



2024 : DHC : 2423



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 12.03.2024
Pronounced on: 28.03.2024

+ **BAIL APPLN. 2742/2023 & CRL.M.A. 7678/2024**

DR. TABASSUM SAIFI Applicant
Through: Ms.Geeta Luthra, Sr. Adv. with
Mr.S.S. Sisodia, Mr.Saurav Kr.
Singh, Mr.Moksh Kataria,
Ms.Muskan, Mr.Karandeep
Singh, Advs.

versus

STATE OF NCT OF DELHI Respondent
Through: Mr.Aman Usman, APP with
Insp. Ashok Kumar.
Complainant in person.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This application has been filed under Section 438 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for being released on anticipatory bail in FIR No.191/2023 registered at Shaheen Bagh, South-East, Delhi for offence under Sections 419/420 of the Indian Penal Code, 1860 (in short, 'IPC'). The above FIR has been registered post an order passed by the learned Metropolitan Magistrate under Section 156(3) of the Cr.P.C. on an application filed by the Complainant-Mohd. Yousuf, father of the deceased-Andleeb Iram. During investigations, Sections 468/471 of the IPC have also been added.



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Factual Matrix

2. It is the case of the prosecution that on 24.03.2022, the deceased was admitted to the hospital of the applicant herein, that is the Medicare Hospital, located at FA-39-40, Abul Fazal Enclave-1, Jamia Nagar, New Delhi, as she was complaining of labour pain. On the same day, at about 8-8:15 PM, she gave birth to a male child through normal delivery. Post the delivery, the deceased showed signs of mild Post-Partum Haemorrhaging (PPH), due to which she was losing blood and was in distress. The Complainant further stated that at about 8:20-8:30 PM, the father of the complainant took discharge of the deceased and shifted her to the Holy Family Hospital, NFC, Delhi, where she unfortunately passed away at about 10:30 PM. Subsequently, the father of the deceased filed a complaint, on 19.04.2022, and then, on a direction passed by the learned Metropolitan Magistrate, the above-mentioned FIR came to be filed. Initially, the FIR was registered for offence under Sections 419/420 of the IPC, but during the course of investigation, the charges under Sections 468/471 of the IPC have also been attracted.

3. It is further the case of the prosecution that during initial inquiry, it was revealed that the applicant holds a degree in Bachelor of Unani Medicine and Surgery (BUMS) from the Faculty of Medicine (Unani), Jamia Hamdard Delhi, but she had used a forged stamp by the name of Dr. F. Tabassum, MBBS, DGO (Obs & Gynae), having DMC registration no.69048. It is alleged that during the course of inquiry, it has been revealed that no such doctor is registered with the said registration number with the National Medical Council.



4. The prosecution further alleges that during the course of her examination, the applicant stated that the stamp was used by one Dr. F. Tabassum, who used to work in her clinic. The prosecution alleges that the said Dr. F. Tabassum, when contacted, stated that she had never treated the deceased and that the alleged stamp does not belong to her; she stated that her DMC Registration Number is R/9048. It is alleged that the applicant prepared/forged a fake stamp to impersonate herself as an MBBS doctor. She also prescribed modern medicines, which can be prescribed only by an MBBS qualified doctor.

5. The prosecution alleges that registration of the Clinic, that is, Medicare Hospital, has also expired on 31.03.2019, and the same is pending renewal.

Submissions by the learned senior counsel for the applicant

6. The learned senior counsel for the applicant submits that the applicant is a medical practitioner having 18 years of unblemished medical experience. She submits that the applicant has obtained her degree in BUMS from the Faculty of Medicine (Unani), Jamia Hamdard College, Delhi, which is a reputed deemed University of NCT of Delhi and has also been granted a Certificate of Registration by the *Delhi Bharatiya Chikitsa Parishad*. She submits that the Jamia Hamdard College of Unani is recognized by the Indian Medicine Central Council Act, 1970 in its Second Schedule and the name of the applicant is also there in the State Register of Unani doctors of *Delhi Baratiya Chikitsa Parishad*.



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7. The learned senior counsel for the applicant submits that vide the Office Memorandum dated 19.02.2014, the Ministry of Health and Family Welfare, Government of India has in particular encouraged that normal deliveries and post-delivery childcare be performed by *AYUSH* Doctors, and that BUMS Doctors are fully authorized to conduct normal deliveries. She submits that it is in fact part of the curriculum and *AYUSH* Doctors are given training for the same. She submits that as per the Indian Medicine Central Council, (Minimum Standard of Education of Ayurveda, Siddha and Unani) Regulations notified in 2013, it is mandatory to provide two months of Clinical Training and Rotary Internship in Gynaecology and Obstetrics to the students, whereas the applicant has completed 1 year of the same. She further submits that following the above Notification, the Medicare Hospital was started by the husband of the applicant for Unani Medicine and Surgery among other treatments as well. She submits that the Medicare Hospital is registered with the Directorate General of Health Services, Government of National Capital Territory of Delhi and has all requisite documentation.

