

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

CRIMINAL WRIT PETITION NO.527 OF 2021
WITH
CRIMINAL APPLICATION NO.1027 OF 2021
IN WP/527/2021

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

WITH
CRIMINAL APPLICATION NO.1024 OF 2021
IN WP/527/2021

RATHI SUMIT RAMCHANDRA AND OTHERS
VERSUS
ARUN PUNJAJI KADU AND OTHERS

WITH
CRIMINAL APPLICATION NO.1028 OF 2021
IN WP/527/2021

DR.SUJAY RADHAKRISHNA VIKHE PATIL
VERSUS
ARUN PUNJAJI KADU AND OTHERS

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Advocate for the Petitioners in WP : Ms.Pradnya S. Talekar
Chief Public Prosecutor for the Respondents / State : D.R. Kale
Advocate for the Applicants in 1024/2021 : Shri S.S. Thombre
Advocate for the Applicants in 1028/2021 : Shri Shirish Gupte, Senior
Advocate h/f Shri A.D.Ostwal and Shri K.D. Jadhav

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

DATE :- 05th May, 2021

Per Court :-

1. On 26.04.2021, we had passed a common order in this Criminal Writ Petition and Criminal Suo Moto PIL No.02/2021, under paragraphs 25 to 31, which read as under :-

- “25. *Ms Talekar, the learned Advocate, who was watching this proceeding, has mentioned a Criminal Writ Petition filed through her office today, 26.04.2021, titled as ‘Criminal PIL Petition No.527/2021’ (Arun Punjaji Kadu and three others Vs. The State of Maharashtra and others). Considering her request, the said petition, by consent, was called for.*
26. *The learned Chief Public Prosecutor submits that no orders be passed in this petition today since the petitioners are active politicians.*
27. *It appears to us that a grievance has been made against a serving Member of Parliament from the Ahmednagar Constituency, namely Dr. Sujay Vikhe that he has procured 10,000 Remdesivir injections secretly and has transported them to Ahmednagar and has indulged in distributing these 10,000 Remdesivir injections to the public at large as a political stunt, which is recorded in two videos.*
28. *In view of the above, we are refraining from passing a specific order today as to whether this proceeding could be registered as a Criminal PIL. We record the appearance of the learned Chief Public Prosecutor on behalf of all the respondents.*
29. *Ms. Talekar submits that, these 10,000 Remdesivir injections have been allegedly transported illegally through a Chartered flight, purportedly by Dr. Sujay Vikhe Patil, a serving M.P. from the Ahmednagar Constituency and photographs have been produced in the petition paper-book as regards their distribution. She, therefore, submits, as this is being done illegally and unauthorizedly, that the respondents need to take immediate action for confiscating such injections which are in the custody of Dr. Sujay Vikhe Patil.*
30. *We find that, a serious allegation has been made in this petition. Until further orders, the respondents would be*

at liberty to investigate and take effective steps as they would have normally taken in the event of the occurrence of any such incident and do the needful as 'the call for duty' demands of them. They shall preserve the confiscated Remdesivir vials, if any, as per the medical protocol until further orders.

31. *List the Criminal Suo-Moto Public Interest Litigation No.02 of 2021 on 03.05.2021 at 02:30 p.m. We are segregating Criminal Writ Petition No. 527 of 2021 filed by Ms. Talekar and we are posting the same on 29.04.2021 at 02:30 p.m."*

2. On 29.04.2021, we have passed an order, below paragraphs 12 to 23, in the present Criminal Writ Petition, which reads as under :-

"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 its contents and act on the uploaded copy of this order."*

Criminal Application No.1024/2021

3. Criminal Application No.1024/2021 has been filed by three applicants, who claim to be close relatives of patients, who have suffered from Covid-19 infection. Remdesivir injections donated to the Covid Facility, namely, Pravara Rural Hospital, Loni, which is a Vikhe Patil Foundation Trust's hospital, were utilized for saving the lives of such patients. These applicants desire audience in the present Criminal Writ Petition as interveners. In view of our order dated 29.04.2021 and for the reasons recorded therein, rejecting an identical Criminal Application No.1019/2021, this Criminal Application No.1024/2021 stands rejected for the same reasons.

