

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1376 OF 2021

Shaikh Faiyyaz s/o Shaikh Imam ... Applicant

Versus

1. The State of Maharashtra
2. The Superintendent of Police, Nanded ... Respondent

WITH
APPLN/2822/2021 IN ABA/1376/2021

...
Mr. R. S. Deshmuh, Senior Counsel i/b Mr. D. R. Deshmukh, Advocate
for the applicant.
Mr. R. B. Narwade – Patil, Advocate for applicant in APPLN/2822/2021.
Mr. N. T. Bhagat, APP for the respondents – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 24.01.2022

Pronounced on : 04.03.2022

ORDER :-

1. Criminal Application No.2822 of 2021 filed for assisting learned
APP stands allowed and disposed of.

2. The applicant – accused is apprehending his arrest in connection
with Crime No.309 of 2021 registered with Vazirabad Police Station,
Dist. Nanded for the offences punishable under Sections 420, 336 of
Indian Penal Code and under Section 33, 33(2)(A) of the Maharashtra

Medical Practitioners Act.

3. Heard learned Senior Counsel Mr. R. S. Deshmukh for the applicant and learned APP Mr. N. T. Bhagat for the respondent – State well assisted by learned Advocate Mr. R. B. Narwade – Patil representing the original informant.

4. It has been vehemently submitted on behalf of the applicant that the applicant had completed Diploma in Pharmacy and, thereafter, Master in Pharmacy. Thereafter, he has also obtained degree in B.E.M.S. (Bachelor of Electropathy Medicine and Surgery) from the Jawahar Electro–Home Medical College, Rajendranagar, Hyderabad (Telangana State). After acquiring the educational qualification, he had registered himself with the Council for Jauhar Electro-Homeopathy Medicos of India, Hyderabad in 2019 and started practicing Electropathy at Nanded under the name of “Faiyyaz Electro-Homeopathy Clinic”. First Information Report has been lodged by one Dr. Sureshsingh Bisen, Medical Health Officer, Nanded-Waghala City Municipal Corporation, Nanded on 03.09.2021, which was based on a complaint application that was filed by one Kavita Bajrang Wankhede dated 15.07.2021. The said complaint application was made to Collector, Nanded, in which reference was also made to the complaint application dated 12.07.2021 to the Police

Inspector, Airport Police Station, Nanded. In that complaint application, it was contended that the present applicant is a bogus doctor. He is posing himself as doctor and has opened clinic and though he was not authorized to treat Covid patients, he has given treatment to her brother Datta Bajrang Wankhede between 16.05.2021 to 20.05.2021. He had given allopathy treatment, which might be prescribed for Covid-19, however, his condition got deteriorated and, therefore, he was shifted to private hospital on 21.05.2021. Those doctors at the private hospital asked the family members as to from where they have got Datta medically treated and when they disclosed the name of the present applicant, it was stated that he was not authorized to give treatment under allopathy. Thereafter, the team of two persons i.e. Dr. Vinod Chavan and Amina Rehman, who are the Medical Officers with the Corporation, were given directions on 05.07.2021 to make inquiry in respect of the complaint application. They had given report on 17.07.2021 that present applicant is posing himself to be B.E.M.S. doctor and he has no license to practice under the Maharashtra Medical Practitioners Act. Again, further orders were given to those doctors to make further inquiry on 09.08.2021. At that time, the dummy candidate i.e. a boy of 5 years old was sent on 26.08.2021 for getting treatment from the applicant and accordingly, the applicant had prescribed the

tablets, which can be prescribed only by the doctor practicing in allopathy. After the report was given by those medical officers, it was placed before the Additional Commissioner, Municipal Corporation, Nanded and then sanction was accorded on 02.09.2021 to register the offence. Accordingly, the offence came to be registered.

5. The learned Senior Counsel has taken this Court through the various communications and letters/orders passed by the Government of India in respect of giving sanction to the practice of those doctors, who are taking education in Electro-Homeopathy, however, the gist of all these communications would show that the concrete decision has not been taken by the Government of India to recognize that practice.

