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

CRIMINAL APPLICATION [ABA] NO. 171/2021.

Dr. Sameer Narayanrao Paltewar.

-**VERSUS**-

State of Maharashtra, P.S. Sitabuldi, Nagpur.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders
	Shri A.V. Gupta, Senior Advocate with Shri A.A. Gupta, Advocate for the Applicant. Ms. K.R. Deshpande, A.P.P. for the Non-applicant. Shri S. Dewani, Advocate for the Informant.

CORAM : VINAY JOSHI, J.

DATE : JULY 30, 2021.

Hearing was conducted through Video Conferencing.

2. Registration of Crime No. 77/2021 at Sitabuldi Police Station, Nagpur for the offence punishable under Sections 406, 409, 420, 465, 467, 468, 471 of the Indian Penal Code and Section 66[c] of the Information Technology Act, led the applicant to approach this Court for grant of pre-arrest bail in terms of Section 438 of the Code of Criminal Procedure.

3. The applicant's earlier attempt of securing pre-

arrest bail from the Court of Sessions remained aborted. On initial submissions, this Court has granted interim protection to the applicant vide order dated 17.03.2021, which is prevailing till date.

4. I have heard exhaustive submissions put forth by the learned Senior Counsel appearing for the applicant, whilst in resistance, heard the learned A.P.P. representing the State, and the learned Counsel appearing for the informant.

5. The applicant is a Medical Practitioner by profession, whilst the informant is a Tax Practitioner. The applicant and informant are Directors of VRG Health Care Private Limited, which is a Company duly incorporated and registered under the provisions of the Companies Act. The share holding pattern in the said Company kept on changing. Currently the applicant is holding 67% share, whilst the informant holds remaining 33% shares of the Company. The Company operates a hospital namely “Meditrina Institute of Medical Sciences” at Ramdaspeth, Nagpur. The applicant is the Director and Chief Executive Officer of the Company. Since the year 2017, a dispute was going on in between both the Directors i.e. the applicant and the informant on various

issues which is pending before the Company Court.

6. At the instance of report dated 19.02.2021 lodged by the informant – Ganesh, the police registered a crime for the aforesaid offences. In past also the informant had lodged a report against the applicant vide Crime No.19/2019, alleging misappropriation and misuse of various government schemes. In the said crime, this Court has granted pre-arrest protection to the applicant vide order dated 11.07.2019. It is the informants' grievance that, the applicant being a Medical Practitioner and Chief Executive Officer has entire domination over the affairs of the hospital. The applicant by way of manipulating hospital bills, has misappropriated Crores of rupees. Some time in the year 2020, the informant came to know about the fraudulent activities of the applicant. On enquiry, he learnt about the misappropriation in large scale.

7. It is alleged that there was huge difference in the bills issued to the patients vis-a-vis to the hospital account. To be specific, it is alleged that the huge amount was received from the patients as per the copy of bill supplied to them, however, to the hospital record the bill amount of said patient was shown to be very less and thus, a huge amount was

siphoned.

8. For instance, the informant stated that a bill of Rs.2,86,000/- was issued to a patient namely Vivekanand Hatwar. The said amount was received from the patient, but, in the hospital record his bill was shown to be of Rs.73,600/- only. Likewise in the case of another patient namely Purushottam Khaparde, an amount of Rs.2,99,693/- was received by issuing the bill, whilst as per hospital record his bill was shown to be of Rs.2,00,693/-. The third instance quoted is about a patient namely Vasant Dambre, from whom after receiving an amount of Rs. 3,62,880/- bill was issued, but, in the hospital computerized record, the bill and receipt of very lesser amount of Rs.1,37,880/- was shown. As such, in these three exemplary cases, there was total misappropriation of Rs. 5,36,415/-.

9. The informant by and large alleged that it was the modus of the applicant to issue different bills to the patients, receives said amount, but, lesser bill amount was accounted into the hospital record. The allegation is about cheating, preparation of forged bills records and misappropriation of huge funds.

10. The learned Senior Counsel would submit that the applicant is maliciously framed under false acquisition by the informant. This is the successive second attempt of the informant of leveling false and frivolous allegations against him.

