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

\+ **<u>BAIL APPLN. 2742/2024 & CRL.M.A. 22917/2024</u>**

DR. VIJAYA RAJAKUMARI .....Applicant

Through: Mr. Vikas Pahwa, Senior Advocate with Mr. Muhammad Ali Khan, Mr. Omar Hoda, Ms. Eesha Bakshi, Mr. Uday Bhatia, Mr. Kamran Khan, Mr. Arjun Sharma, Mr. Prabhav Rathi and Ms. Nancy Shamim, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) AND ANR. .....Respondents

Through: Mr. Amol Sinha, ASC for the State with Mr. Kshitiz Garg, Mr. Ashvini Kumar and Ms. Chavi Lazarus, Advs. with SI Gulab Singh and SI Ashish Sharma, ISC, Crime Branch, Chanakyapuri.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>O R D E R</u>

% **23.08.2024**

1. The present bail application is filed seeking regular bail in FIR No. 124/2024 dated 17.06.2024, registered at Police Station Crime Branch, for offences under Sections 419 /420 /468 /471 /120B of the Indian Penal Code, 1860 (**'IPC'**) and Sections 18 /19 /20 of the Transplantation of Human Organs and Tissues Act, 1994 ('**TOHO Act**').

2. Briefly stated, the FIR in the present case was registered

on a that a secret information alleging that some persons of a well-organized crime syndicate were involved in illegal kidney transplants. It is alleged that these persons took the kidneys of unprivileged and poor persons belonging to Bangladesh and North Eastern States by offering them money. It is alleged that one Mohd. Rasel, allegedly the kingpin of the whole syndicate, along with his associates namely Mohd. Sumon, Ratish Pal and Ifti in connivance with other staff members of prestigious hospitals, were allegedly involved in the illegal act.

3. It is alleged that Mohd. Rasel was the one who established contacts with prospective kidney donors from Bangladesh, and the kidney patients. It is alleged that during the course of investigations, one Mohd Sharique was arrested for his involvement in the illegal act. It is alleged that Mohd Rasel and one Rokon used to prepare files of patients, and used to give the same to Mohd Sharique, who in turn would take appointment for those patients from the applicant.

4. It is alleged that as per the CDR analysis, Mohd Sharique was in constant touch with the applicant. It is alleged that the applicant knew that the Kidney Transplant files were prepared by the Mohd. Rasel, and Rokon by making forged papers since the applicant allegedly used to instruct them to change the relationship between the donor and the recipient.

5. It is further alleged that on 01.07.2024, the applicant was interrogated in relation to her involvement in the present case, and was also confronted with the accused persons. It is alleged that on sustained interrogation, the applicant admitted that she had deleted the WhatsApp chats from the mobile phone of her assistant. It is alleged that the applicant conducted the kidney transplant of the Bangladeshi nationals, and used to deposit the

money with Yatharth Hospital after allegedly collecting cash from Bangladeshi patients and after allegedly deducting her share.

6. The learned Senior Counsel for the applicant submits that the allegations against the applicant are false, frivolous, baseless, and concocted and that she is falsely implicated in the present case.

7. He submits that the applicant was taken by the police from the hospital on 01.07.2024 at around 11am and was arrested in the evening being violative of Section 46(4) of the CrPC.

8. He submits that the FIR does not attribute any offence to the applicant as it does not even name the applicant as an accused.

9. He submits that applicant merely treats the patients at the concerned hospital where surgery for organ transplantation was conducted, but had no role to play in preparation of relevant documents as per the TOHO Act. He submits that the applicant is a reputed doctor and had followed the requisite standard operating procedures as per law and as per the administrative directions of the concerned hospitals before proceeding to conduct the kidney transplantation surgery in the present matter.

10. He submits that Shri Shankar, the kidney donor was clearly informed about the procedure, and he answered in affirmative. Furthermore, Shri Shankar had all the requisite permissions and approvals from the committees as mandated under the TOHO Act and it was only after the approval of the authorisation committee, the applicant did the procedure.

11. He submits that the pre-requisite of authentication by the concerned embassy was duly complied with before the surgery was performed.

12. He submits that the statement of Shri Shankar is contradictory to the evidence *viz* documents and the video which show that he gave his consent to perform the kidney transplant.

13. He submits that the applicant has already shared all bank details, and her house has been searched and no incriminating cash payments have been recovered, which allegedly ties the applicant to the 'money trail'.

