

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

ANTICIPATORY BAIL APPLICATION NO. 784 OF 2022

Altaf Abdul Hasan Khan	 Applicant
v/s.	
The State of Maharashtra	 Respondent

Mr. Shreerat Kamath a/w. Ms. Puja Yadav for the Applicant.
Mr. S.H. Yadav, APP for the State.
Mr. Ayaram Balaram Kadu, PSI, Shivaji Nagar Police Station.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 04th APRIL, 2022.

P. C. :-

1. This is an Application under section 438 of Cr.PC. filed by the aforesaid Applicant apprehending his arrest in C.R.No.17/2022 registered with Shivaji Nagar Police Station, Govandi, Mumbai for offences punishable under sections 304(2), 304(A), 336, 109, 114 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Shreerat Kamath, learned counsel for the Applicant and Mr. S.H. Yadav, 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 who was having diarrhoea was admitted in the hospital which is owned by the co-accused. The said child was an indoor patient from 11.01.2022 to 13.01.2022. He was responding to the treatment and was likely to be discharged. It is alleged that on 13.01.2022, one of the nurses from the said hospital gave a wrong injection resulting in the death of the child. The complainant has alleged that the death of the child was due to medical negligence.

4. It is not in dispute that the procedure prescribed by the Apex Court in *Jacob Mathew v/s. State of Punjab and anr. (Criminal Appeal Nos.144-145 of 2004)* in paragraph 52 has not been followed.

5. 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/s. State of Maharashtra and 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 Doctors 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 (i) duty to take care, (ii) breach of duty and (iii) consequential damages. Hence quashed the charge sheet as against the said Petitioner.

6. In the instant case, the Applicant is a medical practitioner registered under Maharashtra Medical Practitioners Act, 1961 (Mah. XXVIII of 1961) read with section 17 of the Indian Medicine Central Council Act, 1970 (Act No.48 of 1970). He has a degree of BUMS from Maharashtra University of Health Sciences, Nashik. He was appointed as a Resident Medical Officer (RMO) in Noor Hospital. There is no material on record to indicate that he was involved in treating the child. The statement of the complainant reveals that the Applicant had reached the place of the incident after the nurse had administered the injection. Prima facie, there is no material on record to indicate that the Applicant had committed any such act or omission to hold him

responsible for the said crime. The nature of accusations do not justify custodial interrogation. Hence, the Application is allowed on following terms and conditions :-

(a) In the event of arrest of the Applicant in C.R.No.17/2022 registered with Shivaji Nagar Police Station, Govandi, Mumbai, he shall be released on bail on furnishing bail bonds in the sum of Rs.50,000/- with one or two sureties in the like amount ;

(b) The Applicant shall report to the Investigating Officer for four days from 11/04/2022 between 11:00 a.m. to 02:00 p.m. and further as and when required by the Investigating Officer for the purpose of Investigation and interrogation ;

(c) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

(d) The Applicant shall not change his residential address without prior intimation to the Investigating Officer ;

(e) The Applicant shall not interfere with the complainant and the other witnesses in any manner.

7. The Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

**PREETI
H JAYANI**

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