IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.133 OF 2022

Dr. Rajaram s/o. Dhondiba Shendge,
Age : 51 years, Occ. Doctor,
r/o. Main Road, Omerga, Tq. Omerga,
Dist. Osmanabad ..Applicant

Vs.

The State of Maharashtra,
Through Police Inspector,
Omerga Taluka Police Station,
Tq. Omerga, Dist. Osmanabad ..Respondent

Mr.K.N.Shermale, Advocate for applicant
Mr.D.R.Kale, Public Prosecutor for respondent

CORAM : R.G. AVACHAT, J.
RESERVED ON : FEBRUARY 26, 2022
PRONOUNCED ON: MARCH 04, 2022

ORDER :-

This is an application under Section 438 of the Code of Criminal Procedure. The applicant claims to have apprehension of arrest in connection with Crime No.0572 of 2021 registered with Omerga Police Station, Omerga, Dist. Osmanabad for the offences punishable under Sections 420, 465, 468 and 471 read with Section 34 of Indian Penal Code.

2. Heard learned counsel for the parties. Perused the First Information Report (FIR) and related papers.

3. The FIR has been lodged by the Medical Superintendent (Class-I), Sub-District Hospital, Omerga, Dist. Osmanabad, on 12.10.2021. One Tanaji Bansode (accused no.2) had made a complaint to the Civil Surgeon, stating therein that the applicant herein had forged the medical papers and misappropriated Lakhs of rupees under Mediclaim policies issued by various insurance companies. The Civil Surgeon had, therefore, constituted a Committee of three Doctors. The Committee made enquiry into the matter, examined the documents and came to the conclusion that the allegations made in the complaint by Tanaji Bansode were true. The Committee, therefore, gave its report indicting the applicant herein along with the complainant – Tanaji Bansode himself, since Tanaji Bansode would run a Pathology Laboratory in the premises of the hospital run by the applicant herein. The Committee found the alleged offences to have been committed by both of them in concert with each other. The Civil Surgeon, based on the enquiry report, directed to lodge the FIR. The FIR, thus, came to be registered.

4. Learned counsel for the applicant would submit that the applicant is a Medical Practitioner of good repute. He has been practicing medicine for over twenty two years. No crime has ever been registered against him. A false and frivolous complaint has been lodged by Tanaji Bansode. According to learned counsel, only with a view to harass the applicant, a false FIR has been lodged. There is substantial delay in making the complaint. The complainant-Tanaji Bansode would run the Pathology Laboratory on his own. The premises was given to him by the applicant on rent. Learned counsel would further submit that Tanaji Bansode, lateron, filed an affidavit before the District Magistrate withdrawing all his allegations in the complaint. Attention of this Court was also invited to the Advocate's notice issued on behalf of Tanaji Bansode to the applicant herein and the reply given by the applicant thereto. According to learned counsel, the D.G.P. (A.P.P.) gave his opinion in writing, stating therein that no offence is made out against the applicant herein. According to learned counsel, Dr.Alagekar, in his report dated 24.02.2021, gave the applicant clean-chit. Learned counsel would further submit that none of the patients had ever made any grievance. No insurance company has filed any complaint.

Investigation of the crime has been over. The charge sheet is filed. He, therefore, urged for allowing the present application.

5. Learned Public Prosecutor, on the other hand, opposed the application.

6. The applicant is a medical practitioner. He runs his hospital at Omerga. Some portion of his hospital premises was given to the complainant - Tanaji Bansode to run a Pathology Laboratory. Unless the matter is thoroughly investigated, it cannot be ascertained whether he was given the premises on rent to run his own Pathology Laboratory or it was a partnership. The complainant - Tanaji Bansode had issued the applicant an Advocate's notice asking for his share in the bills amounting Rs.32,58,825/-. The applicant claims to have had extended extensive financial assistance to the complainant – Tanaji Bansode. What kind of financial transactions were between the two, can only be unearthed on due investigation.

