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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2942/2024**

MOHD SHARIQUE IN JCApplicant

Through: Mr. Mobin Akhtar, Adv.

versus

THE STATE GOVT OF NCT OF DELHIRespondent

Through: Mr. Ajay Vikram Singh,
APP for the State.

SI Gulab Singh, Crime
Branch, Chanakyapuri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
19.09.2024

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1. The present 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 the Human Organs and Tissues Act, 1994 ('TOHO Act').

2. The FIR was registered on a secret information alleging that some persons of a well-organized crime syndicate were involved in illegal kidney transplants. It is alleged that the accused persons used to induce the under privileged and poor persons to donate their kidneys by taking money. One Mohd. Rasel was alleged to be the kingpin of the whole syndicate along with his associates namely, Mohd. Sumon, Ratish Pal and Ifti. It was alleged that the said accused persons were allegedly involved in the illegal act, in connivance with some staff members of the hospitals.

3. It was alleged that Mohd. Rasel used to establish contacts

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with prospective kidney donors from Bangladesh. The prospective kidney recipients were also citizens of Bangladesh.

4. In regard to the role of the applicant, it was alleged that Mohd. Rasel and Rokon used to prepare files of patients, and used to give the same to the applicant, who in turn would take appointment for those patients. It is alleged that the CDR analysis of the applicant shows that he was in constant touch with the other accused persons, including, the accused person—Dr. Vijaya Rajakumari.

5. The learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case.

6. He submits that the applicant was only a coordinator and his job was only to coordinate the appointment with the doctors of the patients who used to come from abroad.

7. He submits that the applicant used to forward the soft copy of the documents to Hospital Management that were received from patients or their relatives. He submits that merely forwarding documents for the purpose of appointments of the patients cannot be an offence.

8. He submits that the applicant belongs to the humble strata of society and is the sole bread earner in his family.

9. The learned Additional Public Prosecutor (‘APP’) for the State opposes the grant of bail to the applicant as the offences alleged are serious in nature. He submits that the applicant was aware that the kidney transplant was illegally taking place.

10. I have heard the counsel and perused the record.

11. 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; the gravity 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.

12. This Court by order dated 23.08.2024, passed in BAIL APPLN. 2742/2024, had admitted accused Dr. Vijaya Rajkumari on bail. The allegation against the said applicant was that she was conducting the kidney transplant operation despite being aware that the kidney recipients were illegally receiving the kidneys from poor patients.

13. This Court had noted that only one patient has been found to have undergone the operation of the kidney transplant. It was also noted that the surgery on the said patient was performed under the strict procedure as provided under the TOHO Act and TOHO Rules. The Rules provide for approval from the authorization committee in Form 18 and Form 21. It was noted that undisputedly Form 18 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. The proceedings noting the approval and the consent of the donor was also video recorded. The documents submitted by the donor were also verified by the concerned Embassy in Form 21.

14. The allegations against the applicant, at this stage, at best are that he was facilitating arranging the documents for the patients and scheduling appointments on the basis of the same. It is essentially alleged that false papers were prepared on the basis of fabricated documents to facilitate the conduct of surgery.



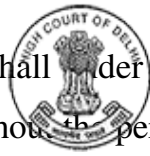
15. It is the case of the applicant that he was only involved in coordinating between the doctor and patients who used to come from different countries. He only used to work as a facilitator and no role can be attributed for submission of any alleged false documents. The allegations and defences in this regard would be tested during the course of the trial. It, however, cannot be denied that the surgeries were conducted after approval from the authorized committee formed under the TOHO Act and the documents allegedly forged were also verified by the concerned Embassy.

16. The charge sheet has already been filed in the present case. It is not the case of the prosecution that the custody of the applicant is required for further investigation.

17. The investigation *qua* the applicant seems to be complete and no apprehension has been raised that the applicant, if released on bail, would threaten the witnesses.

18. 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 ₹25,000/- 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 he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

19. 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.

20. 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.

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

AMIT MAHAJAN, J

SEPTEMBER 19, 2024
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