

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.1019 OF 2021
IN
CRIMINAL WRIT PETITION NO.527 OF 2021**

**SATYAJEET DILIP GHOLAP AND OTHERS
-VERSUS-
ARUN PUNJAJI KADU AND OTHERS**

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Advocate for the Applicants : Shri V.D. Hon, Senior Advocate h/f Shri A.V.
Hon.

Advocate for the original Petitioners : Ms.Pradnya S. Talekar
Chief Public Prosecutor for Respondent Nos.5 to 10 : Shri D.R. Kale

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**WITH
CRIMINAL WRIT PETITION NO.527 OF 2021**

**ARUN PUNJAJI KADU AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for the Petitioners : Ms.Pradnya S. Talekar
Chief Public Prosecutor for Respondents 1 to 7 : Shri D.R. Kale

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**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 29th April, 2021

Per Court :-

(a) Criminal Application No.1019 of 2021:-

1. By this Criminal Application, five applicants are before this Court seeking intervention in Criminal Writ Petition No.527/2021. The

first applicant claims to be the son of a patient. The second applicant claims to be the sister of a patient. The third applicant claims to be the nephew of a patient. Applicant Nos.4 and 5 claim to be the sons of two patients.

2. The learned Senior Advocate Shri Hon, in support of this Criminal Application, submits that after this Court had passed an order on 26.04.2021 in Criminal Suo Moto Public Interest Litigation No.2/2021 and the present Writ Petition, together, the applicants realized from the newspapers that a person, who tried to save their lives, is being sought to be put in the docks. They have filed this Criminal Application seeking intervention in his defence.

3. It is contended that the relatives of these applicants had tested positive for corona virus. There was an acute shortage of medical facilities in Ahmednagar district and hence, Dr.Sujay Vikhe Patil, Member of Parliament from Ahmednagar constituency, made efforts for procuring the Remdesivir injections for the people of Ahmednagar through his foundation's hospital and medical store. It is further stated in the memo of the application that the applicants and their family members are beneficiaries of such supply of Remdesivir injections made available through the medical store of Dr.Vitthalrao Vikhe Patil Foundation, Dr.Vikhe Patil Memorial Hospital, Vadgaon Gupta, Vilad Ghat, Ahmednagar.

4. The learned Senior Advocate further submits that as per the

circular of the State Government dated 10.04.2021 issued by the Public Health Department, Mumbai, there can be no dealing in the said drug without intimation and permission of the District Collector. From paragraph 5 onwards till paragraph 9, the applicants have stated the illnesses of their relatives, the manner in which the relatives were admitted in the Dr.Vikhe Patil Hospital and the manner in which the patients were saved only because of the availability of the Remdesivir injections, made possible by the Member of Parliament.

5. The learned Senior Advocate then specifically submits as under :-

(a) The patients feel that the concerned Member of Parliament is their savior.

(b) These relatives know how the Remdesivir injections were procured on the basis of the information given to them by the District Collector, Dr.Bhosale.

(c) These applicants are objecting to the filing of the petition since the four petitioners are habitual litigants and have filed many petitions against the Vikhe Patil family and some of such petitions have been dismissed by this Court.

(d) None of the patients have made any complaint that the injections are defective/ spurious.

(e) The said Member of Parliament has procured the Remdesivir

injections through his contacts and saved poor people.

6. The learned advocate for the petitioners submits that this petition has been filed on the basis of the video clips recorded by Dr.Sujay Vikhe Patil, Member of Parliament himself and the press release is also at his behest. The petitioners are praying for investigation into the illegal procurement of injections by the concerned Member of Parliament and they have no grievance against the patients, who may have been ultimately benefited by the supply of the said injections.

7. Shri Hon, learned Senior Advocate, vehemently submits that how can a people's representative be blamed for saving the lives of hundreds of patients. The concerned Member of Parliament has actually saved the lives of many patients and in his endeavour to rescue the patients, he has procured the said injections.

8. We are quite surprised by the pleadings and contentions of these applicants, who are purely relatives of patients, who survived the Covid-19 infection and it is apparently on account of they have received Remdesivir injections. In our view, while dealing with the Criminal Writ Petition, we do not find that we need any assistance of the relatives of patients to tell us as to how the concerned Member of Parliament has gone out of the way and procured the injections for them. The submissions of these applicants virtually amount to contending that however wrong, by

conduct, could the Member of Parliament be, he cannot be blamed for saving the patients.

9. In normal circumstances, it would have been appreciable if any person, be he a people's representative or a social worker or a part of an NGO, has made efforts for saving lives. However, the issue raised in the petition is as to whether, the procedure allegedly adopted by the concerned Member of Parliament was a procedure recognized in law. The contentions of these applicants remind us of an old story of Robinhood when it used to be said that "Robinhood goes out of the way to help the poor".

