

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1766 OF 2021

Shailesh Shivaji Barphe .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Sourish Shetye i/b Mr. Shirish Shigwan and Mr. Surendra Sapale for the Applicant.

Mr. A.R. Kapadnis, A.P.P. for the State.

Mr. Raosaheb M. Sutar, Head Constable attached to M.G. Chowk Police Station, Miraj, Dist. Sangli is present in the court.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 12TH AUGUST, 2021.

P.C:-

1. Recently, 01st July was celebrated as ‘National Doctors’ Day’ recognizing and saluting the invaluable contribution of the medical fraternity towards their services to the mankind. The Doctors fought the Covid-19 virus like warriors and paved a ray of hope when the entire country was moving towards a doom.

But, an incident like the present one, which is reported and resulted in registration of an FIR with the Mahatma Gandhi

Chowk Police Station, Miraj, District Sangli indicting the two doctors, gives rise to a despondent and morose feeling.

2. The FIR registered with the Mahatma Gandhi Chowk Police Station vide C.R. No.143 of 2021 speaks of a grim situation. On 27/05/2021, the Medical Officer of Sangli-Miraj-Kupwad Municipal Corporation reported about mismanagement in the Apex Care Hospital, Miraj, run by one Dr. Mahesh Jadhav. It is informed that considering the spike in the Covid cases, private hospitals, nursing homes, multi specialty hospitals were permitted to work as dedicated Covid hospitals and Dr. Mahesh Jadhav sought permission for converting the Apex Care Hospital as a dedicated Covid Hospital. Accordingly, the permission was conferred by the Commissioner of Municipal Corporation on 14/04/2021. In pursuance of the said permission, the hospital started catering to the Corona patients and it was expected for the hospital to follow the protocol assigned by the DMER and DHS Departments of the State of Maharashtra. However, what was noticed was a clear violation of the said Guidelines and it was noted that the patients were charged exorbitantly and there was clear violation of the directives and the SOPs issued by the Authorities. It was also noted that there were large number of deaths in the hospital in crucial period when the second wave gripped the city of Sangli.

3. Noticing the gross irregularities in treating the patients, the

Health Department of the State of Maharashtra, by its letter dated 21/05/2021, authorized the Commissioner of Municipal Corporation to initiate appropriate action against the hospital. Accordingly, the informant and his assisting team carried out an inspection of the hospital on 25/05/2021 and undertook a scrutiny of the bills, case papers, patient entry book, cash book, etc. and irregularities of serious nature came to their knowledge, which are reflected in the complaint. These irregularities are to the effect that the laboratory reports of the patients are not found in the case papers and though the patient was not put on ventilators, in the bill, the charges for ventilators for three days are included. There are discrepancies in the papers of the patients regarding the days for which, they were put on ventilators and though they were charged for those days, they were in fact not put on ventilators. The documents available in the hospital were seized through a panchanama and tendered along with the complaint.

4. The complaint, therefore, alleges that Dr. Mahesh Jadhav, for wrongful financial gain has thrown the protocol/norm for treatment of Covid patients in air and, by giving an impression that the appropriate medical tests were carried out on the patients, obtained huge amounts for his own benefits. The aforesaid complaint prompted the concerned Police Station to invoke Sections 405, 415, 420, 425, 427 of the IPC and Section 51(B) of the Disaster Management Act, 2005.