Criminal Application No.1027 of 2021

4. The petitioners herein have preferred Criminal Application No.1027/2021 seeking amendment to the present petition. The reasons for the amendment are that there are several other politicians in the State of Maharashtra, details of which are mentioned in the proposed paragraphs, who have also allegedly indulged in acts of unauthorizedly procuring remdesivir injections and distributing them in their constituencies. A prayer is also proposed by which the petitioners seek an order of this Court to constitute a special investigation team, chaired by a retired Judge of the High Court, to enquire into illegal procurement and distribution of remdesivir injections by politicians in the State of Maharashtra. However, it is frankly stated that a police complaint against such politicians is yet to be filed by the present petitioners, meaning thereby, that the process of law for embarking upon investigation, has not been put in motion. The learned advocate for the petitioners submits to the extent of the proposed amendment in this Criminal Application that these petitioners would register complaints against the concerned politicians in the appropriate Police Stations.

5. Firstly, we need not take cognizance of the above said grievance at this stage since the complaint, which is the starting point of investigation, is yet to be filed. Secondly, these petitioners desire to register complaints in the concerned Police Stations which naturally would

be inquired into in accordance with the provisions of the Code of Criminal Procedure and, therefore, the writ jurisdiction of this Court need not be exercised to direct the concerned Police Stations, before the filing of such complaints, to conduct investigations properly. It is elementary that police authorities are duty bound to conduct investigations in accordance with the procedure laid down in law.

6. It is now submitted that this Criminal Application No.1027/2021 seeking amendment is sought to be withdrawn by the petitioners. As such, the said application is disposed off as withdrawn.

Criminal Writ Petition No.527/2021

7. Insofar as this Writ Petition is concerned, filed on 26.04.2021, based on the complaint addressed to the Superintendent of Police dated 25.04.2021, the petitioners have put forth prayer clauses A, B, C and D, which read as under :-

- “A. To direct the respondents to register FIR against Dr.Sujay Vikhe Patil and other unknown persons for procuring and distributing Remdesivir injections without authority/license, by issuing a writ of mandamus or any other writ, order, direction as the case may be.*
- B. To direct the respondents to conduct detailed inquiry as to how many Remdesivir injections were procured, distributed by Dr.Sujay Vikhe Patil, from whom it was purchased and at what price and submit its detailed report, pending hearing and final disposal of this petition.*
- C. To direct the respondents to confiscate the stock of Remdesivir injections available with Dr.Vikhe Patil and*

handover the same to the State Government, pending hearing and final disposal of this petition.

- D. To direct the respondents to collect the samples of Remdesivir injections procured by Dr. Vikhe Patil and send it for Chemical Analysis for testing its genuineness and submit its report, pending hearing and final disposal of this petition.”*

8. The orders passed by us earlier which have been reproduced for the sake of brevity and for reference, would clearly indicate that we were not getting drawn into the controversy as to whether, the proposed accused, who is the Member of Parliament from the Ahmednagar constituency, is hijacking the investigation or not. Our serious concern, for obvious reasons, taking into account the unprecedented situation created by the Wuhan virus onslaught, taking away precious lives of the citizens of this country, was to ensure that remdesivir injections are not sold at premium/jacked up prices and are not distributed as largesse to appease the voters in a particular constituency. We were concerned with these injections being put to proper use for treating those patients who desperately needed them under medical advise. In this context, we had directed the respondents to investigate and trace out the remdesivir injections. When we, prima facie, noticed that the District Collector of Ahmednagar was not appearing above board and responsible newspapers having reported that he conducted a press conference in his office practically giving a clean chit to the proposed accused, that we expressed

our apprehension of being unable to trust him with the investigation.

