report is in respect of death of one Sarika Ramesh Shep on 21.07.2017, that means apparently there is delay of two years. It can be seen from the FIR that the MLC was forwarded by Dr. Sachin Bangar of Lifeline Hospital, Beed Bypass, Aurangabad around 08.05 p.m. on 21.07.2017. Even there is delay in lodging the accidental death as per Section 174 of the Code of Criminal Procedure. It appears that it was lodged at about 5.00 a.m. on 22.07.2017. It is not explained as to why statement of Dr. Sachin Bangar was not taken immediately, but then in the FIR it is stated that after the MLC was received, inquest panchanama was drawn between 09.00 to 09.50 p.m. and the dead body was sent for postmortem. The postmortem was performed by Dr. Santosh Bhosle and Dr. Amol Ganakwar. They had reserved the opinion regarding cause of death for the histopathology. The samples were preserved i.e. viscera was preserved. When the statements of the relatives of the deceased were taken and when the inquiry under accidental death was going on, it was told that Sarika was pregnant. She was getting giddiness and, therefore, was admitted to Lifeline Hospital. The informant further states that he received the final certificate of cause of death after the histopathology report on 11.06.2019, which showed that the cause of death is "death due to postpartum hemorrhage due to incomplete abortion". Thereafter, the informant has taken statements of Dr. Sachin

Bangar of Lifeline Hospital and his associate Dr. Pankaj Dhakne. It is then stated that the informant has taken the CCTV footage of 21.07.2017 which was stored by Dr. Sachin Bangar in his computer and it was transpired in the inquiry that one Dr. Gajanan Shelke, Dr. Suraj Rana (applicant in Bail Application No.364 of 2020) and one lady wearing Punjabi dress had tried to carry out illegal abortion on Sarika, on the say of husband and father-in-law of deceased Sarika. The said process of abortion could not be completed and it resulted in heavy bleeding to Sarika and then she was brought to Lifeline Hospital for further treatment, but she expired. It was also contended in the application that the fetus so extracted has been destroyed and, therefore, the informant has lodged the first information report on behalf of the State. Now, the investigation is over and charge-sheet is filed. The contents of the charge-sheet would show that there is no direct evidence against the Dr. Waghmare. Dr. Waghmare was practicing at Sawangi and, therefore, it is hard to believe that she would have been in contact with Dr. Rana. Even if for the sake of arguments it is accepted that she was knowing Dr. Rana, but then it appears that she has been falsely implicated by him. Police have recorded statement of Dr. Rana, but it is of no evidentiary value. In fact, she is practicing in homeopathy and could not have carried out surgery.

5. Learned Senior Counsel further submitted that the evidence that is collected would show that all the way the lady in Punjabi dress has been referred as unknown person, who was seen in the CCTV footage as well as in the statement of one Dnyaneshwari Mahadev Kendre and Mahadev Bhanudas Kendre. Both of them are resident of Aurangabad and the father-in-law Angat Dhondiba Shep and deceased Sarika had come to their house. Both of them were present at Lifeline Hospital and even said Dnyaneshwari had signed the medical papers in which it is stated that she was given to understand the serious condition of Sarika. The statements of various doctors including Dr. Sachin Bangar, Dr. Pankaj Dhakne, Dr. Prashant Rindhe, Dr. Gajanan Solanke would show that they just want to get rid of their own responsibility and none of them have given any reason as to why they had not approached the Investigating Officer immediately after the fact was reported to the police. Their statements are tainted. Though Dr. Gajanan Shelke states in his statement under Section 161 and 164 of the Code of Criminal Procedure that after Dr. Rana underwent spine operation at Ciigma Hospital, Aurangabad, where Dr. Rindhe is also working, then on his request, he was conducting OPD in the hospital of Dr. Rana since June, 2017. He states that he had received phone call from Dr. Prashant Rindhe on 21.07.2017 that on the say of Dr. Rana, Dr. Madhuri

