

IN THE COURT OF SPECIAL JUDGE ANTICORRUPTION, JAMMU

CNR No: JKJM010026372023

File No. 867/2023/Anticipatory Bail

Date of Institution: 06-07-2023

Date of Decision : 10 -07-2023

*Dr. Shashi Sudhan, Age 58 years, w/o Dr. Sudesh Chander,
r/o 26-A, Bakshi Nagar, Jammu.*

... Petitioner.

Through: *M/S Sr. Adv. Pranav Kohli, along with Mr. Aftab Malik,
Farhan Mirza & Vastav Sharma, Advocates.*

Versus

*Union Territory of J&K, through Police Station **Crime Branch**, Economic
Offences Wing, Jammu.*

... Respondent

Through: *Mr. Irshad Ahmed, Ld. APP.*

*In the matter of : Application under Section 438, Cr.PC of Code of criminal
Procedure 1973 & Section 497-A, Code of Criminal Procedure
1989 Svt. seeking bail in anticipation of arrest in FIR No.
57/2023, dated 1st July, 2023 under Section 420, 465, 467,
468, 471, 120-B of RPC and section 5(1)(d) of Prevention of
Corruption Act. Svt., 2006.*

Coram:

Tahir Khurshid Raina

ORDER

1. On filing of the instant anticipatory bail application on 06-07-2023, under Section 497, Cr.PC by the applicant in this court, an interim bail was granted by this court to her on the basis of the averments made in the application, with a direction to the prosecution to file report in the case as well as objections to the said application by or before 08-07-2023. Same got filed on the said date and the case was also heard on the same date finally and was reserved for orders today. Counsels for both the sides advanced their arguments. IO, along with CD file, was also present.

CONSPECTUS OF THE CASE:

2. The gravamen of the case is based on date of birth controversy of the applicant, who is presently holding the coveted position of

Principal Medical College, Jammu. The allegations as inferred from the report and the CD file is that her date of birth as recorded in the matriculation diploma issued by the J&K Board of School Education, Jammu, (for short JKBOSE) is 08-04-1965. However, it is alleged that as per the said date of birth, she was ineligible to appear in the MBBS entrance examination in the year 1981, as she had not then attained the eligible age of 17 years as on Dec. 31, 1981. It further transpires that she got her date of birth corrected from JK BOSE in the year 1981, whereby she got her new date of birth certificate, carrying date of birth as 08-04-1964. Based on this corrected date of birth certificate, she became eligible to appear in the MBBS entrance examination and she did appear and qualified the same and got selected for the said course. When she got admission in the GMC, Jammu for the said course, she mentioned her age in the admission form as 08-04-1964. Same she has filled up in her own hand and signature on 20.10.1981. Later, after completing her M.B.B.S course, she got appointed as Assistant Surgeon in the year 1988. At the time of her appointment, she has then supplied Matric diploma, carrying her date of birth as 08-04-1965, as her age proof. Same has got mentioned on the first page of the service book, carrying her signature thereon which stand confirmed by the authority who attested the particulars on the first page, who was the then Chief Medical Officer, Health and Family Welfare, Jammu. With this date of birth, she then continued her service career. Even in her declaration form submitted by her in the University of Jammu in the year 2016-17, she has mentioned her date of birth as 08-04-1965. So the allegation that she carried two date of birth certificates, which she has used conveniently at two different occasions for obtaining two different benefits to receive i.e, the certificate based on 1964 date of birth she managed from JKBOSE and used for appearing in MBBS entrance examination and admission in the said course. But, when got appointed as Assistant Surgeon, then, with some different intentions, presented age proof based on the Metric Diploma carrying date of birth as 1965.

3. The said controversy, relating to date of birth of the applicant, came to fore in the year 2021, when Crime Branch, Jammu, received a complaint in this regard from a person, namely, Manu Gupta r/o

Channi Himmat, Jammu. Pursuant to said complaint, a preliminary verification (for short PV) was initiated in the same year by the Crime Branch, Jammu. Finally, the allegations in the PV were found correct which led to the registration of an FIR bearing No. 57/2023 on 01-07-2023 against the accused. Search warrant got issued by the Additional Judge, Anti Corruption, Court, Jammu, whereby searches were conducted in the office and the house of the accused. Some documentary evidence has been recovered which form part of the CD file. The investigation is at its very nascent stage and accused is on interim bail as granted by this court.

4. Now, the question before the court is, whether in the facts and circumstances of the case, as reflected from the report and the CD file, she deserves concession of anticipatory bail or not. In this context, I heard the Ld. counsels for the parties, perused the report and the CD file.

5. **Heard and considered.**

6. The law on the concept of anticipatory bail is quite well settled. Of all the major judgments of the superior courts of the country on the point, right from the Constitutional bench judgment, delivered in Gurbaksh Singh Sibbia case in 1980 till date, it is enjoined upon the criminal courts that while deciding anticipatory bail, a fine balance is required to be struck between the individual's right to personal freedom and free movement to that of the right of investigation of the police. And for that to be achieved, court has to consider the following factors like:

Nature and gravity of the accusation, antecedents of the accused, the exact role of him or her in the commission of the offence, as whether the accusation has been made with the sole objective of causing injury or humiliation to the accused to be just behind the bar, accused influential status, position and tendency to tamper with the evidence or to influence the witnesses and his tendency to flee

from the investigation etc. In addition, while considering grant of any such relief to the accused-applicant, the court must be conscious of the fact that anticipatory bail be granted only in exceptional circumstances where the court is prima facie of the view that applicant has been falsely roped in a crime and will not misuse his liberty.

