

HIGH COURT OF MADHYA PRADESH: JABALPUR**(DIVISION BENCH)****MCRC No. 25107/2017**

Dr. Vijay Kumar Pandya Petitioner

Versus

Union of India through CBI Respondent

WITH

MCRC No. 25158/2017

Dr. Vijay Kumar Ramnani Petitioner

Versus

Union of India through CBI & Another Respondent

Coram:**DB: Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, J.**

Shri Manish Datt, Senior Advocate with Shri Manish Kumar Tiwari and Shri Siddharth Kumar Sharma, Advocates for the petitioners.

Shri J.K. Jain, Assistant Solicitor General for the respondent- Central Bureau of Investigation.

Whether Approved for Reporting: Yes**Law Laid Down:**

Grant of anticipatory bail is to be considered in view of the grave accusation levelled against the accused and therefore, may be one of the petitioner is a senior citizen aged 70 years and suffering ailments, would not entitle him to concession of anticipatory bail.

The *modus operandi* and gravity of accusation involving same crime number and almost similar allegations, as discussed in detail in the order passed in MCRC No.24600/2017 (*Dr. Divya Kishore Satpathi vs. CBI*) and connected petitions, which has led to admission of large number of candidates at the cost of more meritorious candidates in a professional course, is glaring and for the same and additional reasons coupled with the allegations against the petitioner in the present case, the applications for anticipatory bail are rejected.

Significant paras: 4, 5, 7, 8, 13 and 14

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Reserved on: 13/12/2017

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ORDER

{ 14/12/2017 }

Per: Hemant Gupta, Chief Justice:

This order shall dispose of both these petitions for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) being MCRC No.25107/2017 and MCRC No.25158/2017 filed on behalf of the petitioners – Dr. Vijay Kumar Pandya and Dr. Vijay Kumar Ramnani respectively, who apprehend their arrest in connection with Crime No. RC2172015A0025 (formerly STF Crime No.12/2013) registered with Police Station – Central Bureau of Investigation, Bhopal (M.P.) for the offence punishable under Sections 420, 467, 468, 471, 201 read with 120-B of IPC; Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (“PC Act”); Sections 43 read with 66 of the Information Technology Act, 2000 (“IT Act”); and Sections 3-D (1) and (2) and 4 of the M.P. Recognised Examination Act, 1937 (“Act of 1937”) as enumerated in the charge-sheet though in the bail applications the offence mentioned is that under Sections 419, 420, 467, 468, 471, 120-B of IPC; Sections 65 and 66 of the IT Act; Sections 13(1)(d) and 13(2) of the PC Act and Sections 3-D (1) and (2) and 4 of the Act of 1937.

2. Dr. Vijay Kumar Pandya – petitioner in MCRC No.25107/2017 was the Dean of the People's Medical College whereas Dr. Vijay Kumar Ramnani – petitioner in MCRC No.25158/2017 was the member of the Admission Committee of the said Medical College. Both these petitions

arise out of the same crime number and almost on similar allegations. The *modus operandi* has been discussed in detail in a separate order being passed today in **MCRC No.24600/2017 (Dr. Divya Kishore Satpathi vs. CBI)** and other connected bail applications. However, the additional arguments, as are raised by the petitioners, are being dealt with hereinafter.

3. Learned counsel for the petitioners contends that a Notification dated 3rd April, 2012 in respect of PMT-2012, Madhya Pradesh Private Medical and Dental Under Graduate Course Entrance Examination Rules, 2012 was published. The argument of the learned senior counsel for the petitioners is that as members of the Admission Committee, the petitioners had only to verify the original documents and are not concerned with the short-listing of the candidates for counselling. Learned counsel refers to a judgment passed by the Supreme Court reported as **Joginder Kumar vs. State of U.P. and others, (1994) 4 SCC 260** and an order dated 10.10.2017 passed by the Supreme Court in **Criminal Appeal No.1758/2017 (Amar Nath Neogi vs. State of Jharkhand)** wherein the appellant, who was more than 65 years of age, was granted benefit of anticipatory bail. The argument of the learned senior counsel is that since Dr. Vijay Kumar Pandya is more than 70 years of age and is suffering from various ailments, he is entitled to concession of anticipatory bail.

4. The Notification referred to by the learned counsel for the petitioners clearly specifies that allotment of a seat to eligible candidate in course and college shall be done by online counselling on merit-cum-option basis. The detailed programme of the counselling was to be advertised later but the

www.mp.gov.in/medicaleducation or any change in the programme shall also be advertised in the news papers besides uploading the same information on the website www.mp.gov.in/medicaleducation.

3. Any student identified as having obtained admission after the last date of closure of admission, he/she shall be discharged from the course of study or any Medical/Dental qualification acquired by such student on such admission, the same shall not be treated as a recognized qualification for the purpose of MCI Act, 1956 or the Dentist Act, 1948, as the case may be.”

5. The allegations are that the People's Medical College was allotted 63 seats of State quota by Director, Medical Education. The college informed the Director, Medical Education that 54 students have taken admission in the first counseling in the college by 20.09.2012 i.e. before the second round of counselling. Thereafter, the college informed that two more candidates have applied for upgradation to Government Medical Colleges. Therefore, the second round of counselling was held only for 11 vacancies by the Director, Medical Education. In the report it is stated that five of accused engine candidates were already students of MBBS course in the medical colleges of Uttar Pradesh but the college has shown that they have taken admission in the college. Thus, the said five seats were declared vacant and filled on 30.09.2012 without following any due process in an arbitrary manner. In fact, it was pointed out that one of the candidate, namely, Neha Batra has prepared a demand draft of Rs.3,81,200/- from a Bank in New Delhi on 28.09.2012 though her name was not appearing in any of the list of the Director, Medical Education. She was admitted on 30.09.2012 and is linked with middleman Sonu Pachori.