9. The learned counsel for the petitioners has drawn our attention to the contents of the memo of the petition in which it has been specifically stated that Dr.Sujay Vikhe Patil had released two videos recorded by him, on the social networking sites, indicating that he had procured 10,000 remdesivir injections from pharmaceutical companies with whom he had friendly relations. It is also averred that 150 injections were donated to the Saibaba Sansthan Hospital, Shirdi and the Government Hospitals and others were donated to the private hospital at Pravara, which happens to be the facility run by his own Vikhe Foundation. It is further averred in the petition that Dr.Vikhe Patil may have purchased these injections from the black market and there is a high possibility that these could be spurious injections being pumped in the market. An apprehension was also voiced that he must be hoarding such injections to be sold in the black market and to be used to enhance his political image and achieve political gains.

10. An additional affidavit is filed by one of the petitioners on 28.04.2021 with an attempt to clear the air as regards the contentions of the learned Chief Public Prosecutor that this petition has been filed by politicians and the Court is being used for self serving political purposes. It is then reiterated that Dr.Vikhe Patil has shown boxes of remdesivir injections in his video claiming that they are 10000 injections and that this

video is available on YouTube at the link <https://youtu.be/1qsP2uAxRdg>. An apprehension is then voiced that the injections were procured by Dr.Vikhe Patil, not by adopting a legal path and were infact procured from a manufacturer situated in Chandigarh, who has not been approved by the Government of India to be an authorized provider of remdesivir injections.

11. A rejoinder has been filed by these petitioners, to the affidavit filed by respondent No.6/ District Collector Dr.Bhosale, attempting to make out a case of forgery and manufacturing of documents by the District Collector so as to protect Dr.Vikhe Patil. Based on such pleadings set out in the rejoinder dated 03.05.2021, it is canvassed that this Court will have to resort to a fact finding exercise so as to conclude as to whether, the Ahmednagar District Administration, inclusive of the Police Department, was manufacturing documents to protect Dr.Vikhe Patil. Reliance is placed on the judgment delivered by the Honourable Supreme Court in the following cases :-

(a) Vishwanath Chaturvedi vs. Union of India and others, (2007) 4 SCC 380.

(b) E. Sivakumar vs. Union of India and others, (2018) 7 SCC 365.

(c) Dhananjay Kumar vs. State of Chhattisgarh, AIR 2020 Chh 36 (FB).

(d) Pareshkumar Dhirajlal Dhanani vs. State of Gujarat, WP (PIL) No.54/2021, decided on 20.04.2021 by the Gujrat High Court.

12. It is canvassed, by relying on the above reports, that firstly, this Court can direct the registration of an FIR and secondly, direct a superior investigating agency in the State of Maharashtra or appoint a retired Judge of this Court, to conduct an enquiry, as this could be termed as a “remdesivir scam”.

13. There is no dispute that these petitioners have addressed the District Superintendent of Police, Ahmednagar, the District Collector, Ahmednagar and the Police Inspector, Rahuri Police Station on 25.04.2021 for registering an FIR against Dr.Vikhe Patil. It is not disputed that these petitioners have not tendered a specific information report to the Police Station, Rahuri for seeking registration of an offence/ FIR against Dr.Vikhe Patil under Section 154 of the Cr.P.C.. The petitioners cannot dispute that an information report has to be filed in a police station and the Station House Officer makes a noting of the same in the station diary and it is within the purview of the SHO to register an FIR keeping in view the law laid down by the Honourable Apex Court in the case of ***Lalita Kumari vs. Government of U.P and others, (2014) 2 SCC 1 (a Five Judge Bench)***.

