

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

Criminal Application (BA) No. 1183 of 2021

(Dr. Shashikant Murlidhar Saraskar ..vs.. State of Maharashtra through P.S.O., P.S. Washim City,
Tal. and Dist. Washim)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. V. Sirpurkar, Advocate for the applicant
Mr . M. K. Pathan, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 9-12-2021

Heard.

2. The applicant is a Medical Practitioner who claims to hold the BAMS degree. He is facing prosecution under Sections 315 read with Section 511 and 34 of the Indian Penal Code (IPC), Sections 3 and 4 of the Medical Termination of Pregnancy Act and Section 33 of the Maharashtra Medical Practitioners Act.

3. In a nutshell, the prosecution case is that pursuant to the secret information received that illegal abortions are done at the hospital of the applicant, the Civil Surgeon and his team raided the hospital at 6.00 p.m. on 18-8-2021 and came across woman patient, namely, Smt. Manorama who was accompanied by her

relative Smt. Chaya. Smt. Manorama disclosed that she was advised to terminate the pregnancy of 24 weeks since she developed certain complications due to fall suffered. While the applicant was concededly not present in the hospital, according to the prosecution, the pills were inserted in the genitalia of the patient by co-accused Vilas Thakre and that the applicant, was not only aware, was a party to the illegal abortions.

4. According to the prosecution, during the course of investigation, the statement of another patient Smt. Durga is recorded and she has similar narrative to tell. According to the prosecution, although the charge-sheet is filed, right is reserved to carry on further investigation under Section 173(8) of the Code of Criminal Procedure, 1973, as a fact, further investigation is in progress and the possibility of disclosure of other illegal abortions cannot be ruled out at this stage.

5. With the assistance of learned counsel for the applicant Mr. Sangram Sirpurkar and learned Additional Public Prosecutor Mr. Mehroz Pathan, who is assisted by

the Investigating Officer, I have scrutinized the material in the charge-sheet.

6. Mr. Pathan is justified in the submission that there is a strong *prima facie* case against the applicant in the sense that the abortions in his hospital could not have been done without his complicity. However, I am inclined to grant bail for reasons briefly spelt out hereinafter.

7. It is trite law that existence of strong *prima facie* case is not the only relevant consideration for deciding the entitlement to bail.

8. Mr. Pathan is right in the submission that since the girl child born died, unless it is shown that the act was done in good faith to save the life of Smt. Manorama, Section 315 of IPC, which is punishable with maximum imprisonment of 10 years, will come into play. While it would be for the accused to justify the illegal abortion during the course of the trial, and if the prosecution discharges the initial burden, at this stage, considering that the charge-sheet is filed, there is no material

presently to suggest that the applicant Medical Practitioner shall be in a position to obstruct further investigation, continued incarceration may not be necessary. Perusal of the statements of two patients shows that the common narrative is some complication after the fall. While it would be during the course of the trial, that the narrative will have to be further scrutinized, that would be a relevant consideration for deciding the entitlement to bail.

9. The applicant Medical Practitioner does not appear to have any earlier antecedent in the sense that the present offence is the first of such kind.

10. However, Mr. Pathan submits, and not without justification, that the conduct of the applicant does not behove a Medical Practitioner and he is not a registered practitioner within the meaning of the Medical Termination of Pregnancy Act. However, as observed *supra*, existence of strong *prima facie* case in itself is not fetter on the discretionary power to grant bail.

11. Mr. Sirpurkar had undertaken, on the basis of instructions received, that during the course of the trial, the hospital of the applicant shall remain closed and that the applicant shall not indulge in any activity similar to that alleged, if released on bail.

12. While I note the submission that during the course of investigation, the Investigating Officer has invoked Section 5 of the Medical Termination of Pregnancy Act, the maximum punishment is 7 years.

13. Considering overall circumstances and the fact that the applicant Medical Practitioner does not appear to be a flight risk, I am inclined to grant bail. Needless to record that if during the course of investigation, certain facts emerge as would call for cancellation of bail or custodial interrogation, it shall be always open to the prosecution to seek custody of the applicant Medical Practitioner.

14. The application is allowed subject to the following conditions.

(i) The applicant be released on bail on executing PR bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with solvent surety of the like amount.

(ii) The applicant shall keep his hospital closed as is undertaken till the conclusion of the trial.

(iii) The applicant shall not make any attempt to influence the witnesses or otherwise to obstruct further investigation.

(iv) The applicant shall report at Police Station, Washim City every Monday and Thursday of the week from 11.00 a.m. to 2.00 p.m. for three months from the date of release from jail.

(v) The applicant shall not leave the country without the permission of the trial Court.

JUDGE

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