6. It has been further submitted on behalf of the applicant that there is no evidence to show that due to the treatment given by the present applicant said patient i.e. Datta Wankhede expired. Though his sister is so alleging, but there are no such papers. In fact, the learned Additional Sessions Judge had granted ad-interim protection to the applicant, who rejected the final prayer on some flimsy ground. Now, the entire investigation is complete and only the formality of filing charge-sheet is remaining. The physical custody of the applicant is not required. Even if it is accepted that the applicant was found practicing allopathy, though

he was permitted to practice only in Electro-Homeopathy, he can be said to have violated provisions of the Medical Practitioners Act for which custodial interrogation is not required. He relied on the order passed by this Court in *Shrirang Dnyanoba Tudme Vs. The State of Maharashtra*, (Anticipatory Bail Application No.1009 of 2020 dated 10.12.2020). In Similar circumstance, when the applicant therein had posed himself as medical practitioner by practicing allopathy, had given treatment to the husband of the informant and then when the situation get worst and the patient was referred to another hospital, he expired and in that case, this Court had granted anticipatory bail by imposing conditions. In fact, relying upon the same authority, the learned Additional Sessions Judge, Nanded had granted ad-interim relief to the present applicant, but when it came to final order, it has been rejected. The applicant is ready to abide by the terms of the bail.

7. Learned APP well assisted by learned Advocate Mr. R. B. Narwade Patil for the original informant – Kavita Wankhede, on whose complaint the inquiry was conducted and the offence came to be registered by the Medical Officer, strongly opposed the application. It was submitted that the applicant has not come with the case that he has obtained any degree which permits him to practice in allopathy. Still, he was found prescribing medicines under allopathy. The applicant who is assisting

APP has produced the photographs of the medicines those were prescribed i.e. the prescription under the signature of the applicant, the photographs of the medicines and also the clinic. She has also produced photographs of the applicant treating Datta Wankhede at home. It was specifically stated that said Datta Wankhede had become Covid positive and it was suggested to the family members that the applicant would treat such patients. Therefore, Datta was taken to applicant on 16.05.2021. In fact, Datta had earlier contacted Dr. Pravin More, who had suggested that Datta should get his RTPCR test done, but then when he was taken to applicant, he told that it is not necessary that the said test should be done, but he assertively, without any tests, stated that he is suffering from Corona i.e. Covid-19 and he would treat him. Datta was admitted in the clinic of the applicant for about an hour and in that period, the saline was applied and four injections were given to Datta. He had also prescribed medicines. The applicant had charged Rs.8,000/-. Thereafter, each day applicant used to go to Datta's house. He used to apply him saline and through that, injection was given. For each day, he was charging Rs.16,000/-. In all, the applicant has taken amount of Rs.64,000/-, however, Datta's condition became serious on 21.05.2021 and, therefore, the applicant was contacted, but he told that he is busy and, therefore, he cannot come. The family members took

Datta to Government Hospital and then to Yashosai Hospital, Nanded. By that time, Datta's health has deteriorated. He was admitted in that private hospital at about 5.45 p.m. on 21.05.2021. Those doctors told that the applicant has no authority to give treatment under allopathy. Datta expired on 23.05.2021. Thereafter, the complaint application was made by his sister and then the inquiry was made. The applicant is not at all authorized to practice in allopathy. Due to his negligence, Datta has expired and, therefore, offence under Section 304 of Indian Penal Code has been added. The custodial interrogation of the applicant is required to see as to whether he had given treatment to any other patient, who was suffering from Covid-19. Learned APP also submitted that when it was known or impressed upon the applicant as well as to the family members of Datta that Datta has turned to be positive, then without precaution i.e. PPE Kit etc. and when he was not authorized to give treatment, it appears that he has given treatment. There are many cases now discovered in the recent past which show that bogus doctors are practicing in allopathy and due to their wrong diagnose and treatment, there is danger to the life of the public. Custodial interrogation is definitely required and with this purpose, the relief at final stage of releasing the applicant on anticipatory bail has been rejected. Note has also been taken about the verification of the fact

made by the Medical Officer by sending decoy patient and when the information appeared to be corrected, then only the FIR has been lodged. Still, there is danger from the applicant to the general public as he would again start practicing, if released on bail.

8. At the outset, the papers those have been collected as well as the papers those have been produced by the applicant, who is assisting APP, would show that the applicant was found prescribing allopathic medicine. In *Shrirang Tudme (Supra)*, this Court has observed that the physical custody will not be required and it has been observed that :-

“Even if for the sake of arguments it is to be noted that the present applicant is professing the medical field, in that field which is not authorized, then it is for the appropriate authorities to take immediate action under the permissible law and only registration of the offence is not the solution. When the incidences of giving treatment under certain other Pathy which was not authorized come to light, then in order to protect the mankind from the further effects of such Pathy which would be adopted by the applicant in future would be in question, then at the most necessary conditions would be required to be imposed, but for that purpose sending the applicants in the physical custody of the police, is not the solution.”

