

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 611 OF 2018

Dr. Sandhya w/o Anant Pantoji (Kulkarni),
Age: 43 years, Occu: Gynaecology Consultant,
R/o Plot No.1 "Chandrika" Sandeshnagar,
Garkheda Parisar, Aurangabad **... Petitioner**

Versus

1. The State of Maharashtra
Through Police Inspector,
M. I. D. C. Waluj Police Station,
Aurangabad
2. Dr. Deelip Bhaskar Dange,
Age: Major, Occu: Service as
Medical Superintendent,
Sub-District Hospital, Gangapur,
Tq. Gangapur, Dist. Aurangabad **... Respondents**

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Mr. V. J. Dixit, Senior Advocate i/b Mr. S. B. Patil, Advocate for
petitioner

Mr. R. B. Bagul, APP for respondent - State

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 21st FEBRUARY, 2022

PRONOUNCED ON : 17th MARCH, 2022

J U D G M E N T :-

. Rule returnable forthwith. With the consent of the
learned Advocate for the petitioner and the learned APP, heard
finally.

2. The challenge in this criminal writ petition is to the order dated 17.01.2015, rejecting the application moved by the petitioner herein for discharge from a criminal case being Regular Criminal Case No.295 of 2013 and the order dated 15.01.2018, passed by the Ad-hoc Additional Sessions Judge, confirming the said order dated 17.01.2017.

3. The petitioner along with others, has been proceeded against by filing a charge-sheet for the offences punishable under Sections 5(2) (3) and (4) of the Medical Termination of Pregnancy Act, 1971 (for short, "MTP Act"), under Section 6 of the Maharashtra Nursing Homes Registration Act, 1949 (for short, "MNHR Act") and under Sections 109, 111 and 113 of the Indian Penal Code (for short, "IPC").

4. The record indicates that the petitioner herein and two other doctors, namely Dr. Bhagyashri Dunakhe and Dr. Madhuri Kothari, were proceeded against by filing a supplementary charge-sheet. All the three, namely, the petitioner, Dr. Bhagyashri Dunakhe and Dr. Madhuri Kothari, preferred application for discharge. The trial Court rejected their application(s). The trio,

therefore, preferred three separate revision applications challenging the order refusing to grant discharge. Then they preferred three separate writ petitions including the present one. This Court, vide common judgment and order dated 21.09.2018, allowed Criminal Writ Petition Nos.330 of 2018 and 496 of 2018 preferred by Dr. Bhagyashri Dunakhe and Dr. Madhuri Kothari, respectively. It appears that the present writ petition has been left out to be decided along with those two writ petitions. This writ petition, therefore, could very well be disposed of in terms of the judgment and order dated 11.09.2018 passed in Criminal Writ Petition Nos.330 of 2018 and 496 of 2018. In para 19 of the judgment and order dated 11.09.2018, it has been observed thus:

“19. The MTP Centre has been registered in the name of Dr. Sandhya Pantoji, who is M.D. (Gynecology), as the owner thereof as seen from the certificate of approval dated 9th March, 2006 issued by the Joint Secretary, Public Health Department, Government of Maharashtra. The papers of investigation show that Dr. Sandhya Pantoji had filed an application in the prescribed form for seeking approval to the proposed MTP Centre. In Clause No. (8) of that application, she had given the names of the petitioners Dr.Bhagyashri Dunakhe and Dr.Madhuri Kothari as the registered Medical Practitioners employed in the MTP Centre, who were having the requisite qualifications and experience in Gynecology and Obstetrics. In Clause No. (10), again the names of both of these petitioners were mentioned as the full-time trained Doctors working at the Centre. The inspection report of the Civil Surgeon shows that Dr.Bhagyashri Dunakhe was named against Clause No. (4) as the Registered Medical Practitioner having experience in

Gynecology and Obstetrics, while in Clause No.(6), the petitioner Dr. Madhuri Kothari was shown as the Assistant having the requisite qualification and experience. In Clause No. (8) also, there is reference of the petitioner Dr. Madhuri Kothari as the person assisting the MTP with minimum three years experience. It is, thus, clear that Dr. Sandhya Pantoji had mentioned the names of both of these petitioners in her application as the persons who were going to conduct MTPs in the proposed MTP Centre.”

5. The learned APP supports the impugned order.
6. The petitioner being a registered medical practitioner as M. D. (Gynecology), authorised to conduct MTP in approved MTP Centres. The approved MTP Centre having been registered in her name, she could not be said to have committed any offences either under Sub-Section (2) or Sub-Section (3) of Section 5 of the MTP Act.
7. Only with a view to avoid repetition of the facts and reasons of the order dated 11.09.2018, it is stated that the present writ petition has to be allowed in terms of the judgment and order dated 11.09.2018.
8. The writ petition thus succeeds. The same is allowed in terms of prayer clauses “C” and “D”. Rule is made absolute.

[R. G. AVACHAT, J.]