8. The learned senior counsel for the applicant submits that the applicant is skilled in performing normal delivery without the intervention of episiotomy cuts or requirement for operation, and has conducted numerous normal deliveries which have been successful. She further submits that the Complainant himself is a BUMS Doctor, and also the applicant's senior.

9. She further submits that it was the Complainant and his wife who insisted to take their daughter to another hospital, which caused



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unnecessary delay in her treatment of PPH, thereby resulting in her unfortunate death. She submits that the death of the deceased happened in the Holy Family Hospital after almost two and a half hours of her discharge from the hospital of the applicant, which shows that the death of the deceased did not happen due to the negligence of the applicant.

10. She submits that the condition suffered by the deceased, while not wholly common, is a condition that could have been treated. She submits that it was the Complainant who insisted that his daughter be discharged and took her to another private hospital in his own car as opposed to availing the services of an ambulance. Placing reliance on the judgment of the Supreme Court in **Jacob Mathew v. State of Punjab & Anr.**, (2005) 6 SCC 1, she submits that case of medical negligence cannot be investigated by the police; it should be based on the opinion of the medical body, like the DMC.

11. The learned senior counsel for the applicant submits that while Dr. F. Tabassum did work with the applicant in her hospital, the said Doctor shifted to her home-town due to the outbreak of Covid-19 Pandemic in 2020-2021, further the allegation that the applicant used the stamp of Dr. F. Tabassum cannot be sustained as the applicant herself is eligible to conduct deliveries.

12. She submits that the prescriptions which bear the stamp of Dr. F. Tabassum are dated 11.09.2021 and 12.03.2022, whereas the deceased was admitted on 24.03.2022, and the delivery was done on the same day. All documents which include the admission form, prescriptions, consent form, discharge form, and the referral notes are



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dated 24.03.2022, which are in the handwriting of the applicant and bear no stamp of the applicant. The alleged documents which show the stamp of Dr. F. Tabassum, such as the ultrasound form are handed over to the patient and not retained by the Doctors. She submits that the Complainant, in order to implicate the applicant, has himself stamped such documents as the stamp even does not have the correct DMC registration number of Dr. F. Tabassum. She submits that if the applicant was to falsely use the stamp of Dr. F. Tabassum, she would have used the correct Registration number.

13. She submits that the alleged documents are dated 11.09.2021 and 12.03.2022, and do not form a part of the date of the incident, that is, 24.03.2022. She submits that mere preparation of an alleged false document is not sufficient to attract offence under Sections 467/471 of the IPC. In support, she places reliance on the judgements of the Supreme Court in *Mohammed. Ibrahim & Ors. v. State of Bihar & Anr.*, (2009) 8 SCC 751 and *Sheila Sebastian v. R. Jawaharaj & Anr.*, (2018) 7 SCC 581.

14. She further submits that the prosecution has been unsuccessful in establishing how the offence under Sections 468/471 of the IPC is made about against the applicant.

15. She further submits that the applicant has been cooperating with the investigation and has been appearing for investigation as when called. There is also no fear of her absconding.

Submissions by the learned APP

16. On the other hand, the learned APP submits that the applicant herein has impersonated herself to be an MBBS Doctor in the name of



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Dr.F. Tabassum, MBBS, DGO (Obs & Gynae) being registered with the National Medical Council *vide* registration no.69048.

17. He submits that one Dr.F. Tabassum used to work with the applicant herein, who has revealed that she never examined or treated the deceased, and that she no longer works with the applicant. Dr. F. Tabassum stated that the alleged stamp does not belong to her. She further revealed that her DMC registration number is R/9048 which is different from the one being used by the applicant. He submits that upon investigation, it has been found that the registration number being used by the applicant does not exist with the National Medical Council. He submits that as the applicant is not a qualified MBBS, DGO (Obs & Gynae), she has impersonated herself to be Dr. Farheen Tabassum and in furtherance of the same, prepared the forged/illegal stamp bearing no. 69048.

18. He submits that the applicant herein also prescribed certain medicines to the deceased which could have been prescribed only by an MBBS qualified doctor, and in doing so has misrepresented herself to be Dr.F.Tabassum, MBBS, DGO (Obs & Gynae) and used her stamp with DMC Registration No.69048.

19. He submits that during the pendency of the proceedings, the applicant has intentionally tried to mislead this Court and detach her name from Dr. F. Tabassum. She filed a letter-head which did not bear the name of Dr. Farheen Tabassum and showing herself simply to be the Medical Superintendent, and which does not even mention her qualification as a BUMS Doctor. He submits that this letter-head is different from the one which is available with the police.



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20. He further submits that the PPH suffered by the deceased could have been treated had an expert obstetrician intervened and given proper medical treatment.

21. The learned APP submits that the registration of the Medicare Hospital was valid only until 31.03.2019, and at present, the renewal of the registration of the hospital is pending, which would further show that services being provided by the applicant at this point in time would not be lawful.