11. The learned Senior Counsel for the applicant mainly canvassed mainly that, though there is some discrepancy in some bills issued to the patients with the hospital account, however, the bill amount received from the patient was entirely deposited in the bank accounts of the Company. Therefore, there was no wrongful gain on the part of the applicant, hence, the charge of cheating and misappropriation would not stand. According to the applicant, the prosecution must show that the amounts deposited in the bank account of the Company was equivalent to the amount shown in the account. It is submitted that in the financial year 2020-21 (01.04.2020 to 31.03.2021), as per the account, cash received was to the tune of Rs.8,28,44,182/-, whilst during said period, the total cash deposit was to the tune of Rs.8,86,46,615/-, meaning thereby near about excess amount of Rs.58 lakhs has been deposited,

besides the cash expenses. It is stated that the opening cash in hand for the said financial year was Rs.17,50,467/-, whilst the closing balance of cash in hand was of Rs.20,12,142/-, meaning thereby excess cash of Rs.3 lakhs was in hand. To strengthen said contention, it is argued that the balance sheets duly certified by the Chartered Accountant to that effect, were handed over to the investigating agency. The said calculation was placed to impress that the actual amount received from the patients as per their bills, was deposited in the Company's account, though less amount was shown into the hospital account. On this basis, it is argued that there was no dishonest intention, otherwise, the applicant has no reason to deposit the excess cash in the Company's bank account.

12. The second limb of argument is about difference in between bills issued to the patients, and the hospital account. On said count, it is submitted that the informant was having access to the system, through which he himself has altered the figures of bills in the hospital account to frame the applicant in false case. Initially it is submitted that the informant being one of the Director, was accessing the system

from his own office by use of his login ID and password. It is also submitted that some time informant visited the hospital and has manipulated the accounts. Besides that some usual submissions are made that the applicant is a reputed Neuro Surgeon, he holds immovable property, the case is based on documentary evidence, etc.

13. The State has strongly resisted the application by filing exhaustive reply-affidavit. The informant has also put his resistance on record by filing reply. It is contended that the applicant in the capacity of Chief Executive Officer, was having entire control over affairs of the hospital. From last two to three years, the informant was not visiting to the hospital due to differences and incident of assault. The applicant has also disabled the computer access of the informant from last two years. According to the State, the applicant himself and through his associates had altered the figures from the system and thus siphoned Crores of rupees. On exemplary basis, three instances have been quoted in the reply which is part of the first information report. According to the State, the past record of the applicant was not fair. Earlier he had misappropriated huge funds by

manipulating the accounts in respect of various government welfare schemes, for which a crime was registered.

14. It is argued on behalf of the State that the informant has quoted three examples, however, during the course of investigation, it was found that near about 58 bills were manipulated. The difference amount runs into Crores of rupees. Still the investigation is under way, in which more cases of fraud are forthcoming. According to the State, during investigation, statement of several connected persons were recorded. The report of Software expert states that the bills have been changed by using the internal IP address from the hospital. It is stated that as per the report from Medant Software, the user ID of the informant was manipulated and used from the hospital. There are statements to show that the informant never visited the hospital since last two years. Thus, the contention is about applicants manipulating the hospital accounts for siphoning huge amount.

15. To cut short, it can be briefly stated that the hospital has received the amount as per the bills issued to the patients, but, lesser amount was shown into the hospital account. So far as the difference in the bill amount is

concerned, almost it is not in dispute. Moreover, it is not disputed that the applicant, a Doctor, was Chief Executive Officer of the Company and was managing the entire affairs of the hospital. It is also not in much dispute that the informant was not regular visitor of the hospital, but, occasionally happened to be there.

16. The principal question is as to who has manipulated the accounts from the system, since apparently there was difference in the billing amount. Initially the applicant has stated that the informant being a Director was having access to the system. Though he was not visiting to the hospital, he accessed the system from his office to manipulate the accounts. In addition, it is submitted that on occasional visits, like visit dated 06.08.2019, the informant came to the hospital and altered the accounts.

17. By denying said contention, it is canvassed on behalf of the informant that, the informants login ID of the system was disabled in the year 2017-18 itself. According to the State, the applicant who was having complete access to the system has created second login ID as “Director-2” in the name of the informant Ganesh and through said new login ID,

manipulated the account. It is a matter of defence to establish whether the informant had access to the computer system, during crucial period. Admittedly, the applicant was having full access to the system, directly or through his employees, who were under his control, therefore, it necessitates to thoroughly interrogate the applicant to unearth the truth.