14. We are circumspect as to the prayer of the petitioners seeking a direction for registration of an FIR within 12 hours of a common

complaint tendered to the Superintendent of Police, Ahmednagar, the District Collector, Ahmednagar and the Police Inspector, Rahuri Police Station, considering paragraph 8 of the said complaint wherein a reference is made to a Suo Moto Criminal PIL No.2/2021 in which, we have passed an order on 22.04.2021. We have no doubt that we are concerned with the lives of people to be saved in this Covid-19 pandemic and an appropriate distribution and utilization of remdesivir injections. Every human life is precious and needs to be protected. We have passed orders earlier directing registration of offences against persons who have indulged in black marketeering of remdesivir injections. We were concerned with every vial of remdesivir injection being utilized for saving lives and we have no hesitation in observing that any person, be he a man from the lowest strata of the society or howsoever influential public figure/ politician he may be, would not be above the law. If on investigation, it is noticed that Dr.Vikhe Patil has committed an act which can be termed as being an offence, he would not be immune to punishment and will not be treated above the law. The law would not permit him to manipulate the investigation for extricating himself from such situation.

15. It is quite apparent, pursuant to the effect of our orders, that 1700 remdesivir injections are purportedly shown to be accounted for. The petitioners expect this Court to monitor the investigation. In Panchabhai

Popotbhai Bhutani and others vs. State of Maharashtra, 2010 (1) Mh.L.J. 421 (Full Bench), the learned Full Bench of this Court, in paragraph 46, has observed that there can be cases wherein the time lag involved in commission of the crime, intimation to the Police and its inaction in terms of Section 154 of CrPC, make it difficult for a complainant or an aggrieved person including a victim, to first take recourse to the provisions of Section 154(3) and then invoke the jurisdiction of the Court under Section 156(3). Such cases could be the ones where there is likelihood of the evidence being destroyed and the delay in investigation may prove fatal to the case of the prosecution or the complainant. In such exceptional circumstances, it cannot be said that any person who has approached the Police under Section 154 for registration of information of commission of a cognizable offence and the police fails to act with promptitude, is debarred from approaching the Court directly under Section 156(3).

16. Considering the pleadings, it is obvious that, on the one hand, the petitioners allege, on the basis of the videos uploaded, that the concerned M.P. had traveled in a chartered flight with 10000 vials of remdesivir injections. On the other hand, the reports X-1, X-2 and X-3 submitted before us, indicate that the Civil Surgeon had deposited the requisite amount with Pharm Deal at Pune for purchasing 1700 vials.

17. We find from the facts of the case in hand that two videos were purportedly uploaded by Dr.Vikhe on 24.04.2021 and the complaint

was addressed to the District Superintendent of Police on 25.04.2021 at 18:05 hours. This petition was filed on 26.04.2021, before noon. The petitioners expect that we should consider every sheet of paper placed before us, by the litigating parties, including those filed by Dr.Vikhe seeking intervention, threadbare. Considering the settled law on the scope of exercise of our writ jurisdiction, in dealing with laxity on the part of the investigating officers investigating into a complaint, we need to permit the police authorities to deal with the complaint strictly in accordance with the provisions of the CrPC as has been held in *Lalita Kumari (supra)*. If the informants are aggrieved by the manner of investigation or if they have material available to form a view that the police authorities are protecting Dr.Vikhe and are sheltering him by applying a gloss over the acts which he has committed, the informants can always knock the doors of the Court. But, presuming that the investigation agency is not going to investigate properly and passing orders in our writ jurisdiction on apprehension may not augur well in criminal jurisprudence and the justice dispensation system. We do not intend to do so in the backdrop of the complaint having been filed at 18:05 hours on 25.04.2021 and this petition being filed before noon on 26.04.2021.

18. As such, we find it pragmatic not to hastily come to a conclusion or become judgmental in view of the time span in lodging of the first complaint and the filing of this writ petition. Orders directing

registration of an FIR are normally passed after the Court is convinced that the legal remedies available to the complainant have been exhausted and the grievance of the complainant is not redressed. An order directing that the investigation be taken away from a concerned police station so as to be handed over to any other I.O. or the State C.I.D. or any other higher investigating agency, can be passed only after this Court is convinced, pursuant to the investigation, that the I.O. is soft peddling on the complaint and the investigation is merely a farce.

