

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.101

CRM-M-4727 of 2022

Date of Decision: February 11th, 2022

Dr. Janatan @ Jonathan

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Amandeep Singh Manaise, Advocate
for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab.

Mr. Ritesh Pandey, Advocate
for the complainant.

SANT PARKASH, J.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

The instant petition has been filed under Section 438 Cr.P.C.
seeking grant of anticipatory bail in case FIR No.5 dated 13.01.2022,
registered under Section 304-A of IPC (Sections 304 and 149 IPC added
later on) at Police Station City Gurdaspur, District Gurdaspur.

Brief facts of the case are that on 11.01.2022, complainant's son
namely Rohit Kumar met with an accident while going on his motorcycle
and got his face injured. He was taken to Civil Hospital, Gurdaspur for
treatment. On 12.01.2022, Dr. Rachna referred the patient to Guru Nanak
Surgical and General Hospital, Gurdaspur for operation and on her
recommendation, complainant brought his son to the said hospital being run

by Dr. Rohit Hans (BDS). There, the complainant consulted the petitioner (Dr. Jonathan, BDS), who said that operation of patient's jaw is required to be done. On 13.01.2022 at about 11.00 a.m., the petitioner took the patient to the operation theatre, but the patient died due to medical negligence.

Learned counsel for the petitioner submitted that initially the case under Section 304-A IPC was registered and the petitioner was enlarged on bail. The subsequent insertion of Section 304 IPC is totally frivolous and it has been added merely to harass and humiliate the petitioner. Further elaborating his arguments, learned counsel contended that the petitioner was a qualified MDS (Dental Surgeon) and he was competent to conduct the surgery on the jaw of the deceased. He would further submit that the patient died even before the start of the operation and no negligence can be attributed on his part.

Learned State counsel coupled with learned counsel for the complainant took strong exceptions and urged that it was only on account of the negligence of the petitioner that the patient (complainant's son) expired. The petitioner was not even competent to conduct the surgery and despite that, he tried to handle the same in a private hospital whereas he was posted in some government hospital. There was no back up in the said hospital in case if any emergency arises and knowing it fully well, the petitioner opted to conduct the surgery. Moreover, finding the patient dead, the petitioner ran away from the spot.

After having heard learned counsel for the parties and going through the material placed on the file including the PMR placed on the record, this Court is of the considered opinion that the petitioner is not entitled to the concession of anticipatory bail.

Admittedly and evidently, initially the FIR was registered under Section 304-A IPC and in pursuant to the order dated 17.01.2022 passed by learned Chief Judicial Magistrate, Gurdaspur (Annexure P-2), the petitioner was enlarged on bail for that offence. Later on, offence under Section 304 IPC was substituted in place of Section 304-A IPC and anticipatory bail application qua that offence was dismissed by learned Sessions Judge, Gurdaspur vide order dated 28.01.2022.

It is further not disputed that the present petitioner was serving as a dental surgeon in a government hospital and he opted to conduct the aforesaid surgery in a private hospital namely Guru Nanak Hospital, Gurdaspur.

From the internal dissection of the dead body, it was found that the mouth and face posterior hard palate was fractured and right maxilla was fractured. 6x6 cm flap type tear present on further dissection underneath nose and upper lip. Dark reddish brown infiltration and clotted blood present at fractured sites. With regard to the external injuries, the PMR would suggest that 6x5 cm dark coloured bruise was there on the right and anterior part of the scalp just behind the hairline. 2x2 cm dark coloured abraded bruise on antero lateral aspect of lower one third of right thigh and two dark coloured abraded bruises on anterior aspect of left knee. It clearly indicates that primarily and predominantly, the deceased suffered injuries on the mouth and face including the denture and jaw.

From the sequence of events narrated above, it would be evidently clear that prima facie, it appears to the Court that the present petitioner opted to conduct the surgery without any back up of emergency services and other facilities including proper equipment and trained staff. A

video clip prepared immediately after the death of the deceased has been shown to the Court whereupon it can reasonably be inferred that there was no proper infrastructure for conducting such surgery. Otherwise also, there was no occasion for the present petitioner to conduct the surgery in a private hospital whereas he was employed in a government hospital. The factum of running away by the present petitioner from the spot after the occurrence, is indicative of the fact that he was having some guilty mind and wanted to escape from the clutches of the law. The present case does not appear to be simpliciter case of death by rash and negligent act as defined under Section 304-A IPC.

In the present case, the custodial interrogation of the present petitioner is required to be conducted in order to ascertain the fact with regard to his option to conduct surgery in a private hospital; that whether the facility of conducting such surgery was not available in the hospital and whether the proper infrastructure including staff was there in the hospital for conducting such surgery.

Taking into consideration the totality of the circumstances, there is no ground to grant the petitioner concession of anticipatory bail and therefore, his request for the same is declined.

Petition stands dismissed.

**(SANT PARKASH)
JUDGE**

February 11th, 2022

Maninder

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No