

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

CRM-M-18581-2024
Date of Decision : April 29, 2024

MANISH KUMAR VARSHNEY -PETITIONER

V/S

STATE OF HARYANA -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Bhupender Singh, D.A.G., Haryana.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, as instituted under Section 438 of the Cr.P.C., the petitioner seeks the concession of anticipatory bail, in case FIR No.53 dated 14.03.2024, under Sections 120-B, 420, 467, 468, 471 of the IPC, Section 15(3) of the Indian Medical Council Act, 1956, Section 44 of the Clinical Establishments (Registration and Regulation) Act, 2010 (on first page of the FIR, Section 41 of the Clinical Establishments (Registration and Regulation) Act, 2010, is mentioned as Section 44 thereof, owing to its non availability in CCTNS, regarding which a special note is appended at the end of column No.12 of the FIR), registered at P.S. Dadri City, District Charkhi Dadri.

2. Upon an apprehension cropping up in the mind of the petitioner regarding his arrest, in the FIR (supra), he approached the learned Additional Sessions Judge, Charkhi Dadri, thereby seeking the relief of anticipatory bail, however, the said relief was declined to him

vide order dated 08.04.2024. Consequently, the petitioner has now accessed this Court, thereby seeking the relief of anticipatory bail.

CRUX OF THE FIR AND INVESTIGATION

3. Compensdiously and concisely, the allegations surging forth from a scrutiny of the instant FIR are extracted hereinafter:-

(i) On 14.03.2024, a raid was conducted at Core Path Lab, Opposite Government Hospital, Loharu Road, Dadri, by joint team of CM Flying Squad and Dr. Ankur, Deputy Civil Surgeon, Charkhi Dadri;

(ii) Petitioner's co-accused Sumit, Lab Operator/Lab Technician, was found present in the Lab;

(iii) The data of the Lab's machine computer system, i.e. test reports concerning hormones and biochemistry, was compared with the backup data available in the computer, whereupon, it surfaced that 64 reports of T-3, T-4 and TSH tests were issued on the basis of backup data in the computer, however, in the machine's backup, only the data pertaining to TSH Test was found;

(iv) Similarly, 4 other test reports of Vitamin B-12, LFT and GGT were also issued on the basis of backup data of computer, however, no test was in fact conducted, as no data in this regard was found available in the machine backup;

(v) All these 67 false lab test reports were issued under the digital signatures of the petitioner, without actually conducting any tests;

(vi) On verification, DMLT Diploma of petitioner's co-accused Sumit was also found to be fake and he was illegally using the digital signatures of the petitioner, in his absence;

(vii) As per registration certificate of the Lab, although the petitioner, who is resident of Aligarh, U.P., was found associated therewith, however, neither he was found present there at the time of raid, nor he came thereafter despite

repeated communications;

(viii) In this way, the petitioner and his co-accused Sumit were found to be cheating the people at large, by giving false lab test reports, without conducting any tests.

4. During the course of investigation, the petitioner's co-accused Sumit moved an application before the learned Magistrate concerned, thereby seeking re-testing of his lab under videography, which was allowed. Accordingly, a Committee was constituted and the said Lab was again checked. The relevant extract of this checking report, as narrated in paragraph No.6 of the order dated 08.04.2024, whereby, petitioner has been declined the relief of anticipatory bail, is reproduced hereinafter:-

“.....As per report of the said committee there was mismatch between the reports found on maccura 11000 machine and the reports which were found on LIS which was connected to the cloud back up services provided by IT Dose Company. No physical record is found of the test which were conducted in reference to the complaint. No record was produced pertaining to the complaint of fault in the link between the LIS and machine. No record was produced by LT, record mismatch between the model number mentioned on the services receipt and imprinted on machine. The committee has finally concluded that based upon above findings and observations we are of the opinion that several deficiencies were found in reporting and maintenance of record and of machine maintenance. Based on the record produced before us the data between the LIS and machine could not be matched due to partial loss of data (as told by LT Mr. Prashant) and there was no physical record present of the data. Therefore, the LIS system and machine data needs to be examined an IT Expert and the representatives of the company providing cloud storage of the Core Path Lab....”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

5. The learned counsel for the petitioner, in his beseeching the relief (supra), submits that since the petitioner is a well qualified doctor possessing the degree of M.B.B.S. and degree of Medicine in Pathology, therefore, he is competent to run a medical lab in any part of the country. He further submits that no patient has ever made any complaint either against the accused or against the lab concerned regarding supplying of inaccurate or defective lab test reports. Moreover, although the petitioner was not present in the lab at the time of raid, however, he never received any communication from the raiding party.

6. The learned counsel for the petitioner further submits that, in case the backup data of some of the lab reports was not found stored in the computer concerned, it may be for the reason that, the tests/reports which could not be conducted in the lab, the same become conducted through outsourcing, therefore, non-availability of backup data cannot be construed to be supplying of incorrect or false reports to the patients. Nonetheless, if any misdeed has at all been conducted, it may have been conducted by co-accused Sumit (Lab Technician) and the petitioner cannot be held vicariously liable for any such misconduct or negligence.

7. Moving forth, the learned counsel for the petitioner has drawn attention of this Court towards the Instructions dated 16.10.2018, issued by the Ministry of Health and Family Welfare, Government of India, wherein, laboratories have been classified into three categories, i.e. basic composite, medium and advanced. By making heavy dependence

upon the instructions (supra), he submits that, since for reports containing numerical value/result of test/technical analysis of samples, the presence of MBBS doctors is not essential, therefore, in the present case, the presence of the petitioner in the lab concerned, at all the times, was/is not essential.

REASONS FOR DISMISSING THE INSTANT PETITION

8. What surfaces from a studied survey of the entire record available before this Court, is that, during a raid conducted at the lab concerned, by a joint team of CM Flying Squad and Dr. Ankur, Deputy Civil Surgeon, Charkhi Dadri, it was found that the petitioner, who is a qualified doctor, has outsourced his work to a person/co-accused Sumit, who is not even a qualified lab technician. Moreover, the co-accused Sumit was, in the absence of the petitioner, found issuing medical lab reports, under his digital signatures.

9. Interestingly, although the petitioner has made heavy dependence upon the instructions (supra) to justify his act of running the laboratory from a distant place, however, the said instructions in fact benefit the prosecution, inasmuch as, it establishes the case of the prosecution that, under the garb of the said instructions, the petitioner authorized the co-accused Sumit (Lab Technician) to, in his absence, use his digital signatures, on day to day basis, for issuing medical lab reports.

10. Now, insofar as the plea of non making of any complaint by the patients is concerned, this plea is of no significance, as the gullible patients cannot be taken to be well equipped or knowledgeable to test the veracity of the medical lab reports, rather they heavily rely on such

reports and take further treatment accordingly.

11. *Prima facie*, this modus has been adopted by the petitioner just to reap pecuniary benefits, inasmuch as, despite him undisputedly being a resident of Aligarh (Uttar Pradesh), he was running a lab at a far away place therefrom, i.e. at Charkhi Dadri, Haryana. Consequently, this Court is constrained to form a *prima facie* inference that, since the petitioner, under the greed of money, is instrumental in playing with the health of gullible persons.

FINAL ORDER

12. For all the reasons (supra), coupled with the fact that custodial interrogation of the petitioner is necessary to unearth whether or not the petitioner is running any other laboratories, in a similar fashion, therefore, this Court is not inclined to grant the extraordinary relief of anticipatory bail to the petitioner. In summa, the instant petition is **dismissed**.

April 29, 2024
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No