19. The learned counsel submits, on instructions, that the petitioners would be preparing a detailed complaint considering the material that has come on record before this Court in this proceeding, for registering offences, with a specific police station, against Dr.Vikhe Patil and also against such bureaucrats/ police officers who may have indulged in forgery of documents that were filed in this proceeding. We are not expressing any opinion on these issues as (a) the police authorities are capable of resorting to Section 161 of the CrPC for the recording of additional statements considering that the earlier complaint dated 25.04.2021 was addressed to the Superintendent of Police, Ahmednagar and the same could be investigated into by the concerned Police Station and (b) if the petitioners intend to lodge a specific complaint against Dr.Vikhe. The investigating agency will now have to investigate as to whether, 10000 vials of remdesivir injections or any quantum of vials over

and above the admitted fact of procuring 1700 vials by Dr.Vikhe, will have to be gone into by the investigating agency.

20. Since the petitioners state that they would be taking assistance of material placed before this Court for submitting additional information to the Rahuri Police Station or file a detailed complaint, all aspects raised by the petitioners in their complaint will have to be investigated into by the concerned Police Station. Allegations of the local administration resorting to a cover-up operation or creating new documents so as to screen the concerned M.P from the clutches of law, will also have to be gone into by the investigating agency.

21. In view of the above, this Criminal Writ Petition is disposed off. We have permitted the petitioners to utilise additional material and even those documents or affidavits filed before us and/or file a fresh complaint with the entire material available now. The Police Station before whom such complaint would be filed, will follow the procedure as enshrined under the CrPC and *Lalita Kumari (supra)* and if the petitioners are aggrieved by the manner of investigation, they do have a right in law to take recourse to available legal remedies. The record of the Shirdi Airport as regards the landing and take off of the private/ chartered aircrafts, which is preserved, shall be kept secured so as to facilitate the investigation and shall not be destroyed for one year.

Criminal Application No.1028/2021

22. We have heard the learned Senior Advocate Shri Gupte on Criminal Application No.1028/2021 filed by Dr.Sujay Radhakrishna Vikhe Patil in which, the following prayer has been put forth :-

“a) That this Hon’ble Court be pleased to allow the present application and thereby permit the Applicant, to be impeded as a party Respondent in Criminal Writ Petition No.527 of 2021 and the Applicant may kindly be permitted to file his detail affidavit and to address this Hon’ble Court during the course of hearing and the Applicant be heard in the interest of justice.”

23. The learned Senior Advocate Shri Gupte has strenuously canvassed that the applicant needs to be added as a respondent in the Writ Petition since he has a right to be heard before the Court could order registration of an FIR.

24. The consistent view of the Honourable Apex Court as regards audi alteram partem is that a suspect or a proposed accused would not have a right of hearing at the stage of investigation/ registration of an FIR. We find that the following judgments would apply to this application:-

(a) Union of India and another vs. W.N. Chadha, 1993 Supp (4) SCC 260 : AIR 1993 SC 1082. (paras 77, 80, 81, 83, 88 to 90, 94 and 98)

(b) Anju Chaudhary vs. State of U.P., (2013) 6 SCC 384. (paras 31 to 36)

(c) Tushar Vajubhai Gaglani vs. Jagdeesh J. Vaswani and others,

2001 (1) Mh.L.J. 463. (paras 3 and 4)

(d) Union of India vs. Haresh Virumal Milani, 2018 (1) Bom. C.R. 769. (paras 15 to 19)

25. The learned Senior Advocate submits, on instructions, that the applicant desires to withdraw this application as the petition is being disposed off with the directions as are set out herein above and in the event, the petitioners come back to this Court with their grievance about the investigation, the applicant Dr.Vikhe Patil, if so advised, may renew his request for seeking a right of hearing in those proceedings.

26. As such, this Criminal Application No. 1028/2021 is disposed off as withdrawn.

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(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)