Waghmare would treat Sarika. Dr. Prashant Rindhe is also saying that he had received phone call from Dr. Rana and informed about the treatment to be given by Dr. Madhuri Waghmare in his hospital. What is transpiring in the charge-sheet is that it is a clinic that Dr. Rana used to run and it is not a full fledged hospital where abortion can be performed. But it is certain that Dr. Prashant Rindhe and Dr. Gajanan Solanke are now intentionally giving false story and the sequence that they are stating, appears to be impossible. Further, the evidence has been tried to be collected that Sarika was brought in Swift car owned by Dr. Madhuri Waghmare and statements to that effect have been recorded, however, the R.C. Book copy shows that it is in the name of somebody else. Now, when the entire evidence is collected and the charge-sheet is filed, further physical custody of the applicant is not required. Her father is ailing and, therefore, she needs to give attention to her ailing father. Learned Senior Counsel, therefore, vehemently canvassed for bail of the applicant.

6. Learned Advocate Mr. S. G. Ladda also taken this Court through the charge-sheet and submitted that it has come on record that Dr. Rana has undergone spine surgery and he himself was not conducting his OPD. If anything is done behind his back, then he will not be responsible. Now, the other doctors are getting rid of the facts

and want to involve Dr. Rana. If the postmortem report is considered, it does not give any kind of indication that the abortion was attempted through any surgical method. The conduct of Dr. Sachin Bangar is objectionable. He has not immediately given MLC to the police and now, he is coming with the case that he was pressurized by Dr. Rana and Dr. Madhuri Waghmare. Perusal of the MLC information would show that the patient was brought by Dr. Gajanan Shelke and Angat Dhondiba Shep, who was the father-in-law of deceased Sarika. When Dr. Gajanan Shelke had idea about what had allegedly happened at the clinic of Dr. Rana, then how he can keep mum for about two years. No doubt, unfortunately the lady has died, but the way the investigation has been conducted and now the applicants have been involved raises suspicion. Therefore, with such suspicion, the applicants need not be kept in jail. They are ready to abide by the terms of the bail.

7. Learned APP submitted that both the applicants are the medical practitioners, who have taken oath for saving the lives of people, but here with an intention to earn money by illegal means, they have done illegal abortion. It is actually done by Dr. Madhuri Waghmare in the hospital of Dr. Rana on his request. Though he was not present at the spot, yet, every arrangement was made by him. Dr. Prashant Rindhe and Dr. Gajanan Solanke were looking after the clinic of Dr. Rana.

Dr. Rana had developed some physical problem as he had undergone the spine surgery. Though there appears to be some delay in forwarding MLC information by Dr. Sachin Bangar, he has given explanation for the same. He had written that MLC at about 08.05 p.m., but it appears that it was sent around 5.00 a.m. on 22.07.2017. Even the witnesses Mahadhav Kendre and Dnyaneshwari Kendre, who were present at the spot, have stated that after Sarika was declared dead, there was discussion going on between the doctors. It is also to be noted from the record that Sarika had three daughters and she was pregnant for the fourth time. It appears that her husband and father-in-law were insisting that if the fetus is female, then she should get the abortion done. Said Sarika and her family were resident of Shepwadi, Taluka Ambejogai, District Beed, but then it appears that they had chosen a place far away from their place to do the said illegal act. It was pretended that she was suffering from giddiness and, therefore, taken for the treatment. The CCTV footage at Lifeline Hospital was preserved by Dr. Sachin Bangar. Taking into consideration the said CCTV footage and the statements of Mahadev Kendre, Dnyaneshwari Kendre, Dr. Gajanan Solanke, who had accompanied the lady to hospital, driver of Swift car in which she was brought to the lifeline hospital, so also the statement of Meena Rajput, who herself is a staff nurse working at

GHATI Hospital, Aurangabad and is married to Dr. Rana and who had taken Dr. Rana to Lifeline Hospital on 21.07.2017 at about 7.30 p.m, all these facts would show the involvement of both the applicants. The police were waiting for the cause of death and after the histopathology report had come on 11.06.2019, further part of the investigation has been done. The final certificate clearly states that death is due to postpartum hemorrhage due to incomplete abortion. There is absolutely no delay thereafter and, therefore, when there is strong evidence against the present applicants, they do not deserve any sympathy. They were associated with noble profession, but due to such act, it cannot be stated that they are doing any such noble act now and, therefore, they do not deserve any sympathy.