5. Learned counsel for the Applicant submits that the FIR is against Dr. Mahesh Jadhav as he was running the hospital in Sangli, which was converted into a Covid facility hospital. As far as the present Applicant is concerned, it is submitted that he has obtained a postgraduate degree in M.D. Pulmonary Medicine and he is not named in the FIR. The submission is he was working as Assistant Professor in the said stream at the Government Medical College, Miraj and was invited by Dr. Mahesh Jadhav, who is his classmate, as a visiting Consultant to the Apex Care Hospital. It is his submission that he resumed his duty as visiting Consultant with effect from 21/04/2021 and from 24/05/2021 he severed his connection with the Apex Care Hospital, Miraj and he no longer work for the said hospital. The submission advanced is to the effect that being a visiting Consultant, he was not responsible for the administration of the hospital and since Dr. Mahesh Jadhav was his classmate, he has consented to offer his special services to the hospital and even the staff in the hospital were appointed by Dr. Mahesh Jadhav, but since he is specialized in Pulmonary Medicines, he attended to the patients, who were suffering from Covid and discharged his responsibilities to the best of his ability and within the resources available and, therefore, he cannot be attributed any illegal activities as alleged in the complaint for more than one reason that he was not a full time salaried doctor and, in fact, his visiting charges were also not paid by Dr. Mahesh Jadhav and

despite this, he continued to render his duty to the Covid patients, who were admitted in the hospital. It is submitted that he has received an amount of Rs.4,50,000/- towards visiting charges for the period when he rendered his services as a Specialist. Innocence on part of the Applicant is made the basis of this application, seeking pre-arrest bail.

6. Learned A.P.P. has placed on record the report of the Committee constituted at the Government level for the purpose of examining the alleged irregularities and the lacune at the instance of the hospital. The Committee constituted by the Dean of GMC, Miraj was chaired by the Professor and Head of the Department of Pediatric, the other members being the Professor and Head of the Department of Medicine, Associate Professor Department of Forensic Medicines, Associate Professor Department of Anesthesia and Department of Medicines, Government Medical College, Miraj. The Committee examined the case of each patient through their medical records and recorded the statement of Interns and the Resident Medical Doctors associated with the Apex Care Hospital.

7. A detailed report has been submitted after a thorough enquiry by the Committee, which broadly made the following observations:

- A. Unqualified persons were employed as RMO for monitoring and managing the severe Covid-19 patients.
- B. Medical and Nursing records are not properly maintained.
- C. Because of inadequate record, it cannot be ascertained whether prescribed drugs were administered or not.
- D. Serial Laboratory and Radiological monitoring of patient was not followed as per MOHFW Protocol.
- E. These acts indicate failure to take reasonable degree of care of seriously ill patients admitted in the hospital.

8. The Report of the Committee is submitted patient-wise and one of such reports in respect of one Mahadev Dongre, who was admitted to the hospital on 20/04/2021 and his case is analysed in detail. On perusal of his medical charts, the Committee has opined that it was necessary to monitor the investigation during hospitalization stay, but there is no record of B.P. and temperature in the medical papers. Further, there is no mention of the CPR details though there is a mention of injections like atropine, adrenaline and noradrenaline though doses are not mentioned. No laboratory investigation of serum electrolytes and ABG are available, which are essential tests for the management of severe Covid-19 patients and, by not doing so, it has adversely affected the health outcome of the patient. Several

irregularities, which have proved fatal to the patient are recorded in the report.

9. The Special Team, during investigation, noted that the hospital had engaged Final Year BHMS students for treating patients and prescribing medicines. For prescribing modern medicines, it is imperative that the persons should be registered medical practitioner registered with the State Medical Council or National Medical Commissioner (Medical Council of India) as per the Maharashtra Medical Council Act, 1965 and the person, who is not registered is not entitled to practice in modern medicines, commonly referred to as '*allopathy* medicines' nor allowed to examine patients and prescribe medicines, independently. The statement of one Jamir Tamboli is to the effect that medicines were prescribed by him at the instance of the present Applicant. The Committee further records that there is huge disparity in the case papers of the patients reflecting negligence in their treatment. The minute details are charted out in the report.

10. During the course of investigation, the statements of the employees are also recorded, who particularly named the Applicant as a Specialist, who used to visit the patients and issue instructions to the RMO. About the administration of Remdesevir medicine, the witnesses have deposed that the RMO used to procure the Remdesevir medicine and at his instructions,

it was administered to the patients. When asked about the death rate of the hospital, the attendants have reported that since the patients were not administered proper treatments, they expired. It is also stated that the ventilators, emergency medicines were also not made available and the RMO, dealing with the patients, did not have the expertise.

