

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 611 OF 2022

Sayyed Nasimuddin Ziaullah

..Applicant

v/s.

The State of Maharashtra .

..Respondent

Dr. Arun Mishra i/b. A.A.Siddiquie i/b. A.A.Siddiquie & Associates
for the Applicant.

Mr. S.H.Yadav, APP for the State.

Mr. I.M.Shikhalgar, P.I., Shivaji Nagar Police stn. present.

**CORAM : ANUJA PRABHUDESSAI,J.
DATED : 15th MARCH, 2022.**

P.C.

1. The Applicant herein has filed this application under Section 438 Cr.P.C. apprehending his arrest in C.R.No.17 of 2022 registered with Shivaji Nagar Police Station, Govandi, Mumbai, for the offences under Section 304(2), 304(A), 336, 109, 114 r/w. 34 of Indian Penal Code.

2. Heard Mr. Mishra, learned Counsel for the Applicant and Shri Yadav, the learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

3. The aforesaid crime has been registered pursuant to the FIR lodged by Mohd. Azim Mohd. Ismail Khan. A perusal of the FIR

reveals that two years old son of the Complainant was admitted for medical treatment in the hospital which is owned by the Applicant. The said child was an indoor patient from 11.1.2022 to 13.1.2022. He was responding to the treatment and was likely to be discharged . It is alleged that on 13.1.2022, one of the nurses from the said hospital had given a wrong injection to the child, as a result of which the said child expired on the same day. The Complainant has alleged that the death of child was due to medical negligence.

4. On the previous date of hearing, this Court (Coram : Bharati Dangre, J.) had directed the learned APP to ascertain whether the procedure prescribed by the Honourable Supreme Court in the case of Jacob Mathew v. State of Punjab has been adhered to.

5. Having taken instructions from the Investigating officer who is present before the Court, learned APP has stated that the procedure prescribed by the Apex Court in Jacob Mathew (supra) in paragraph 52 have not been followed. Learned Counsel for the Applicant has relied upon the decision of the Division Bench of this Court (Nagpur Bench) in Dr. ***Bhushan Brijmohan Katta v. State of Maharashtra & Anr. (Criminal Writ Petition No. 225 of 2018)***. In the said case administration of wrong injection by the nursing staff on duty had

resulted in death of four babies. One of the Junior Resident Doctor on duty was also charged for offence under Section 304 r/w. 34 of IPC. He had challenged the charge sheet/ final report. The Division Bench held that to constitute culpable homicide as defined under Section 299 IPC, there must be an act or omission coupled with the intention or knowledge. In the absence of such act or omission there can be no offence of culpable homicide. The Division Bench held that the case fails to meet the three parameters of Jacob Mathew (supra) namely (1) duty to take care (ii) breach of duty and (iii) consequential damages. Hence quashed the chargesheet as against the said Petitioner.

6. In the instant case, the Applicant is the owner of the hospital. The child was under treatment of a qualified pediatrician Dr. Gangawane. The nurse- Salimunissa, who had allegedly administered the injection had completed six months nursing course. The Investigating Officer has not obtained independent and competent medical opinion before levelling charge of rash and negligent act. Prima facie, there is nothing to show that the Applicant has committed any such act or omission to hold him responsible for the aforesaid crime. The Applicant is stated to be an elderly person of 64 years of age, and is suffering from cancer and other ailments. His presence is not required to facilitate investigation. The Applicant has roots in the society and there are no chances of his absconding.

7. Considering the above facts and circumstances, in my considered view, this is not a case for custodial interrogation. Hence the Application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the applicant in C.R.No.17 of 2022 registered with Shivaji Nagar Police Station, Govandi, Mumbai, the applicant be released on bail on furnishing bail bond of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the Investigation Officer.
- (ii) The Applicant shall report to the Investigating Officer for four days from 21.03.2022, and further as and when required by the Investigating Officer for the purpose of investigation and interrogation.
- (iii) The Applicant shall provide his permanent as well as temporary address, if any, and his contact details to the Investigating Officer.
- (iv) The Applicant shall not change his residential address without prior intimation to the Investigation Officer.
- (v) The applicant shall not interfere with the complainant and the other witnesses in any manner.

Digitally
signed by
PRASANNA P
SALGAONKAR
Date:
2022.03.21
14:43:16
+0530

PRASANNA P
SALGAONKAR

(ANUJA PRABHUDESSAI, J.)