10. Considering the parameters and limitations in the Criminal Writ Petition, we are of the opinion that we would not be traveling to the extent of enquiring into as to who the beneficiaries of injections are and as to whether, they have legally purchased the injections or not. This is not our job as this would be within the jurisdiction of the law enforcing agency to investigate as to whether, the injections were procured illegally and therefore, whether, the beneficiaries of such injections can be said to have been illegally benefited.

11. Considering the above, this Criminal Application filed by these five applicants seeking intervention, does not deserve to be considered and the same stands rejected.

(b) Criminal Writ Petition No.527 of 2021:-

12. We have perused the annexures from page Nos.34 to 40 and 46 to 50. These annexures contain the press reporting/ screen shots of purported video recording done by the Member of Parliament Shri Sujay Vikhe Patil himself while flying in the chartered aircraft. From the said printout, it is made to believe that an undisclosed number of Remdesivir injections have been procured by the concerned Member of Parliament.

13. The petitioners have filed an additional affidavit dated 28.04.2021 duly sworn and affirmed by petitioner No.4 wherein, the news report published in daily "Sakal", Ahmednagar main edition, dated 28.04.2021 is annexed, which indicates that the Member of Parliament Dr.Sujay Vikhe Patil admits that he traveled through the chartered aircraft from Delhi and carried Remdesivir injections with him. He does not spell out the number of vials that he had procured. 300 injections were handed over by him to the District Government Hospital and some injections were handed over to the Shirdi Hospital, which is known as Shri Saibaba Trust's hospital. The Deputy Chief Executive Officer of the Sansthan has thanked him in writing. He had prepared the video recording by himself and he had procured the said injections to save the lives of the people of Ahmednagar. He further admits of having acquired those injections by using his personal connections. Several boxes were unloaded at the Shirdi Airport and there has been video recording of the same as well. In the

same news item, the concerned Member of Parliament has further stated that he has preserved all the records of having purchased the injections and he has denied that he had purchased 10,000 injections, contrary to what appears in his video clippings uploaded by him.

14. The press reports placed on record by the petitioners in the additional affidavit at page 62, printed in daily “Loksatta” dated 27.04.2021, indicates that the correspondent has reported the visit of the concerned Member of Parliament to the office of the District Collector. The press conference was then held in the premises of the District Collector’s office in which, the District Collector himself addressed the correspondents. The District Collector states in the said address that the concerned Member of Parliament has sought permission to start the covid hospital in the hospital at Vadgaon Gupta, Vilad Ghat, Ahmednagar, which is a “shut down” hospital. The District Collector had advised the concerned Member of Parliament that the injections and oxygen cannot be supplied through the District Government Hospital and the said injections can be purchased directly from the manufacturers.

15. The learned Chief Public Prosecutor has placed before us the communication/ report received by him dated 28.04.2021 from the District Collector, Ahmednagar along with 48 pages of documents. The compilation of the report, tied loosely, is taken on record and marked as “X-1” collectively, for identification. The said report is prepared by the

District Collector, which is at page Nos.1 and 2, in which the District Collector has stated in paragraphs 2 to 6 as under :-

- “2. *It is respectfully submitted that present respondent No.6 vide communication dated 08.04.2021 has informed to the Dean, Dr.Vitthalrao Vikhe Patil Foundation’s Dr.Vikhe Patil Memorial Hospital and Medical College, Viladghat, Ahmednagar (herein after referred as the hospital) to reserve 200 beds along with essential medical equipments, staff and medical services immediately for the treatment of COVID affected patients in the Dr.Vikhe Patil Memorial Hospital and Medical College, Viladghat, Ahmednagar. In response to the same communication dated 08.04.2021 the Dean of the said hospital vide communication dated 08.04.2021 has informed to the present respondent that they are taking every steps and efforts to make available 200 beds for the treatment of COVID affected patients in their hospital. However, the Dean and Medical Superintendent of the said hospital has requested to make available and provide the injections such as Remedisivir, Merupenum and other such injections, PPE kits, ventilators, supply of oxygen and other like demands for the better treatment of COVID affected patients. The hospital administration has assured that after compliance of the above said demands and facility the treatment of the COVID affected patients will become more easier and convenient.*
3. *It is further respectfully submitted that the present respondent vide communication dated 10.04.2021 after taking into considering the outbreak of COVID-19 pandemic and the prevailing situation has assured that the necessary directions in respect of the supply of oxygen, the ventilators will be given to the concern authorities/ suppliers. In so far as the special medicines such as Remedisivir and etc are concerned it has been informed to the hospital administration that the Food and Drugs Administration will inform to concern supplier for making available the said special medicines in the medical store of the hospital. The present respondent No.6 with this assurance has further directed to the hospital administration to reserve 200 beds for the treatment of COVID affected patients in their hospital*

with immediate effect.