18. The case diary contain statements of some persons of which I may refer few without disclosing their names. A person working with the billing section has stated that there was vast difference in the original bills and the bills prepared in the system, and the said mess was since last 2-4 years. It was further stated that the informant was never seen in the hospital since last 2-3 years. Particularly, it was stated that in the year 2017-18 itself, the informant's software ID was disabled. Then a person related with the Mednet Software speaks about alteration in the computerized account. He says that 2 IDs were created in the name of Director-2 of Dr. Ganesh and the modification was done from the hospital itself. He further states that the applicant was in total control of the affairs of the hospital, and was able to create

new login ID. Moreover, there are some other statements which speaks about the manipulation of accounts.

19. Since various statements indicates the role of the applicant being incharge of the entire affairs of the hospital, his contention that informant himself has manipulated the account cannot be accepted, on prima facie basis. Of course, it is a matter of investigation wherein it is for the investigating officer to not only collect the material against the accused, but, to place the entire true facts before the Court.

20. Interestingly on 31.03.2021 it was submitted to this Court on behalf of the applicant that the bills as per hospital record even if seen today in the software, would match with the bills issued to the patients. In short there is no difference in the bill amount at all. In order to verify the said submission, learned A.P.P. gave three random name of patients of which the applicant undertook to supply the fresh printouts to the investigating officer for verification. The said exercise appears to have been done in which also the learned prosecutor has shown that still there is difference in billing amount. According to the learned A.P.P. for the purpose of

verification, the applicant again made alteration in the bills.

21. For instance, case of patient namely Chandrakala Bhede was pressed into service. The bill issued to the patient was of Rs.3,80,617/-, whilst the bill as per the hospital record was of Rs.2,09,618/-. Learned A.P.P. while explaining the modus of the applicant, has stated that the applicant used to manipulate the entry of amount received in cash by altering the figure, but, e-payment made by the patient was shown as it is. On exemplary basis, in case of Chandrakala Bhende, it was shown that the copy of the bill received by the patient shows details of payment made mostly in cash and partially by electronic mode. Particularly, the said bill bears entry of payment of Rs.50,000/- in cash dated 27.11.2020. In that context, my attention is invited to the receipt dated 27.11.2020 pertaining to the same patient i.e. Chandrakala (Page No.72 of the compilation of patient Chandrakala Bhende). Surprising to note that in the hospital account there was credit entry dated 27.11.2020 of Rs.5000/- only, from the said patient Chandrakala Bhende, instead of cash payment of Rs.50,000/-, as per the bill issued to the patient. Similar type of difference was noted in the bills of patients

namely Ishwardas Ludhwani and Partibha Dhanalkotwar. True, it is a disturbing affair that a huge bill amount was collected from the patients, but, very less is accounted for, may be to suppress the revenue, evade income tax or for some other purposes.

22. As regards to the second submission advanced by the learned Senior Counsel that, despite difference in the bill amount, the applicant has deposited excess amount, though prima facie looks to be impressive, but, it has no bearing at all. It is hundred bedded hospital having inflow of large number of patients. There are various heads under which there would be daily cash collection. Obviously the daily deposit of cash in the bank cannot be bill wise, but, as per entire daily collection, therefore, it is difficult to understand and accept that though the hospital account shows less collection, still excess amount has been deposited into the bank. Though the applicant gave only figures of cash collection and deposits, however, it requires to be scanned with the help of accounting expert. Moreover, the question about authenticity of figures quoted by the applicant is also a matter of scrutiny. Therefore, at this stage, the submission

that there is no wrongful gain or wrongful loss, cannot be accepted, that too on bare submission.

23. The informant has also placed on record forensic audit report dated 11.05.2020 of the Company, carried out by the Chartered Accountant. The conclusions of the said report bears relevance, hence, they are reproduced below :

> "*1. There has been misappropriation of funds in the form of cash withdrawals done by SP and later on adjusted by way of fictitious entries in the books of accounts.*
>
> *2. There have been instances of financial irregularities, revenue suppression for which SP is directly responsible but involvement of other Directors including GC cannot be ruled out.*
>
> *3. Major differences amongst the directors are due to the fact that there have been many transactions which are not reflected in the books of accounts. These transactions have become the bone of contention among the directors.*
>
> *4. There has been lack of transparency in the Books of Accounts of the Company. There have been major instances of inflation of Expenditure and some cases of suppression of Income in all the financial years. For the Financial Year 2012-13 to 2017-18, Books of Accounts and Financial Statements do not give a true and fair view of the state of the*

affairs of the company.

