

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2524 OF 2025

Dr. Arjun Shivappa Pol. ... Applicant.

Vs.

The State of Maharashtra. ... Respondent.

Mr. S.B. Talekar a/w. Shivali S. Tikate, Mr. Satyaajeet Salve i/b.
Talekar & Associates, Advocate for the Applicant.

Ms. M.H. Mhatre, APP for Respondent/State.

PSI Prashant Relekar, Talegav MIDC Police Station, Pimpri
Chinchwad.

CORAM : ASHWIN D. BHOBE, J.

DATE : 10th JULY, 2025.

P.C. :

1. Heard Mr. Talekar, learned Advocate for the Applicant
and Ms. Mhatre, learned APP for State.

2. By the present Application filed under section 483 of the
Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the
Applicant is seeking regular bail in Crime No. 160 of 2024
registered at Talegaon MIDC Police Station, Pune for the offences
punishable under Section 103(1), 105, 238, 90, 3(5), 61(2) of the
Bharatiya Nyaya Sanhita, 2023 (for short "BNS"). Said Crime is
registered as Sessions Case No. 121 of 2024 and is pending on the
file of Additional Sessions Judge, Vadgaon Maval, Dist. Pune.

3. There are 4 Accused in the present crime. Applicant is

Accused No. 4. Bail Application at Exh. 2 filed by the Applicant in Sessions Case No. 121 of 2024 was rejected by the learned Additional Sessions Judge, Vadgaon Maval, Dist. Pune on 22nd April, 2025.

4. Case of the prosecution is that Samareen Nisar Nevarekar (deceased) was admitted in Amar Hospital on 6th July, 2024. She was taken to the said hospital for abortion. Admission papers of the deceased referred to Samareen (deceased) being brought to the hospital for termination of pregnancy. Samareen (deceased) was under consultation of the Applicant a medical practitioner. Applicant conducted termination of pregnancy of Samareen (deceased), which resulted in death of the Samareen (deceased). Case of the prosecution is that body of Samareen (deceased) was thereafter eliminated by throwing the same in the river bed.

5. Mr. Talekar, learned Advocate for the Applicant submits that Applicant is a doctor by profession, having experience of 37 years in the medical field. He submits that the allegations against the Applicant in the present Crime are that the Applicant as a doctor acted in rash and negligent manner (हलगर्जीपणे) while giving treatment to Samareen (deceased). He submits that apart from the said allegations which are in the nature of medical negligence, there are no allegations with reference to the Applicant's having any malafides while conducting the said termination of pregnancy of Samareen (deceased). He submits that the Applicant as a doctor has taken all the necessary care and precaution at the time of

conducting the abortion, which was in the interest of the patient. He therefore, submits that the offence charged against the Applicant would not be attracted. He submits that the ingredients of Section 103 and 105 of the BNS are not attracted even remotely to the case of the Applicant.

6. Ms. Mhatre, learned APP for the State opposed the bail application on the ground that Applicant though a doctor, has acted in rash and negligent manner which resulted in death of Samareen (deceased). She submits that Panvel Municipal Nagar Palika by letters dated 24.07.2024 and 20.03.2024 had informed Amar Hospital not to admit new patients failing which action would be initiated under the provisions of Mumbai Nursing Home Act. She submits that there are earlier instances wherein patients have lost their lives in Amar Hospital. She submits that the present crime is third of its kind which resulted in death of the patient. She submits that investigation has revealed money transactions between the Applicant and the co-accused (Accused No. 3) which gives an impression that the Applicant was giving commission for getting patients to the Hospital for the purpose of abortion.

7. I have perused the records with the assistance of the learned Advocates for the parties.

8. In the case of Jaccob Mathew v/s. State of Punjab & Anr.¹

1 (2005) 6 SCC 1

the Hon'ble Supreme Court has summed up the law of negligence in the context of medical profession. Paragraph 48 of the Judgment is transcribed hereinbelow :

“We sum up our conclusions as under:-

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The

standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as [laid down in Bolam's case \[1957\] 1 W.L.R. 582, 586](#) holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in [Section 304A](#) of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in [Section 304-A](#) of the IPC has to be read as qualified by the word 'grossly'.

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.”

9. Hon’ble Supreme Court in the case of Dr. Suresh Gupta v/s. Govt. of NCT of Delhi & Anr.² has considered the liability of the doctor for death due to medical negligence/degree of

2 (2004) 6 SCC 422

negligence required to be proved etc. In paragraph Nos. 21 to 23 Hon'ble Supreme Court has observed as under :

“21. Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal'. It can be termed 'criminal' only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.

22. This approach of the courts in the matter of fixing criminal liability on the doctors, in the course of medical treatment given by them to their patients, is necessary so that the hazards of medical men in medical profession being exposed to civil liability, may not unreasonably extend to criminal liability and expose them to risk of landing themselves in prison for alleged criminal negligence.

23. For every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecutions of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because if the courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than giving all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and patient. Every mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence.”

10. Perusal of the charge-sheet reveals that the allegations against the Applicant are that the Applicant conducted the abortion/medical termination of pregnancy of Samareen (deceased)

in a negligent manner.

11. Statements recorded of the Administrator of Amar Hospital and the nurse who were present during the said operation indicates that the Applicant had conducted the procedure for Medical Termination of Pregnancy on the deceased. Document at page 163 is the admission sheet of Ms. Samareen by which she has consented for the required medication in Amar Hospital.

12. Prima facie, there is no material placed in the investigation paper to indicate negligence on the part of the Applicant. Similarly there is no material to show that the Applicant did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his sufferings. Issues sought to be raised by the Ms. Mhatre, learned APP would have to be considered at the stage of trial.

13. Reliance placed by Ms. Mhatre, on the letter dated 24.07.2024 of Panvel Municipal Corporation, in the absence of any material on record indicating any restrained order, passed against Amar Hospital or any material showing suspension of the license of the hospital or of any medical professionals, would not assist the prosecution at this stage.

14. Ms. Mhatre, learned APP submits that Applicant has criminal antecedents. Mr. Talekar relies on the statement made by the Applicant on oath in paragraph No. 6 of the Interim Application No. 2525 of 2025, which reads as under :

“6. The applicant submits that there is no direct evidence against him. There has been no recovery of incriminating material from his custody. **Similarly, there has been no criminal antecedents.**”

15. Be that as it may, having criminal antecedents by themselves cannot be the basis for refusal of prayer for bail (See Prabhakar Tewari v. State of U.P.)³

16. Applicant is in jail for almost a year. Investigation is completed and charge-sheet is filed. There are no compelling reasons for continuation of the Applicant in jail pending the trial. Applicant is therefore, entitled to bail.

17. In view of the above, Bail Application is allowed on the following conditions :

(a) Applicant be released on bail in Crime No. 160 of 2024 registered with Talegaon MIDC Police Station, Pune on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Vadgaon Maval, Pune.

(b) Applicant shall not tamper with prosecution

evidence and also shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Investigating Officer.

(c) Applicant upon release within 3 days shall furnish his residential addresses with proof and contact details to the Investigating Officer, Talegaon MIDC Police Station, Pune.

(d) Applicant shall attend each and every date of the trial pending before the Additional Sessions Judge, Pune, unless exempted.

(e) Applicant shall report to the Investigating Officer on the first Saturday of each month from 11 a.m. to 2 p.m. till framing of charge and as and when required.

18. Criminal Bail Application No. 2524 of 2025 is disposed of.

(ASHWIN D. BHOBE, J.)