

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.185 OF 2024

Dr. Sushant Ramchandra Jadhav ... Applicant

Vs.

State of Maharashtra ... Respondent

WITH
BAIL APPLICATION NO.834 OF 2024

Birendra Baijinath Yadav ... Applicant

Vs.

State of Maharashtra ... Respondent

WITH
BAIL APPLICATION NO.1008 OF 2024

Deepak Mahaveer Jain ... Applicant

Vs.

State of Maharashtra ... Respondent

Mr. Viral Rathod a/w. Mr. Vishwatej Jadhav for Applicant in BA/185/2024.

Mr. Ashok P. Mundargi, Senior Advocate a/w. Mr. Shreyansh R. Mithare, Mr. Meghdeep Oak and Ms. Anjali Nimbkar for Applicants in BA/834/2024 and BA/1008/2024.

Mr. R. M. Pethe, APP a/w. Mr. Mayur S. Sonavane, APP for Respondent-State in all the Applications.

Mr. Adinath Gawade, P.I., Mulund Police Station.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 11, 2024

P.C. :

. Heard Mr. Rathod, learned counsel for the applicant in Bail Application No.185 of 2024, Mr. Mundargi, learned senior counsel for applicants in Bail Application Nos.834 of 2024 and 1008 of 2024, as also Mr. Pethe and Mr. Sonavane, learned APPs for the respondent-State in all the applications.

2. These bail applications have been filed by accused Nos.3, 4 and 5 seeking bail in connection with FIR No.0298 of 2023 dated 11.05.2023

registered with Mulund Police Station, Mumbai, for offences under Sections 112, 117, 120-B, 302, 307, 416, 419, 426, 465, 471 read with Section 34 of the Indian Penal Code, 1860 (IPC), as also Section 33 of the Maharashtra Medical Practitioners Act, 1961.

3. In the present case, the informant is an individual, who approached the police on 11.05.2023, having earlier approached the police and thereafter having moved the jurisdictional magistrate under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr.P.C.). His grievance originated from the unfortunate death of his brother. It is stated that the brother of the informant was found unconscious and when he was taken to M. T. Agarwal Hospital, which is a hospital run by the Brihanmumbai Municipal Corporation (BMC), he was declared dead. The informant is said to have made enquiries into the workings of the said hospital run by the BMC under the Right to Information Act, 2005, whereupon he came across information, indicating that over a considerable period of time, doctors provided by a particular Trust called *Jeevan Jyot Charitable Trust* could be said to be either bogus doctors or doctors not having appropriate qualifications for providing services in the ICU / ICCU departments of the said hospital. According to the informant, his enquiries led to a conclusion that 17 such doctors provided by the aforesaid Trust had given their services during the period from 2018 onwards, resulting in 149 deaths. It was stated that in some cases, the death certificates were issued by bogus doctors and that in any case, the causes of death recorded in such death certificates were mechanically recorded and that they had no connection with the actual cause of death of patients. The names of the trustees of the Trust and those associated with the Trust were mentioned and names of 3 doctors were specifically mentioned as those who could be said to be bogus doctors. On the basis of the aforesaid assertions made by the informant, FIR came to be registered.

4. The applicants in Criminal Bail Application Nos.834 of 2024 and 1008 of 2024, being accused Nos.4 and 5, are trustees of the aforesaid Trust, while applicant in Bail Application No.185 of 2024 is a *homeopathic* doctor arraigned as accused No.3.

5. The learned senior counsel appearing for the applicants in Bail Application Nos.834 and 1008 of 2024 (accused Nos.3 and 4) submitted that in the present case, the statement of the informant leading to registration of the FIR and the material that has come on record appear to have applied vicarious liability on the applicants as trustees of the said Trust. It is submitted that, at worst, the allegations could be that, some of the doctors provided by the said Trust to the said hospital, under the contract executed with the BMC, did not have relevant qualifications or that they were termed as bogus doctors. It is submitted that as trustees of the said Trust, the aforesaid applicants never directly dealt with the issue of supplying doctors in terms of the contract executed with the BMC and co-accused Surekha Chavan, who was in-charge of the Human Resources Department of the Trust was the person verifying the qualifications of the doctors and then arranging for their services to be provided in the aforesaid hospital. It is submitted that in any case, the allegations levelled against the Trust, could be said to be relevant for offences registered in the present case under the IPC, other than the offences under Sections 302 and 307 of the IPC. It is submitted that by no stretch of imagination, could the applicants be held liable for intentionally causing the death of any particular individual or attempting to cause such death. It is submitted that the whole case against the applicants is far-fetched and the applicants, having been arrested on 15.08.2023, have already undergone incarceration for more than a year and hence they are entitled to be released on bail. The investigation has been completed and the charge-sheet has been filed. At this stage, it is not clear when charge would be framed and there is remote possibility of

commencing the trial, much less being completed within the reasonable period of time. On this basis, it is submitted that the bail applications may be allowed.

6. The learned counsel appearing for the applicant in Bail Application No.185 of 2024 submits that the offence registered under Section 33 of the Maharashtra Medical Practitioners Act, 1961 is misplaced in the facts of the present case, for the reason that the applicant is a duly registered medical practitioner of homeopathy. In support thereof, attention of this Court is invited to registration certificate issued by the Maharashtra Council of Homoeopathy, Mumbai dated 30.10.2018. It is submitted that the applicant may have visited the aforesaid hospital as an observer, but there is no material to link the applicant with the alleged offences. It is submitted that the statements of witnesses recorded during the course of investigation indicate that such witnesses came to know from the police that the applicant had allegedly impersonated another doctor while performing duty at the said hospital being run by the BMC. It is further submitted that therefore, there is hardly any material to link the applicant with the present case. It is emphasized that the material on record, in no manner, can link the applicant with the death of any individual, and therefore, there is no question of invoking Sections 302 and 307 of the IPC against the applicant. It is submitted that the applicant was arrested on 17.06.2023, thereby indicating that he has already suffered incarceration for about one year and three months and that, this factor can also be taken into consideration.

