

**Court No. - 76**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 1997 of 2023

**Applicant :-** Pappu Lal Sahu

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Abhay Nath Srivastava, Atul Kumar, Raghvendra Yadav

**Counsel for Opposite Party :-** G.A., Akhilesh Kumar Ojha, Bal Mukund Singh, Shri Prakash Mishra

**Hon'ble Saurabh Shyam Shamsbery, J.**

1. Heard Sri Raghvendra Yadav, learned counsel for applicant, Sri Sunil Srivastava, learned AGA for State and Sri Akhilesh Kumar Ojha, Advocate for Informant/Complainant.

2. Applicant-Pappu Lal Sahu has approached this Court by way of filing present bail application seeking enlargement on bail in Case Crime No. 0741 of 2022, under Sections 419, 420, 467, 468, 471, 274, 304, 120B IPC, Police Station Dhoomanganj, District Prayagraj, after rejection of his bail application vide order dated 15.12.2022 passed by Additional District and Sessions Judge/Special Judge (E.C. Act), Allahabad.

3. It is a case where a patient has died due to carelessness of doctors and staff as well as management of hospital, namely, Global Hospital, Asrawal Road, Saha Pipalgaon, Parayagraj and allegations are that adulterated platelets were provided and injected to patient.

4. Learned counsel for applicant submits that applicant is neither owner nor shareholder nor staff of hospital concerned. He is only owner of building wherein hospital concerned was running. He refers to photocopy of a notarized agreement of rent and period of rent agreement is 10 years. He further submits that applicant was not involved in day-to-day working of hospital. Allegation levelled against applicant is only that complainant has made a payment of Rs. 25,000/- in the name of son of applicant though there is no conclusive proof of same on record. Name of applicant was mentioned only because he has offered help to complainant side for arranging platelets and to put pressure on applicant. FIR was lodged with a delay of two days. Learned counsel refers to paras 8 and 9 of the affidavit that applicant has offered help as a human being, however, he

has neither received any money nor provided any platelets. He also submits that even if it is deemed that allegations are true on its face value, offence may not travel beyond Section 304 Part II IPC.

5. Learned AGA appearing for State submits that applicant was a part of racket which was prevailing at the time when incident took place wherein adulterated platelets were sold. Money has been transferred through "Phone Pay" and there are allegations of conspiracy also.

6. Learned counsel appearing for Informant/Complainant submits that applicant and his son were involved actively in procuring adulterated platelets, which was injected to deceased and this was the reason that patient died when he was rushed to another hospital.

## **7. LAW ON BAIL - A SUMMARY**

(A) The basic rule may perhaps be tersely put as bail, not jail.

(B) Power to grant bail under Section 439 Cr.P.C., is of wide amplitude but not an unfettered discretion, which calls for exercise in a judicious manner and not as a matter of course or in whimsical manner.

(C) While passing an order on an application for grant of bail, there is no need to record elaborate details to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal. However, a Court cannot completely divorce its decision from material aspects of the case such as allegations made against accused; nature and gravity of accusation; having common object or intention; severity of punishment if allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of witnesses being influenced by accused; tampering of evidence; character, behaviour, means, position and standing of accused; likelihood of offence being repeated; the frivolity in the case of prosecution; criminal antecedents of accused and a prima facie satisfaction of Court in support of charge against accused. The Court may also take note of participation or part of an unlawful assembly as well as that circumstantial evidence not being a ground to grant bail, if the evidence/ material collected establishes prima facie a complete chain of events. Parity may not be an only ground but remains a relevant factor for consideration of application for bail.

(D) Over crowding of jail and gross delay in disposal of cases when undertrials are forced to remain in jail (not due to their fault) may give rise to possible situations that may justify invocation of Article 21 of Constitution, may also be considered along with other factors.

(See, State Of Rajasthan, Jaipur vs. Balchand @ Baliay (AIR 1977 SC 2447 : 1978 SCR (1) 535; Gurcharan Singh vs. State (Delhi Administration), (1978) 1 SCC 118); State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21; Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr (2010)14 SCC 496; Mahipal vs. Rajesh Kumar, (2020) 2 SCC 118; Ishwarji Mali vs. State of Gujarat and another, 2022 SCC OnLine SC 55; Manno Lal Jaiswal vs. The State of U.P. and others, 2022 SCC OnLine SC 89; Ashim vs. National Investigation Agency (2022) 1 SCC 695; Ms. Y vs. State of Rajasthan and Anr :2022 SCC OnLine SC 458; Manoj Kumar Khokhar vs. State of Rajasthan and Anr. (2022)3 SCC 501; and, Deepak Yadav vs. State of U.P. and Anr. (2022)8 SCC 559)

8. For a patient, hospital is like a temple wherein doctors are worshipped as a God. However, of late, there are many reported incidents that both management of hospitals and doctors are treating patients as a tool of earning money and for that they are indulging in such practice which are contrary to their hippocratic oath and specifically when there are scarcity of medicines, medical instruments and platelets, as was in the present case.

9. It was a time when Dengue was spreading and obviously it was difficult to get platelets of same blood group and black marketing of platelets was prevailing. Applicant is one of such person, who was indulged in such unethical work. He has misused the trust of a patient and indulged in such activity with help of his son that not only took money but to provide such platelets which was not procured from proper licensed place. Knowing it well that it being adulterated platelets and may cause death of a patient, still he indulged in the activity of making money by procuring adulterated platelets and providing it to patient, which ultimately led to death of deceased. Applicant has not only committed an offence which is against one person but in the given circumstances it is against public at large. There are allegation of conspiracy, forgery and fraud and evidence for same are prima facie available on record. Therefore, in my considered opinion, it is not a fit case for grant of bail.

10. Application is accordingly dismissed.

**Order Date :- 23.3.2023**

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