9. It will have to be observed that though certain persons are posing

themselves to be graduated or taken education in some different Pathy are also practicing the allopathy which they are not permitted, yet no appropriate action is taken by the concerned authorities immediately. They would start moving only when some untoward incident happens. Therefore, only on the ground that such practice is dangerous to the mankind and general public will not be the ground to reject the application. In other words, if the appropriate authorities under the Act are not taking prompt steps to prevent any damage to the public from such application or practice under the Pathy than not authorized; then morally those authorities cannot object to the application on the ground that the person's acts are dangerous to the general public. Stopping such person from practicing altogether can be the solution, but certainly it does not require him to be put behind bars.

10. Now, turning towards Section 420 of Indian Penal Code as alleged, it is to be noted that the applicant, who is assisting APP, herself had given complaint application to Collector, Nanded, wherein she has stated that Datta was initially taken to one Dr. Pravin More, who appears to be the Medical Practitioner, who has taken degree in allopathy. He had prescribed medicines as well as asked Datta to get his RTPCR test done. Instead of getting that test done and going back to same doctor, from her complaint it appears that their relative Baba Pawar told them

that he came to know that the present applicant has treated many covid patients and, therefore, they went to applicant on 16.05.2021. That means, there was no question of any kind of representation by the applicant to Datta or his family. According to Kavita, the present applicant told that there is no need for RTPCR test to be done, but then he positively stated that Datta is Covid positive, but according to her, applicant gave assurance that Datta would be cured. She has then stated as to what kind of treatment was given by the applicant. According to the chronology, she had given that Datta was shifted to Yashosai Hospital on 21.05.2021. After he was taken to Government Hospital, he was shifted there in Yashosai. The police papers show the medical certificate of cause of death issued by the said hospital in respect of Datta Bajrang Wankhede. It stated that Datta expired at about 9.00 a.m. on 23.05.2021. It is definitely stated that he was suffering from Covid-19, but the manner of death that has been stated is natural. The papers also show that remdesivir injection was given to him. If the concerned hospital, who had treated him from 21.05.2021 to 23.05.2021 is giving the cause of death as natural, then it will have to be proved by the prosecution as to how it attracts ingredients of Section 304 of Indian Penal Code, which appears to have been added later. That duration i.e. the treatment of Datta between 21.05.2021 to 23.05.2021 with Yashosai

Hospital and then he succumbing to the illness whether amounts to negligence in alleged treatment which was given by the applicant prior to 21.05.2021 will have to be proved to be the outcome of the prohibition for applying allopathy to the applicant as well as the nexus between the two things i.e. treatment and death is the endeavour for the prosecution at the time of trial. For that purpose then, the applicant need not be sent behind bars.

11. Again at the cost of repetition, as regards the decoy patient is concerned, appropriate conditions can be imposed on the applicant. Same is the case as regards ingredients to Section 336 of Indian Penal Code. Further, as regards Section 420 of Indian Penal Code is concerned, if we consider the photograph of the applicant given by the applicant - Kavita, then it clearly states that he is giving degree of M. Pharm and B.E.M.S.(EH). Now, whether he should write (Dr.) professing his name and whether it would raise confusion in the mind of the public is concerned, those are the facts to be considered on the basis of the facts of the case and evidence i.e. adduced. For that purpose also physical custody of the applicant is not required.

12. The applicant is having permanent place of abode. There are no criminal antecedents those have been pointed out by the prosecution

and, therefore, he deserves to be released on anticipatory bail, however, stringent conditions deserve to be imposed. Hence, the following order :-

ORDER

- I) ABA No.1376 of 2021 stands allowed.
- II) In the event of arrest of the applicant – Shaikh Faiyyaz Shaikh Imam, in connection with Crime No.309 of 2021 registered with Vazirabad Police Station, Dist. Nanded for the offences punishable under Sections 420, 336 of Indian Penal Code and under Sections 33, 33(2)(A) of the Maharashtra Medical Practitioners Act, he be released on P. R. Bond of Rs.50,000/- with two sureties of Rs.25,000/- each.
- III) The applicant shall remain present before the Investigating Officer on every Monday, Wednesday and Friday between 10.00 a.m. to 02.00 p.m. till filing of charge-sheet and cooperate with the investigation.
- IV) The applicant shall not indulge in any kind of practice and shall not pose himself to be a medical practitioner to the general public till the conclusion of the trial.
- V) He shall not tamper with the evidence of the prosecution in any manner.
- VI) He shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]