22. The learned APP submits that the applicant would be liable to be prosecuted for offence under Sections 415/464 of the IPC apart from the Sections that have already been invoked against her.

23. He submits that the case of **Jacob Mathew** (*Supra*) cannot come to the aid of the applicant as the same would be applicable in a case where the doctor is to be proceeded for only medical negligence and permission of the Medical Board is required. He submits that in the present case, the applicant is not an MBBS qualified doctor. He submits that this is a case of pure impersonation and forgery.

24. He submits that **Mohammed Ibrahim** (*Supra*) and **Sheila Sebastian** (*Supra*) both pertain to question of forgery and not with impersonation and forgery with a view to gain illegally.

25. He further submits that initially a case for offence under Sections 420/419 of the IPC was registered against the applicant but during the course of investigation, Sections 468/471 of the IPC have been added as the applicant has willingly and intentionally used a forged stamp, which has also been recovered at her instance. He



submits that further custodial interrogation would be required to reveal the whereabouts of the stamp and other documents.

Analysis & Finding

26. I have considered the submissions made by the learned counsels for the parties.

27. From the above narration of facts, it is evident that it is the case of the prosecution that the applicant impersonated herself as Dr. F. Tabassum, a qualified MBBS. The applicant is also alleged to have forged a rubber stamp showing a false registration number of Dr. F. Tabassum. Though the applicant denies the above allegations, the learned APP, during the course of hearing, showed the letter-head/prescription that appears to be that of the Medicare Clinic, a clinic/hospital run by the applicant, and which bears the alleged false stamp. This is not a case where the Complainant merely questions the nature of treatment given to the patient or alleges medical negligence. The prosecution herein alleges impersonation and forgery in order to deceive patients to believe that they are being treated by a duly qualified doctor having an MBBS degree. The judgment of **Jacob Matthews** (Supra), therefore, shall have no application.

28. The judgment of **Mohd. Ibrahim** (Supra), in fact, shows that, if the case of the prosecution is to be believed that the applicant impersonated herself as Dr. F. Tabassum and prepared false documents bearing a false stamp, the offence under Sections 463/464/471/478 of the IPC would be made out against the applicant. The said judgment would, therefore, not come to the aid of the



applicant. Similar is the case with ***Sheila Sebastian*** (Supra). As rightly pointed out by the learned APP, the above referred cases, both pertain to question of forgery and not with impersonation coupled forgery with a view to gain illegally. Therefore, they cannot come to the aid of the applicant.

29. In ***Gurbaksh Singh Sibbia v. State of Punjab***, (1980) 2 SCC 565, the Constitutional Bench of the Supreme Court, while considering a question of the balance between personal liberty and the investigational powers of the police, had laid down that the nature and seriousness of proposed charges, the events leading up to the making of such charges, apprehension that the applicant might be absent from the trial, tampering of witness(s) and the larger interest of the public and State, are some factors that must be borne in mind at the stage of granting or denying anticipatory bail.

30. In ***Central Bureau of Investigation v. Santosh Karnani and Another***, 2023 SCC OnLine SC 427, the Supreme Court has opined as under:

“24. The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on



consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.”

31. Recently, in ***Srikant Upadhaya & Ors. v. State of Bihar & Anr.***, 2024 INSC 202, the Supreme Court has reiterated the principles of Anticipatory Bail, as under:

*“8. It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438, Cr. P.C. is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in *HDFC Bank Ltd. v. J.J. Mannan*, (2010) 1 SCC 679).*

9. When a Court grants anticipatory bail what it actually does is only to make an order that in the event of arrest, the arrestee shall be released on bail, subject to the terms and conditions. Taking note of the fact the said power is to be exercised in exceptional circumstances and that it may cause some hinderance to the normal flow of investigation method when called upon to exercise the power under Section 438, Cr. P.C., courts must keep reminded of the position that law aides only the abiding and certainly not its resistant. By saying so, we mean that a person,



having subjected to investigation on a serious offence and upon making out a case, is included in a charge sheet or even after filing of a refer report, later, in accordance with law, the Court issues a summons to a person, he is bound to submit himself to the authority of law. It only means that though he will still be at liberty, rather, in his right, to take recourse to the legal remedies available only in accordance with law, but not in its defiance.....”

32. Applying the above principles, it cannot be denied that further interrogation would be required to test the veracity of the allegations made against the applicant and to unearth all material evidences. Though the applicant states that she has joined in the investigation on a number of occasions, the effectiveness of custodial interrogation is materially different. She may have to be confronted with the material that the prosecution possesses in order to unearth the truth.

33. In my opinion, therefore, given the nature of allegations and the peculiar facts and circumstances of the present case, the applicant has not been able to make out a case for grant of anticipatory bail.

34. Accordingly, the application is dismissed.

35. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of Bail and shall not be construed as an expression on the merits of the matter.

NAVIN CHAWLA, J

MARCH 28, 2024/RP

Click here to check corrigendum, if any