

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION (APL) NO. 65 OF 2017**

Dr. Vaibhav s/o Kamlakar Sapkal,  
Aged about 35 years, Occ. - Doctor,  
R/o Shelu Bazar, Tahsil – Mangrulpir,  
District – Washim.

.... **APPLICANT**

**VERSUS**

State of Maharashtra,  
through PSO, PS Ramdaspath, Akola,  
Tahsil and District Akola.

.... **NON-APPLICANT**

---

Mr. R.N. Ghuge, Counsel for the applicant,  
Mr. N.R. Rode, Addl.PP for the non-applicant,  
Mr. O.S. Harwani, Counsel for the complainant.

---

**CORAM : ROHIT B. DEO, J.**

**DATED : 24<sup>th</sup> SEPTEMBER, 2021**

**ORAL JUDGMENT :**

Applicant-Dr. Vaibhav Sapkal is arraigned as accused 3 in Regular Criminal Case 730/2010 for offences punishable under Sections 363, 417, 419, 420, 467, 468, 469, 470, 304-A, 120-B and 201 read with Section 34 of the Indian Penal Code.

2. The applicant preferred an application under Section 239 of the

Criminal Procedure Code, 1973 (Code) seeking discharge. The learned Judicial Magistrate First Class Court-1, Akola rejected the application seeking discharge, vide order dated 03-12-2016.

3. Dissatisfied, the applicant is invoking inherent powers and the revisional jurisdiction of this Court.

4. The prosecution case is that Manoharlal Chhutlani admitted his grandson Saurabh, aged 2 ½ months, at the Shukla's Children Hospital of accused 1, on 11-11-2008. Saurabh was under the observation and care of accused 1-Dr. Parthsarathi Shukla and the applicant at the Intensive Care Unit (ICU). On 15-11-2008 at 6-30 a.m. the informant noticed that instead of Saurabh, some other child was in his place. The informant confronted accused 1-Dr. Parthsarathi Shukla, who insisted that the child is his grandson. The informant pointed out to accused 1 that his grandson Saurabh is of fair complexion and the child in his place is of dark complexion. The informant lodged report at the concerned police station.

5. During the investigation, it transpired that on 10-11-2008 Mr. Mahadeo Dhaberao admitted his son, aged 4 days, at the hospital of accused 1 and till 15-11-2008 the said child was also at the ICU under

the observation of Dr. Parthsarthi Shukla and the applicant. On 15-11-2008 at 3-00 a.m. Dr. Parthsarthi Shukla told the aunt of the child Smt. Gangabai Solanke that the condition of the child is critical. At 5-00 a.m. accused 1 reiterated that the condition of the child is extremely critical and Smt. Gangabai Solanke went to call Mr. Mahadeo Dhaberao, who reached the hospital only to be told by accused 1 that the child has expired. Mr. Mahadeo Dhaberao took the custody of the body of the child and cremated the same. On 19-12-2008, the police informed Mr. Mahadeo Dhaberao that his son is alive and is at Utkarsha Baby Care Centre, Malkapur, Akola. During the investigation, the police excavated the spot of the cremation and secured the biological samples. The blood samples of Mr. Harish Chhutlani and his wife Mrs. Laxmi, the child who was alive, Mr. Mahadeo Dhaberao and his wife Mrs. Reshma were collected and sent for DNA profiling, which revealed that the biological parents of the child who is alive are Mr. Mahadeo Dhaberao and Mrs. Reshma. The DNA profile further revealed that Mr. Harish Chhutlani and Mrs. Laxmi Chhutlani are not biological parents of the dead child who was cremated.

6. I have given due consideration to the material in the charge-sheet and the reasons recorded by the learned Magistrate who rejected the discharge application. The application seeking discharge will have

to be scrutinized on the anvil of certain well established principles. While considering framing of charge, the test is not whether the material on record will result in conviction, rather, the test is whether the material is on record is sufficient to presume the commission of an offence. Having thus noted the well established principle, it must be borne in mind that the Court is not expected to act as a post office. Sifting of material on record for the limited purpose of ascertaining the existence of a case warranting trial, is not only permissible, is expected. While a strong suspicion may be sufficient to frame charge, the suspicion must be based on some material which if translated into evidence, will be incriminating. Strong suspicion which is based on moral notions of the Judge or which is in the realm of surmises and conjectures, will not suffice.

7. The learned Counsel for the applicant would submit that as against applicant-Dr. Vaibhav Sapkal, there is no material in the entire charge-sheet which, even if translated into evidence, will raise a presumption of commission of offence.

8. At this stage, it would be apposite to note the reasons recorded by the learned Magistrate to reject the discharge application. The first circumstance or material which is noted, is an alleged admission by Dr.

Vaibhav Sapkal that three days after 15-11-2008, accused 1-Dr. Parthsarathi Shukla called him and told him that the medical papers of the child of Mr. Mahadeo Dhaberao are soiled and another set will have to be prepared and that Dr. Vaibhav Sapkal accordingly prepared notes in his handwriting as per the say of Dr. Parthsarathi Shukla. Apart from the fact, that the alleged admission is not admissible, the admission does not take the case of the prosecution any further and is not inculpatory, given the case of the prosecution. The learned Magistrate then records, and the observation is again based on the alleged admission of Dr. Vaibhav Sapkal that all the accused prepared false documents of medical record, in furtherance of common intention.

9. In my considered view, there is absolutely no material on record, which if translated into evidence, will inculcate applicant-Dr. Vaibhav Sapkal in the crime. The learned Counsel for the informant Mr. Manoharlal Chhutlani, who was permitted to address the Court, invited my attention to the statement under Section 161 of the Code of Dr. Kavita Adhau, and the portion of which a reference is made, is to the effect that Dr. Parthsarathi Shukla called Dr. Vaibhav Sapkal and got notes written from him. This portion of the statement is clearly hearsay since it is not even the version of the witness that she was present in the house of accused 1-Dr. Parthsarathi Shukla where the

alleged notes were written. In any event, assuming that certain notes were written as dictated by accused 1-Dr. Parthsarthi Shukla, the case of the prosecution is taken no further. This Court is satisfied that as regards applicant-Dr. Vaibhav Sapkal, there is no material to warrant a trial and compelling him to undergo the trauma and torture of a trial will be an empty ritualistic formality, in the absence of any incriminating material.

10. Applicant-Dr. Vaibhav Sapkal is entitled to discharge in Crime 255/2008 registered with Ramdaspath Police Station, Akola and this application is, therefore, allowed in terms of prayer clause (i), which reads thus :

*“quash and set aside the order dated 03-12-2016 below Exhibit 62 in Regular Criminal Case 730/2010 passed by the Judicial Magistrate First Class (Court No.1), Akola and further be pleased to discharge the present applicant in the said matter.”*

**JUDGE**

*adgokar*