7. The criminal court is therefore duty bound to evaluate the entire material before it very carefully while applying the aforesaid guiding principles and then to reach to a fair and final conclusion as to grant or refuse the concession of pre-arrest bail to the accused. So, precisely the guiding golden principle for the court is that, *the personal liberty is a very precious fundamental right and should not be curtailed, except when it becomes imperative in the facts and circumstances of the case.*
8. During the course of full length arguments on the instant application, I found a candid admission of facts by the counsel for the applicant that accused appeared in MBBS entrance examination in the year 1981 on the basis of the corrected date of birth as 08-04-1964 and based on it, she also got admission in MBBS course in GMC, Jammu. However, she mistakenly supplied her matriculation diploma at the time of appointment, carrying date of birth as 08-04-1965, an error at her part without any guilty intention.
9. So, prima facie, I do not find any divergence of opinion on the allegations attributed to her by the prosecution that there are two date of births being carried by the applicant which she has used at two different stages of her career. However, after getting her appointment, she continued with her date of birth as 08-04-1965. Even in the year 2016, she in her declaration, submitted to Jammu University mentions her date of birth as 08-04-1965. Not only to this context, but even in her reply to the questionnaire, put to her by the Crime Branch, Jammu, in the year, 2021, when the PV was going on, therein also she has categorically stated her date of birth as 08-04-1965. So based on these facts as revealed in the report and the

CD file, there is no two opinion with regard to existence of two different date of births, conveniently used by the accused on two different occasions i.e one for getting admission in MBBS and second when got appointed as Assistant Surgeon. So the offence of fraud, forgery and misconduct under Prevention of Corruption Act, as pleaded by the Ld. APP, are prima facie made out. In that context, the element of humiliation and unnecessary targeting of the accused, based on some fake and false complaint is absolutely ruled out and any such argument pleaded by the counsel for accused does not sustain at all.

10. Now, in this context, whether the offence alleged is a high gravity offence, one of the factor to be considered while deciding the anticipatory bail application. Fact remains that gravity of the offence is not to be gauged only in context of the punishment prescribed. Though, it is on a higher degree for the said offences, but in my appreciation, notwithstanding to the degree of punishment, it is more to be seen in context of the status and position of the person who is alleged to have committed the same. A doctor by profession, who happened to be earlier a teacher in the Medical College and presently at a high pedestal in the hierarchy is consciously continuing her alleged fraud, with two date of births certificates, using conveniently at different occasions, makes the alleged offence of high gravity. She, being the role model should not have even thought in her imaginations which is alleged to have been done by her. Even she carries two PAN Cards, two driving licences with two different date of births. Even in L. I. C policies, her date of birth mentioned is 1964. So this is the conduct of the accused who is holding the coveted position of Principal Medical College. This speaks of her antecedents, another factor to be considered by the court while dealing with her prayer for grant of Pre-arrest bail.

11. Let's now deal with other aspects of the case. During preliminary verification, a questionnaire was sent to her by the Crime Branch, Jammu on 09-05-2021, to know from her as what were the documents she submitted with the application form for admission in the MBBS, also copies of the said documents were sought from her. In her reply, she stated that she did not remember and the

documents must have been attached with the form. However, it was astonishing to note that when the investigating agency raided at her residence, there it found the original admission file of her, carrying no age proof attached with it. How come she was having the custody of the original admission file of her which dates back to 1981, supposed to be in the concerned admission section of the college. Why only the age proof is missing from it when it is the foundational document on the basis of which she claimed her eligibility and later got admission in the MBBS course. So obviously, she by misusing her position as Principal, managed to get the old file and then either has destroyed the document or is in her custody.

12. Apart, keeping the admission file with her, carrying no age proof with it, simply speaks that she was not sure about the genuineness of her age proof as 08-04-1964, on the basis of which she has got eligibility to appear in MBBS entrance examination and later admission in MBBS course in the year 1981. Astonishingly, after getting appointment, she continuously stuck to her original date of birth as 08-04-1965. This is an important issue which is very pertinently raised by the prosecution to be considered by the court while deciding the instant application.
13. Her complete refusal to Crime Branch to respond on this issue as it is a 40 year old matter and on the other hand managed to get admission file from the section, which now carries no age proof of her, sufficiently sustains the doubt about the genuineness of second date of birth certificate carrying the date of birth as 08-04-1964. It is the said document on which the edifice of her whole career rests, genuineness of which apparently has of course been put into doubt by none else but by her own conduct, hence a fact inevitably needs to be investigated meticulously.
14. In addition, by refusing to respond fairly to Crime Branch and keeping the admission file in her custody speaks of her influence, potential and tendency to tamper with the evidence, who instead of cooperating with the investigating agency as a bonafide public servant even fled away and was not available at her office or home when the investigating agency raided at both the places.

15. Thus, as said at the outset, the order granting or refusing bail must reflect a fine balance between the two conflicting interests i.e, sanctity of individual liberty and the demand of effective, perfect and fair investigation by the police. When seen in context of facts, as put in the preceding paras, I don't find any justification left to this court to sustain the plea of pre-arrest bail to be granted to the accused. Consequently, the interim bail, granted vide order dated 06-07-2023 is not being extended further.
16. The instant anticipatory bail application is accordingly dismissed.
17. The CD file is returned to the IO in the open court and he is directed proceed in the case in accordance with the law governing the field.
18. Application be consigned to records after its due compilation.

Announced:
10-07-2023

(Tahir Khurshid Raina)
Special Judge Anti Corruption
Jammu