4. *Vide communication dated 15.04.2021 the hospital administration has urged that there is shortage of Remdesivir injections and because of the same the COVID 19 affected patients are facing the instant problems and medical complications. On this backdrop the hospital administration has requested to provide Remdesivir injections immediately and it has shown their willingness that they are ready to deposit the necessary charges in the concern bank. The present respondent after considering the said demand of Remdesivir injections and medical emergency has directed Civil Surgeon to procure the said medicines immediately and further directed that the required funds be taken from the institute/ hospital administration and place the order.*
5. *Accordingly the hospital administration has deposited the requisite amount for total 1700 Remdesivir injections through RTGS into the account of Administrative Officer, General Hospital, Ahmednagar. The purchase order came to be placed by Civil Surgeon before the concern supplier i.e. M/s Pharma Deal. Thereafter the 1700 Remdesivir injection has been supplied by M/s Pharma Deal to the Civil Surgeon and the same have been thereafter provided/ supplied to the said hospital through Civil Surgeon.*
6. *It is respectfully submitted that the Food and Drugs administration has inspected the stock of Remdesivir injections on 27.04.2021 in the said hospital and same found to be appropriate and correct in consistence with the supply of the said injections from Civil Hospital. It is further respectfully submitted that the hospital administration vide communication dated 28.04.2021 has submitted the detail list of distribution of Remdesivir injections.”*

16. Considering the contents of the report reproduced herein above, we find that the District Collector permitted the Civil Surgeon, Ahmednagar to place an order directly with the supplier M/s Pharma

Deal, 1313, Sadashiv Peth, Opposite Bharat Natya Mandir, Pune-411030 (email : info@pharmadeal.org). Two receipts annexed to the report of the District Collector indicates that the Civil Surgeon placed an order with M/s Pharma Deal and paid an amount of Rs.7,56,000/- and Rs.18,14,4000/-. Page 16 of the report indicates that Dr.Vikhe Patil Medical Store, Vilad Ghat, Ahmednagar, has credited an amount of Rs.25,70,400/- in the account of the Civil Surgeon, Ahmednagar. Further receipt indicates the payment made by Dr.Vikhe Patil Medical Store to the Civil Surgeon for the said amount. Issue would be, whether, this is a legally accepted procedure?

17. This makes one thing clear that these 1700 Remdesivir injections, which the District Collector solemnly states to have been purchased by following legal procedure, have been supplied by the firm from Sadashiv Peth, Pune to the Civil Surgeon and these injections/ boxes have not taken the air journey through the chartered aircraft from Delhi to Shirdi.

18. Though we are not forming a final opinion, prima facie, we are of the view, considering the press conference allegedly held in the premises of the District Collector by he himself and the receipts placed before us and that these injections have not taken the route from Delhi to Shirdi, the District Collector is attempting to protect the concerned Member of Parliament by holding the press conference in his premises to

make the statement that these are injections that have come from Pune and most of them have been handed over to Dr.Vikhe Patil Medical Store. The question, therefore, is as regards, whether, the concerned Member of Parliament Dr.Sujay Vikhe Patil carried a different set of boxes containing Remdesivir injections through the chartered aircraft from Delhi to Shirdi and as to where are these boxes? Whether, the video recordings and photographs uploaded by the said Member of Parliament during his air journey as well as on landing at the Shirdi Airport and distributing the said injections by holding a get together, are truthful or not and whether, they need to be investigated.

19. Ex-facie, considering the role played by the District Collector, Ahmednagar Dr.Rajendra B. Bhosale, unless proven otherwise, we do not think that we would any confidence in his role in the investigation. The learned Chief Public Prosecutor submits that the District Collector may be given an opportunity to explain his position and an adjournment of around three days may be granted.

20. In view of the above, we are listing this petition on 03.05.2021 (Monday) at 02:30 PM.

21. In the meanwhile, we direct the Principal Secretary, Home Department, State of Maharashtra, Mumbai to ensure that the details about the aircraft landings at the Shirdi Airport in connection with private aircraft / chartered flights in between 10.04.2021 to 25.04.2021 be

preserved and especially, preserve the video recordings through CCTV footage as regards the cargo consignment, since the petitioners allege and also the concerned Member of Parliament purportedly states in his video recording that he landed in the chartered aircraft at Shirdi Airport and unloaded boxes of Remdesivir injections. We make it clear that we will not tolerate any excuse about any CCTV footage being lost or loss of any details of the chartered/ private aircraft landings and take off. So also, the District Superintendent of Police, Ahmednagar shall trace out the boxes containing Remdesivir injections, which admittedly were unloaded by the said Member of Parliament at the Shirdi Airport. A report shall be placed before us on 03.05.2021 at 02:30 PM.

22. The learned Chief Public Prosecutor would convey this order to respondent Nos.2, 4 and 5 and would place necessary details before this Court on 03.05.2021.

23. Since this lengthy order has been dictated in open court at around 04:00 PM, the parties shall note it's contents and act on the uploaded copy of this order.

kps

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)