7. The complaint made by Tanaji Bansode was enquired into by a Committee of three Doctors. The Committee gave report holding both the applicant – Dr. Rajaram Shendge and the

complainant – Tanaji Bansode to have been involved in the crime in question. The application for grant of anticipatory bail moved by the applicant was rejected by the Sessions Court. The applicant had, therefore, approached the High Court. After having realised that no relief would be granted to him, the applicant withdrew his application. After a while, he again approached the Court of Addl. Sessions Judge and urged for grant of anticipatory bail. His application again came to be turned down. True, this Court is not sitting in appeal over the order passed by learned Addl. Sessions Judge refusing to grant the applicant anticipatory bail. The observations made by learned Addl. Sessions Judge in his order dated 26.10.2021 passed below Exh.1 in Cri. Bail Application No.159 of 2021, are worth reproducing. The observations have factual foundation. It would, therefore, be apposite to reproduce relevant portion of the order dated 26.10.2021, as under :-

> 9. Perused the inquiry report submitted by the committee headed by Dr. R.U.Suryawanshi. The committee recorded statement of Tanaji Babruwan Bansode on 23/11/2019 in the cabin of Medical Superintendent of Sub-District Hospital, Omerga. They also recorded opinion of the concerned persons. The concerned persons stated in writing that,
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> 10. Tanaji Bansode was not ill. Even then, Dr. R.D.Shendge used documents of Tanaji Bansode, I.P.D.

paper, X-ray, E.C.G. and blood testing reports which are false and bogus. By use of the false, bogus and fabricated documents, bill amount is obtained from the insurance company and misappropriated the same. A list of such patients who are cheated in the aforesaid manner and commission of misappropriation by taking the bill amount are also stated in the written statement. On 21/12/2018, bogus medical examination papers of Tanaji Bansode were prepared. However, Tanaji Bansode was out of station on 21/12/2018 for funeral ceremony of near relatives. On 22, 23, 24/12/2018, Dr.R.D.Shendge in his private hospital gave reports and medical examinations report by his signature. Thus, insurance company was cheated by showing Tanaji Bansode as ill when he was not ill.

11. Tanaji Bansode also stated in his written statement that by use of name of the patient and code words, Dr. Shendge was obtaining blood testing report as per his will from Tanaji Bansode, which are incorrect and cheating the patients.

12. On examination of IPD paper of Tanaji Bansode, it revealed that Dr.Sachin Shendge examined the concerned in his hospital.

13. The Committee also recorded statement of Dr. Sachin Shendge in his hospital. Dr.Shendge stated that on 21/12/2018, he went in the hospital and took the round and examined the concerned patient. Houseman in the hospital, made notes on the paper as per advise of Dr. Sachin Shendge. As per instruction of Dr.Sachin Shendge, houseman signed on the paper on behalf of Dr. Sachin Shendge. The Committee also went in the hospital obtained available documents and I.P.D. papers, testing reports of the complainant-Tanaji Bansode and made in depth inquiry.

14. As per statement of Dr. Shendge, Tanaji Bansode was working as Lab Technician in the hospital. Tanaji Bansode was also trusted Aide of Dr.Shendge and looking after his economic transactions. On

21/12/2018, Tanaji Bansode was suffering from Asthma. Tanaji Bansode was admitted in the hospital at about 7.00 a.m. On 21/12/2018 and treatment was given to him. As he was feeling better after medical treatment, Tanaji Bansode was discharged on 12.00 hours for funeral ceremony of his relative only for the period two hours and asked him to again admit in the hospital. The responsibility of lab and report is on Tanaji Bansode. He i.e. Tanaji Bansode was looking after works of the lab by remaining admitted in the hospital. On 23/12/2018 at about afternoon he was relieved/discharged from the hospital. Tanaji Bansode was giving report under his signatures as he is owner of the lab. Dr. Shendge did not ask him to give any incorrect report. Tanaji Bansode is entirely responsible for the reports in case it is incorrect.

15. On the basis of aforesaid inquiry, written statements and detailed study, the committee submitted their report which are as under:-

1. Tanaji Bansode was admitted on 21/12/2018 in the hospital as per I.P.D. papers and other documents.

2. During the period of admission, Tanaji Bansode was out of hospital from 21/12/2018, at about 12.00 hours. Tanaji Bansode works in his lab during the period of admission in the hospital.

3. Every report of the patient are given under the signatures of Tanaji Bansode and same are the correct.

4. The signatures of the patient on the IPD papers is tallying with the signature on the lab report before 21/12/2018. However, the signature on the lab report after 22/12/2018 is not tallying with earlier signatures.