8. At the outset, it can be seen that now the investigation is over and charge-sheet is filed. Though Sarika had expired on 21.07.2017 and her postmortem was conducted, yet, the opinion was reserved for histopathology. The documents on record show that time and again the Investigating Officer was making communication to get the histopathology report from the expert, however, he could not get it prior to 11.06.2019. It was revealed for the first time on that day, that the cause of death of Sarika was “death due to postpartum hemorrhage due to incomplete abortion”. It appears that some statements were recorded

in the inquiry under Section 174 of the Code of Criminal Procedure, but they were mainly of the relatives of Sarika. Even witness Dnyaneshwari Kendre had stated at that time i.e. on 22.07.2017 that she has not witnessed any suspicion in respect of death of Sarika. The role of the said lady is to the extent of presence at Lifeline Hospital after she was called by father-in-law of Sarika. She has not stated that Sarika became ill in her house and then directly she was taken to Lifeline Hospital. Her statement indicates that deceased and her father-in-law had gone out and then she was called to hospital. As regards the postmortem report is concerned, column No.17 in respect of surface wounds and injuries says that there is 'no injury'. In column No.21 which relates to examination of abdomen, it is stated as regards Uterus - weight-785 grams of size 16 cm x 12 cm x 4 cm evidence of enlargement of cervical part of uterus. Blood oozing out from cervical opening. On opening uterine cavity evidence of large blood clot of 150 cc in cervical region with thinning of wall with placenta present over left and anterior part of size 09 cm x 06 cm. Hemorrhages present in muscle wall of cervix, retro-placental bleeding. No amniotic sac or fetal parts identified. As regards viscera is concerned, whole uterus with its contents were preserved for histopathology and then it is stated that opinion is reserved.

9. After the report of histopathology, it appears that the further

statements have been recorded and even due to the time gap, it appears that the police were unaware about the whereabouts of Dr. Gajanan Shelke, Dr. Rana and the unknown lady wearing Punjabi dress. This has been revealed from the statement of Dr. Sachin Bangar, who has stated that as to how he was pressurized by Dr. Rana and Dr. Madhuri Waghmare for not sending MLC information immediately to the police and then he has shared the CCTV footage, which he had stored in his computer. He has also given the reason in his statement as to why he had stored the said CCTV footage. Thereafter, statement of Dr. Prashant Rindhe has been recorded on 20.08.2019, who has stated that he along with Dr. Gajanan Solanke running the clinic i.e. OPD of Dr. Rana. On 21.07.2017, he had received Dr. Rana's phone call at about 9.00 a.m. and he has specifically stated that he was referring patient by name Sarika Ramesh Shep to the hospital who would be examined by Dr. Madhuri Waghmare. Then he says that same patient came around 10.00 a.m. along with her father-in-law. He asked them to wait in the hospital. He received phone call from Dr. Madhuri Waghmare who made inquiry about Sarika and then asked Dr. Prashant Rindhe that he should make that patient wait till 2.00 p.m. He then says that Dr. Madhuri Waghmare arrived at about 2.00 p.m. and started giving treatment to Sarika. He left the hospital for lunch. Thereafter, he