14. He submits that applicant is a 50 years old female medical professional and the entire evidence in the case is in the possession of the investigating agency and there is no possibility of tampering.

15. Lastly, he submits that the applicant has deep roots in the society and she is a doctor of stellar reputation who has been working for the last 30 years.

16. *Per Contra,* the learned Additional Standing Counsel for the State opposed the bail application on the grounds that the offences alleged against the applicant are serious in nature. He submits that the statement under Section 164 of the CrPC of the victim – Shri Shankar is incriminating in establishing that the present applicant was engaged in kidney transplantation without following the due procedure.

17. He submits that the applicant was aware of the ongoing investigation and she took the mobile phone of her assistant – Mahender Singh and deleted the conversation which shows that she might tamper with the evidence and may influence the witnesses. He submits that the applicant used to take cash from the patients and deposit the same to Yatharth Hospital after deducting her share which shows her *malafide*.

18. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind,

such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

19. The applicant is sought to be implicated in the present case on the basis of the statement of Shanker whose kidney was allegedly transplanted without his consent and on the basis of the disclosure statement of Mahender Singh, who used to work as the applicant's assistant and stated that the applicant on coming to know about the arrest of Mohd. Rasel and accused Vikram, called Mahender Singh and deleted certain WhatsApp chats. The applicant is further alleged to be in contact with the other co-accused persons.

20. The learned Senior Counsel for the applicant has filed additional documents which show that the victim Shanker had travelled to India on a Medical Visa. Shanker, however, in his complaint has alleged that he had travelled to India for the purpose of employment.

21. It is pertinent to note that any surgery in regard to the transplant of organ is performed under the strict procedures as provided under the TOHA Act and Transplantation of Human Organs and Tissues Rules, 2014. The same provides for approval from the authorization committee in Form 18 and Form 21. It is undisputed that Form 18 in the present case was filled and the Committee comprising of various doctors, including the Chief Medical Officer, Gautam Budh Nagar, as the Chairman of the Authorization Committee, approved the transplantation of kidney of the donor Shanker. The proceedings where the approval of the

donor is taken is also video recorded. It is also pointed out that the documents filed by the donor to show the genuineness were verified by the concerned Embassy in Form 21. In terms of the Rule 20 of the TOHO Rules, in a case where a donor is a foreign national, proper documents are sent to the concerned Embassy for authentication. The same was carried out in the present case.

22. It is not the case of the prosecution that the applicant was the member of the Committee who approved the transplantation of the kidney of the donor. It is alleged that all the accused persons acted as a facilitator in arranging poor patients from the Bangladesh for the purpose of donation of kidney. The allegation essentially is that false files are prepared on the basis of fabricated documents so that the operations can be conducted.

23. The allegation against the applicant, at this stage, at the highest, seems to be that she performed surgery and was aware that the patient, on whom the surgery is conducted, was not eligible for the donation of the organ.

24. It is not the case of the prosecution that the documents were prepared by the applicant. As noted above, the documents even otherwise were authenticated by the concerned Embassy in terms of the provisions of the TOHO Rules. The Committee which was constituted under the Act after interacting with the patient was satisfied that the organ was donated for genuine reasons. The Act itself provides for three tier safeguards - firstly, being submission of the documents then its authentication by the Embassy and thirdly the satisfaction of the Committee which consists of Senior Doctors as well as a Senior Government Officer. In such circumstances, at this stage, to allege that the applicant was involved in the falsification of the record would be far-fetched and is a subject matter of further investigation.

25. The applicant is in custody since 01.07.2024. The investigation qua the applicant seems to be complete and the only apprehension raised by the prosecution is that she being a Doctor may threaten the donor / witnesses. The apprehension can be taken care of by putting appropriate conditions.

26. The applicant, being a woman, is undeniably entitled to special consideration while dealing with the question of bail, in terms of the proviso to Section 437(1) of the CrPC.

27. In view of the above, in the opinion of this Court, the applicant has made out a case for bail and is directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

a. The applicant shall cooperate in any further investigation as and when directed by the concerned IO;
b. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
c. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
d. The applicant shall appear before the learned Trial Court as and when directed;
e. The applicant shall provide the address where she would be residing after her release and shall

not change the address without informing the concerned IO/ SHO;

f. The applicant shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.

28. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

29. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

30. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

AUGUST 23, 2024