



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**  
**NAGPUR BENCH : NAGPUR.**

**CRIMINAL WRIT PETITION NO. 670 OF 2021**

Raju Uttamrao Gavai

vs.

State of Maharashtra, through its Secretary, Home Department, Mumbai & ors.

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None for the petitioner.

Mr V. R.Phasate, Additional Public Prosecutor for respondent nos. 1 to 3.  
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**CORAM :- NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.**

**DATE :- 22<sup>nd</sup> NOVEMBER, 2024**

**P. C.**

The appointed counsel Ms Soniya Gajbhiye is absent.

2. In this background, we deem it appropriate to appoint Mr. S.M.Bhagde, learned counsel, to assist the Court.

3. We have heard the respective counsel.

4. This petition is filed by the complainant in Crime No.453 registered on 17.05.2018 for the offence punishable under Sections 304, 312, 314, 315 and 34 of the Indian Penal Code.

5. The prayer of the petitioner is for issuance of directions to implead Dr. Sneha Rathi as an accused in the said crime and hand over the investigation to the District Crime Investigation Department.

We are informed that, as against the existing accused, charge-sheet is already submitted.

6. It is the case of the prosecution that Late Pranjal, the daughter of the petitioner, was having relations with accused Ajay Ogle and was pregnant out of such relations.

7. It appears that during the medical termination of pregnancy, said Pranjal has lost her life. It is the case of the petitioner that Dr. Sneha Rathi,

who treated his daughter, had unauthorizedly carried out medical termination of pregnancy and as such, prosecution needs to be proceeded against her.

8. In response to the notice issued by this Court, an affidavit-in-reply is placed on record duly sworn by the Investigating Officer. It is brought on record that in view of the judgment delivered by the Apex Court in the matter of *Jacob Mathew Vs. State of Punjab [(2005) 6 SCC1]*, in case if a doctor is to be prosecuted, it is necessary to record a satisfaction of existence of *prima facie* evidence in the form of credible opinion given by any competent doctor to support the charge of negligent act on the part of the doctor who has treated the patient/victim.

9. It is claimed that opinion of the Committee headed by Civil Surgeon i.e. District Health Geievance Redressal Committee was received on 25.06.2019. It is stated that the Committee after perusal of the entire papers, in relation to the death of the petitioner's daughter-Pranjal, noted that the cause of death due to 'anphilectic reaction' during the surgical process. Such material i.e. expert opinion was found to be the basis for not including Dr. Sneha Rathi as an accused in the aforesaid crime.

10. Be that as it may, it is still open for the complainant-petitioner to canvas his grievance before the trial Court during the conduct of the Session Trial, in case, if he is of the view that Dr. Sneha Rathi is not appropriately impleaded or purposefully deleted from the said crime.

11. *Prima facie*, we are satisfied that there does not exist any material to cause indulgence at this stage of the proceedings particularly when the Investigating Officer has conducted himself in accordance with the mandate provided by the Apex Court in the matter of *Jacob Mathew* (supra). This leads us to draw only inference not to cause indulgence in the petition and as such, we dismiss the petition.

12. However, we note that the Commissioner of Police has already addressed a communication to the Regional Forensic Science Laboratory thereby seeking reports. If not already produced, we direct the Regional Forensic Science Laboratory to submit all the reports before the Office of the Commissioner of Police/Trial Court expeditiously and in any case within a period of six months from today.

13. Learned Additional Public Prosecutor to communicate this order to the concerned.

(VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

*Andurkar.*