11. The witnesses have gone on to the extent of saying that after the death of Covid patients, without sanitizing the beds, the other patients were admitted on the same beds. There was absence of infrastructure in the form of X-Ray machines, Suction machines, ECG machines, Fumigators, etc. The sanitizer was reported to be not in sufficient quantity and the hand wash was not made available. A series of deficiencies have come on record through the statements of the staff members.

12. The nursing staff has stated that the medicines used to be administered after consulting the Applicant on telephone. The statements collated by the Investigating Officer during the investigation depict mismanagement of the hospital and when the submission of learned counsel for the Applicant is appreciated in the wake of the said allegations, I do not think it holds good. The staff of the hospital, whose statements are recorded, have specifically referred to the Applicant as a Specialist and the medicines being administered at his instance. Merely because he is a Consultant, is not a ground to absolve

him, since he was engaged by Accused No.1 as a Pulmonologist, whose services were very essential and germane for treating Covid patients. The owner of the hospital may be Dr. Mahesh Jadhav, but if the Applicant has noted the discrepancies in managing the hospital, he ought to have brought the same to the notice of the competent authorities, but he continued with the casual approach and, in absence of required equipments, which were necessary for treating Covid patients, just allowed the patients to breath their last in the hospital. The case of the prosecution is that out of 205 patients admitted in the said period, when the Applicant was attached to the hospital, 87 patients died and the whole scenario depicts a grim picture. The Applicant cannot take shelter of he being a visiting Consultant and shirk his responsibilities since he was recruited to cater to the needs of the Covid patients.

13. The legal position on the aspect of criminal negligence attributed to the doctors is well defined and true that the element of mensrea must exist for establishing negligence. As far as the invocation of Section 304A of the IPC against the doctor attributing death due to criminal medical negligence is concerned, it is a settled legal position that it must be shown that the accused doctor did something or failed to do something, which in the given facts and circumstances, no prudent medical professional in his ordinary senses and prudence, would have done or failed to do. The hazard taken by the accused doctor

should be of such a nature that injury which resulted was most likely imminent. The phrase '*gross*' though not used in Section 304A of the IPC, it has been held that before the liability is fastened to a medical practitioner under Section 304A of the IPC, it must be established that the act attributed to him must be grossly negligent and rash.

14. Keeping this principle in mind, learned A.P.P. has invited my attention to the papers of investigation, which reveals that when the house of the Applicant was searched and the panchanama was drawn, incomplete files relating to the patients were found in his house, which according to the Applicant, were allotted to him by Accused No.1. In absence of the custodial interrogation of the Applicant, the investigation cannot move further is the submission of learned A.P.P. 87 persons have lost their lives, when they were admitted in the hospital run by Accused No.1 and the patients were treated by the Applicant. The course of treatment being deficit and the negligence on part of the Applicant has already surfaced in the enquiry report submitted by the Committee constituted under the Chairmanship of Dr. Shishir Mirgunde and the report speaks for itself. The enquiry is further required to be carried out *qua* all the patients, but there are no papers available in the hospital is the submission of learned A.P.P.

15. This definitely warrants custodial interrogation of the

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Applicant, who is evading his arrest. The doctors must account for their acts and what has surfaced from the prosecution case is gross negligence, on account of which, 87 persons lost their lives.

16. The statement '*Medicines cure disease, but only the doctors can cure patients*' holds good in the present case and when there is a failure on the part of the Applicant to cure the patients by exhibiting his sincerity and dedication, he came to be arraigned as an accused and he must undergo the necessary custodial interrogation in the wake of the allegations. For the aforesaid reasons, the Application is rejected.

[SMT. BHARATI DANGRE, J.]