> 5. As per statement of Dr. Sachin Shendge, IPD Paper, on 21/12/2018 he took round in the hospital. He examined Tanaji Bansode. However, the paper work and signature is made by Houseman i.e. R.M.O.
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> 9. As per the list given by Tanaji Bansode, i.e. friends relatives, employees of the hospital, employees of the college and other friends, are admitted in the hospital for treatment and claim is made with F.H.P.L. Health Insurance Company regarding the said patient and the treatment.
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> 10. Tanaji Bansode preferred a complaint application on 06/9/2019 with police station, Omerga and insurance company on 20/7/2019 in written.

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17. ....
18. ....
19. ....
20. ….

21. He further stated therein that, he was not knowing who is patient, but accused no.2 used to give paper cheat containing name of the patient and the code-words. Single arrow, double arrow, triple arrow, upside arrow indicating to give increasing findings. In case of downside arrow, findings of medical investigation to be given on lower side. Accused no.1 was also compelling accused no.2 to give such reports by making understanding of +, - markings for positive and negative. As accused no.2 was dependent on accused no.1 financially, and he was running his lab in the hospital of accused no.1, he was doing the report as

per instruction of accused no.1. In case of in depth inquiry scam of crores of rupees would be surfaced on record.

22. ....
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24. ....

25. Investigating papers also reveals the medical investigation documents of Mahadevi Aandure, Rupchand Gaikwad, Kasturi Lohar, Birajdar Prabhakar, Ashok Reddi, Kumar Kalshetti, Nirmala Adevi Nagade, Gulchand Sagar, Datta Bandichode, Vicky Birajdar, Sharnamma Devangi, Hanmant Waghmode, Shakuntala Jujar, Rangubai Shendge, Bhimashankar Raypgol, Priyanka Dudhbhate, Hanmant Waghmode, Khandu Aaglave, Chandrakala Sankule, Laxman Jadhav, Venykat Pertale, Varsha Medebane, Mahesh Sasture, Surekha Patil.

26. Copy of the I.D.Card having name of Tanaji Babruwan Bansode, his member I.D. No.10014205612 period 1/1/2018 to 31/12/2018 of Apollo Munich Health Insurance is also produced on record.

27. Copies of the prescription are also produced on record. A copy dated 15/1/2018 bearing name Ghante Gopal shows double arrow in upside direction in front of letters B e |. A single arrow is shown in front of letters CBC | in case of Suraj Sontakke having date 21/11/2018. There are various such copies of the prescription showing upside double arrow, letter N having encircled drawing, single arrow, +, and other signs like →, in front of various abbreviations used in medical practice. Other signs like + A A and encircling the signs.

28. The list of names of patients their IPD Number, sex, claim amount, paid amount, dates are given in a tabular form containing at least 173 persons.

29. Names of Ganesh Katre, Subhash Jagtap, Gunwant Waghmode, Ashok Dudhbhate, Gorakh Ghodke, Sonkate Vijayabai, Tanaji Bale, Chandrakant Bansode, Chandu Dudhbhate as friends and relatives are stated in the list. Names of hospital employees are also stated therein. Names of college employees and friends are also enclosed therein.

30. This court do not find any substance in the submission that, neither any patient, nor insurance company has made any complaint against accused no.2. The reasons are simple and easy to understand. When the patients are not knowing as to whether the claim is preferred or not. Allegations are made that, in a secret manner, accused no.2 prepared I.D. cards etc. obtained health insurance, and the reports given by the lab technician who was then in confident of accused no.2. In absence of knowledge of cheating, one cannot give a complaint. Secondly, the policies are taken by accused no.1 in the name of other persons. It is not brought on record that, those persons were knowing about the taking of health insurance in their name, because they have not paid insurance premium. In absence of knowledge or the concrete proof, insurance company cannot be accepted to lodge the complaint. Insurance amount lying with the insurance company is the amount of people who paid insurance premium to insurance company. Hence, amount of insurance company is a public fund. The said amount must be utilized for genuine, deserving persons. The public fund lying with insurance company cannot be siphoned by a single person by making fraud and hacking a criminal conspiracy. Certainly there is wrongful loss to insurance company and in turn to people. Certainly there is wrongful gain to accused no.1. Thus, cheating is prima facie committed. It is settled principle of law that criminal law can be set into motion by any person. This case is not limited for cheating of a private single person. The cheating is committed against the people at large. Therefore, there is no merit in the submission that, accused no.2 had withdrawn the allegations

> against the accused no.1. In fact, this amounts to tampering with the prosecution evidence/witnesses. It is also nothing but a tactic to avoid legal proceedings."