received phone call from Dr. Rana at about 5.00 p.m. stating that Sarika has become serious and, therefore, he should go back to clinic. He reached clinic at about 5.30 p.m. and found Dr. Madhuri Waghmare in frightened condition and she told that the blood pressure of the patient has gone down. She is required to be admitted to some other place. Dr. Prashant Rindhe states that he was receiving phone calls from Dr. Rana now and then and making inquiry regarding shifting of the patient. He got knowledge about the abortion of the patient done by Dr. Madhuri Waghmare, but then he says that he was told by Dr. Rana that they will manage the things and he shall not disclose it to anybody. Thereafter, Dr. Gajanan Solanke had arrived and all of them had shifted Sarika to the Lifeline Hospital in the Swift car of Dr. Madhuri Waghmare. If we consider statement of Dr. Gajanan Solanke, it is on the same line. Further the statements of these two persons under Section 164 of the Code of Criminal Procedure are also giving the same story. At this stage, it can be noted that both the applicants have not given their own assessment as to why they would have been implicated, if they want to contend that they have been so implicated. They have not come with a case of professional rivalry. No doubt, for bail application they may not disclose their defence, but if they want the Court to use discretion in their favour, then at least some such case will have to be made out. It

appears from the statements of those two doctors, that they were not even knowing Dr. Madhuri Waghmare prior to that incident.

10. Further evidence that is collected is the statement of Mahadev Kendre and Dnyaneshwari Kendre who have then stated that they were present at the time when Sarika was admitted to hospital. After she was declared dead, they say that there was discussion between Angat Shep and the doctor accompanying him and madam to the doctors in Lifeline Hospital. They were saying that police should not be informed. They both have further stated that when they went to GHATI hospital at about 11.00 p.m., at that time, the doctor who was present at Lifeline Hospital, was also present and he was telling Angat and Ramesh that the matter should be resolved. That doctor had given amount of Rs.19,00,000/- to them in presence of these two witnesses as well as other relatives, for the marriage and education of the three daughters of Sarika. Dr. Pankaj Dhakne who was the associate of Dr. Sachin Bangar has also stated as to why they had not given MLC certificate immediately. Further, there is statement of one Bharatsingh Thakur, who has given his rooms on rent to Dr. Rana, who was running a clinic by name Sanjivani clinic in those rooms. There is statement of Balkrushna Gaikwad, who has stated that he had purchased Swift car from one Devanand Dhanorkar on 11.03.2019. Prior to that, it was in the name of Dr. Madhuri Waghmare.

11. Important statement appears to be of Meena Rajput, who is the wife of Dr. Rana and she has stated that since her husband has undergone spine surgery, he was residing with his mother, but her husband had called her at about 7.30 p.m. of 21.07.2017 and asked her to accompany him to Lifeline Hospital. Therefore, she went to her mother-in-law's place, took her husband along with her in auto rickshaw and then went to the hospital and at that time, she could know about the death of Sarika due to abortion. This witness is staff nurse. When the wife herself is stating that she had taken her husband to Lifeline Hospital, then that statement carries importance. There is one more statement of one Satish Tehere, who states that he knows one Dr. Sunil Rajput who is the co-accused in this case. Dr. Sunil Rajput was having professional transactions with Dr. Rana and they used to do sex determination test with the help of machine. This witness used to provide patients to Dr. Sunil Rajput and then he says that Dr. Sunil Rajput used to charge amount Rs.15,000/- per patient and used to give him amount of Rs.1,000/-.

12. The CCTV footage is stated to be showing the presence of both the applicants, so also it is stated by the witnesses. Dr. Madhuri Waghmare is homeopath. Surgery by homeopath is prohibited. Therefore, the prosecution has come with a case that accused No. 1 and 2 i.e. husband

and father-in-law of deceased Sarika took her for illegal abortion of the female fetus to the present applicants. Further, the prosecution case is that accused Dr. Rajput had done the sex determination test and accused Dr. Rana made the arrangements at his clinic to carry out the termination of the pregnancy illegally by accused Dr. Madhuri Waghmare. Under such circumstance, when there is ample evidence against the applicants and the allegations against them disclose about one of the heinous crime, they do not deserve any sympathy. Hence, both the applications stand rejected.

[SMT. VIBHA KANKANWADI, J.]

scm