7. On the other hand, the learned APPs appearing for the respondent-State referred to the conditions of the contracts specified by the BMC, while inviting bids from interested parties for supplying doctors and professionals in hospitals run by the BMC, including the said M. T.

Agarwal Hospital. After referring to various conditions specified in such documents, reliance was placed on communications sent by the BMC periodically, before the alleged incidents, about the lack of appropriate professional doctors being supplied by the Trust. Such communications were addressed to the Trust and according to the learned APP, no remedial measures were taken. Reference was also made to the provisions of the Maharashtra Public Trust Act, 1950 to contend that each trustee would be liable for the actions of the Trust and therefore, the applicants i.e. accused Nos.4 and 5 can be said to be liable to face prosecution for the aforesaid offences. It was submitted that the offences registered in the present case are serious and the role of accused Nos.4 and 5 is evidently made out by the material on record. As regards accused No.3, it is submitted that there is enough material to indicate that he had impersonated and thereby committed offences leading to death and also harm to the life and limb of innocent patients.

8. This Court has considered the rival submissions. It is significant to note that the statement of the informant, leading to registration of the FIR, does not identify particular individual or individuals as victims whose deaths or injuries could be relatable to specific acts of commission or omission on the part of the applicants before this Court. The FIR has been registered on the basis of material unearthed by enquiries made by the informant in connection with the affairs of the aforesaid hospital run by the BMC. The allegations are omnibus and general in nature, pertaining to a period specified in the FIR, generally referring to deaths of 149 individuals. In other words, neither the statement leading to registration of the FIR nor the documents that have come on record, during the course of investigation, forming part of the charge-sheet, identify individual deaths or sufferance of individuals due to the alleged acts of commission and omission on the part of the applicants. At this stage, it is impossible to understand the connection of

the applicants to the death of identified individuals in respect of the offences registered under Sections 302 and 307 of the IPC. On this score itself, the applicants have made out a *prima facie* case in their favour.

9. Apart from this, the emphasis placed on the documents pertaining to the BMC as regards the invitation of bids, the conditions of awarding the contract and subsequent communications sent to the Trust, can be said to be wholly irrelevant to the specific offences registered under Sections 302 and 307 of the IPC against the accused persons, including the applicants. Such documents, at worst, could show that there was enough ground for the BMC to have taken appropriate action against the Trust of either cancelling the contract or imposing penalties, if so provided under the contract or law. The BMC is not even the aggrieved party or the informant in the present case and therefore, reliance placed on such documents can be said to be irrelevant for justifying registration of offences under Sections 302 and 307 of the IPC against the accused, including the applicants herein.

10. This is apart from the specific contention raised on behalf of the applicants that as trustees, they had either marginal or no role to play in details of engaging medical professionals being supplied to the said hospital run by the BMC as per the contract. The co-accused person is said to have performed the said task. In any case, invoking Sections 302 and 307 of the IPC in such circumstances, *prima facie*, does not appear to be sustainable as against accused Nos.4 and 5.

11. As against accused No.3 i.e. applicant in Bail Application No.185 of 2024, a specific allegation is made about the said applicant having impersonated another doctor and also being liable for offence under Section 33 of the Maharashtra Medical Practitioners Act, 1961. Considering the registration certificate issued by the Maharashtra Council of Homoeopathy, Mumbai, the said applicant has indeed made

out a *prima facie* case in his favour to indicate that offence under Section 33 of the said Act is not made out. As regards impersonation, the statements of witnesses upon which the investigating authority appears to have placed reliance, all indicate that such witnesses came to know from the police that the said applicant had impersonated another doctor. These witnesses include doctor in-charge of the relevant department in the said hospital. These witnesses have not been able to identify the aforesaid applicant as a doctor, who indeed performed duties in the ICU / ICCU. The said applicant has, therefore, made out a *prima facie* case in his favour.

12. The applicants before this Court have undergone imprisonment for more than a year. The charge-sheet is already filed. The charge is yet to be framed and considering the volume of the matter, it would be reasonable to conclude that the trial may not commence in the foreseeable future, much less being completed within a reasonable period of time. Hence, the applicants have made out grounds for being enlarged on bail.

13. In view of the above, the applications are allowed in the following terms:-

- (A) The applicants - Sushant Ramchandra Jadhav, Birendra Baijinath Yadav and Deepak Mahaveer Jain shall be released on bail in connection with FIR No.0298 of 2023 dated 11.05.2023 registered with Mulund Police Station, Mumbai, on furnishing P.R. Bond of Rs.50,000/- each with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicants shall cooperate with the trial Court for expeditious trial and they shall attend each and every date, unless exempted for reasons to be recorded in writing;

- (C) The applicants shall not tamper with the evidence of the prosecution. They shall not influence the informant, witnesses or any other person concerned with the case;
- (D) Upon being released on bail, the applicants shall immediately, and in any case within a week, furnish the details of their active mobile numbers and residential addresses to the trial Court and update about the same, if there is any change.

14. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicants in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

15. The bail applications stand disposed of accordingly.

(MANISH PITALE, J.)

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