8. The gist of the material appearing against the applicant herein is that he and the complainant - Tanaji Bansode prepared false pathological reports of some persons, who were, in fact, not ill. The persons in respect of whom such reports were prepared, were none other than the staff members of the college run by the applicant. Admittedly, the applicant is a panel Doctor of FHPL Insurance Company. The complainant had given *modus operandi* as to how false medical papers were brought into being. Same has been described in paragraphs 21 and 27 above of the order passed by learned Addl. Sessions Judge.

9. It appears that the complainant is won over. He, therefore, withdrew the complaint made to the Civil Surgeon. Although he has withdrawn from his complaint, a serious economic offence requiring detailed investigation came to light. His withdrawal of the complaint would, therefore, be of little consequence. It appears that incorrect submission was made on behalf of the applicant. Charge sheet has been filed so far as the arrested

accused, Tanaji Bansode. The charge sheet appears to have been filed to avoid the arrested accused to claim the default bail. It has been specifically mentioned in the charge sheet that the applicant herein is absconding and the investigation of the crime so far as against him, is yet to be made effectively. It is not known as to in response to what communication, Dr.Alagekar gave his report dated 24.02.2021, finding no specific substance in the complaint made by Tanaji Bansode. The fact remains that the three-member Committee of high ranking Doctors had enquired into the matter and submitted report indicting the applicant in a serious economic offence.

10. Learned counsel for the applicant has placed reliance on the following authorities:-

(i) Siddharth Vs. The State of Uttar Pradesh and anr., Criminal Appeal No.838 of 2021;

(ii) Arnesh Kumar Vs. State of Bihar, AIR 2014 SC 2756

(iii) Bombay High Court order dated 13.01.2022 in Anticipatory Bail Application No.1589 of 2021 (Sagar @ Balu Babasaheb Lokhande Vs. The State of Maharashtra);

(iv) Bombay High Court order dated 13.12.2021 in Anticipatory Bail Application No.997 of 2021 (Prakash s/o. Kondaji Zaware and ors. Vs. The State of Maharashtra)

11. I have gone through the authorities relied on. The facts in the case of **Siddharth** (supra) indicate that investigation of the crime was over. Charge sheet was filed against all the accused therein. The Court concerned was insisting for arrest of the accused therein as a pre-requisite formality to take the charge sheet on record in view of Section 170 of the Cr.P.C. So is not the case herein.

The facts of **Sagar Lokhande's case** (supra) are on somewhat similar lines. The investigation of the crime therein was over with filing of charge sheet. The facts of the case in hand, however, warrant the applicant's arrest for investigation of the crime.

So far as **Arnesh Kumar's case** (supra) is concerned, it was the offence under Section 498-A of I.P.C. The directions in **Arnesh Kumar's case** (supra) were made applicable in the cases, where the offence is punishable for imprisonment for a term of seven years or less.

12. It appears from the submissions made by learned APP before learned Addl. Sessions Judge, that custodial interrogation of the applicant was required. It also appears that the applicant has

misused the liberty granted to him. This Court had granted him interim protection only on the ground that his father was on death bed. It was specifically mentioned in the order itself that the merits of the matter were not adverted to. True, unfortunately, the father of the applicant passed away. This Court, with the consent given by learned APP, extended the interim protection on two occasions, only on the ground of death of the applicant's father. This Court had passed the first of such order on 04.02.2022. The applicant, taking disadvantage of such order, made a communication to the Investigating Officer claiming to have been granted interim anticipatory bail and appeared on his own before the Investigating Officer with sureties to be furnished. Had this Court adverted to the merits of the matter on the day one, it would not have granted the applicant interim protection. Be that as it may.

13. Since the applicant is involved in serious economic offences, he does not deserve grant of bail under Section 438 of the Code of Criminal Procedure. The application, therefore, fails. The same is rejected.

[**R.G. AVACHAT, J.**]

14. After pronouncement of the order, learned counsel for the applicant, prays for continuation of the interim protection. The prayer for continuation of interim protection is rejected.

[**R.G. AVACHAT, J.**]

KBP