5. *Removal of GC as a Director was uncalled for as he was not the only Director who was responsible for the financial irregularities. He was deliberately removed for questioning the financial and medical irregularities done by SP in VRG.*

6. *SP in particular and other Directors in general are guilty of mala fide acts, breach of fiduciary duty and negligence."*

(Note : The term "SP" denotes to the applicant – Dr. Sameet Patlewar, whereas the term "GC" denotes to the informant – Ganesh Chakrawar)

24. These remarks, contained in the forensic audit report reinforces need of thorough investigation. Though the applicant submitted that the balance sheet of the year 2019-20 has been audited and handed over to the investigating officer, however, it has to be scrutinized in context with the entire record.

25. It is argued that the matter is largely depending upon the documents, and the investigating agency has already seized the Computers, Harddisk etc., therefore, there is no necessity of custodial interrogation. Moreover, it is submitted that the applicant is a reputed person i.e. Neuro

Surgeon, having deep roots in the society. Except one earlier crime registered at the behest of the very informant, he backs clean record. The applicant has cooperated with the investigating agency while on interim bail, and assures to continue with the same.

26. The matter pertains to the vast magnitude having various dimensions to be unearthed. The investigation has been handed over to the Economic Offences Wing by the concerned police. The applicant was incharge of the hospital, meaning thereby he is in a dominant position as pertains to the entire staff of the hospital. Several employees of the hospital who are connected with the billing section, cash department etc., would be the relevant persons who can repeal the necessary information. In view of the very position of the applicant being major share holder and Chief Executive Officer of the Hospital, the possibility of pressurizing the hospital staff cannot be ruled out.

27. As per the prosecution case, so far the alteration was noted by the investigating agency in 57 bills, and still some more may add to the figure. Obviously the alleged misappropriation is of Crores of rupees. In such cases

thorough investigation from various angles, including the account experts, computer system experts, etc., would be needed. The applicant would be in a position to furnish the relevant information during the course of interrogation. One cannot predict in which way the information from the applicant would assist or provide a clue to the investigating agency for arriving to a logical conclusion. Prima facie, there is no material to indicate that the accusation has been made with an object of injuring or humiliating the applicant of having been arrested. Merely because the applicant is a Doctor by profession, having immovable property, the other vital material and seriousness of the crime cannot be overlooked. On thorough investigation, the police would be in position to pinpoint as to who and in which manner manipulated the account. At this juncture, there is ample material on record against the applicant, at least to direct him to join the course of investigation. In this view of the matter, it is not a fit case to use judicial discretion and grant pre-arrest protection. Criminal Application is therefore, rejected.

28. At this stage, the learned Senior Counsel for the applicant prays for extension of interim protection by stating

that since long the applicant is under protection of this Court and he desires to approach to the higher forum. It is brought to the notice that initially interim protection was granted by the Sessions Court vide its order dated 22.02.2021. Moreover, in Criminal Application (APL) No.393/2021 vide order dated 09.03.2021, this Court had passed an order in effect that, in case of rejection of pre-arrest bail application by the Sessions Court, the interim protection would continue for a period of 72 hours, to enable the applicant to approach this Court. In such a background, this Court vide order dated 17.03.2021, has granted interim protection which is prevailing till date. The learned A.P.P. and learned Counsel appearing for the informant objected to the request made by the applicant for extending the interim protection. Precisely, it is submitted that the applicant remained non-cooperative during the period of interim protection, as well as this Court on merits has rejected this application.

29. Undeniably from 25.02.2021, the applicant is enjoying the interim protection. This Court has continued the interim protection during the pendency of this application. The applicant has every right to test the order of this Court

before the higher forum. However, if in the meanwhile the applicant is arrested, then ultimately his right to approach to the higher Court would be frustrated. In view of this, the interim protection granted by this Court vide order dated 17.03.2021, is extended for a period of three weeks from today, on same terms and conditions as are set out in the said order. Needless to mention that the said interim protection would cease to operate thereafter.

JUDGE

Rgd.