6. Learned counsel for the petitioners has also referred to certain communications addressed by the People's University in respect of the candidates against State quota not reporting for admission, to contend that the petitioners have acted in a *bona fide* manner and sought directions from the Director, Medical Education to fill the vacant seats.

7. As per the Rules notified by the State Government, the candidates have to report on the notified date and time to the Dean or the Principal of the College concerned. The College Admission Committee consists of Dean/Principal, two Professors and at least two Medical Teachers. The entire allegation against the petitioners is of furnishing of wrong information to the Director, Medical Education including the candidates, who were already students of MBBS course in other colleges of the State of Uttar Pradesh. As members of the Admission Committee, it was expected of the petitioners to ascertain about the gap year which would have arisen on account of the engine candidates having been admitted in an earlier year in other State. The Admission Committee cannot wash their hands of the matter only by stating that they were to verify the certificates or their complicity and the role would be required to be examined during the course of trial.

8. The order of the Supreme Court in **Amar Nath Neogi's** case (*supra*) is an order of grant of anticipatory bail for the reason that he is a senior citizen and that he was never in Government service. We find that the said order is an order in the facts of that case. May be one of the petitioner is said to be of 70 years of age and is suffering ailments but the grant of

anticipatory bail is to be considered in view of the grave accusation levelled against the petitioner.

9. Learned counsel for the petitioners relied upon the judgment of the Supreme Court reported as **(2011) 1 SCC 694 (Siddharam Satlingappa Mhetre vs. State of Maharashtra and others)** as well as **(2016) 1 SCC 152 (Bhadresh Bipinbhai Sheth vs. State of Gujarat and another)** to contend that though the power of grant of anticipatory bail is extraordinary but it is not restricted to exceptional or rare cases and is to be ordinarily exercised. The relevant extract of the judgment in **Siddharam Satlingappa Mhetre's case (supra)** on which reliance has been placed, is reproduced as under:-

“85. It is a matter of common knowledge that a large number of undertrials are languishing in jail for a long time even for allegedly committing very minor offences. This is because section 438 Cr.P.C. has not been allowed its full play. The Constitution Bench in *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 clearly mentioned that section 438 Cr.P.C. is extraordinary because it was incorporated in the Code of Criminal Procedure, 1973 and before that other provisions for grant of bail were sections 437 and 439 Cr.P.C. It is not extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some courts of smaller strength have erroneously observed that section 438 Cr.P.C. should be invoked only in exceptional or rare cases. Those orders are contrary to the law laid down by the judgment of the Constitution Bench in Sibbia's case (supra).”

10. The aforesaid argument of the learned counsel for the petitioners is again not tenable in view of the role played by the petitioners of giving wrong information to the Director, Medical Education – as discussed hereinabove.

11. The Supreme Court in its judgment in **Bhadresh Bipinbhai Sheth (supra)** allowed the bail under Section 438 of the Code in view of the fact that allegation of an offence under Section 376 of IPC was after 17 years of the alleged offence. Thus, the said decision is also of no help to the petitioners.

12. The Supreme Court in **Joginder Kumar's** case (**supra**) dealt with the right of an arrested person to inform somebody and to consult privately with a lawyer and it was recognised as a right inherent under Articles 21 and 22(1) of the Constitution. We do not find that such judgment is applicable to a person, who is seeking pre-arrest bail.

13. There are grave and serious allegations of wrongful admission of students in the Medical Colleges. Large numbers of students have been admitted otherwise than on merit for financial considerations. Such action of the petitioners, if proved, during trial would show the deep-rooted malice in the admission process whereby the merit is given a go-bye and the students, who are not meritorious, were admitted for monetary consideration. The action or inaction of the petitioners has denied admission to the large number of students who were, in fact, entitled to admission. The entire process is antithesis of the rule that the students should be admitted only on merit. Thus, the gravity of the accusation against the petitioners is glaring.

14. The learned Special Judge has found that the allegation against the petitioners does not fall within the case of 'no evidence' or that the petitioners are being arrested without any basis or in a *mala fide* manner.

The role of the petitioners vis-a-vis the nature and gravity of the accusation has been properly appreciated in terms of the direction (i) contained in para 112 of the judgment of the Supreme Court in **Siddharam Satlingappa Mhetre (supra)**. In the present case, direction (vi) contained in the said decision is also relevant that impact of grant of anticipatory bail in cases of large magnitude affecting large number of people is also a parameter for consideration for grant of anticipatory bail. The action of the petitioners has led to admission of large number of candidates at the cost of more meritorious candidates in a professional course. The impact of the action of the petitioners, if proved, would show that how the professional courses are being conducted by the private medical colleges. Therefore, in view of the seriousness of the allegations, which have wide ramifications on the cause of professional education in the State, we do not find that the petitioners are entitled to concession of pre-arrest bail.

15. Further argument of the learned counsel for the petitioners is that the petitioners were not arrested during investigation and have cooperated with the Investigating Officer, therefore, at this stage the arrest of the petitioners will deprive them of personal liberty. The argument looks attractive but the fact is that the investigation process was long drawn. There are more than 500 accused. If the accused were not arrested during investigation, it does not mean that the petitioners are entitled to anticipatory bail as the allegations against the petitioners of exploiting the admission process are quite serious.

16. Therefore, for the reasons recorded in the order being passed today in **MCRC No.24600/2017 (Dr. Divya Kishore Satpathi vs. CBI)** and other connected bail applications and the allegations against the petitioners in the present case, as discussed above, we do not find that any case is made out for grant of anticipatory bail to the petitioners.

17. Consequently, the present petitions for grant of anticipatory bail under Section 438 of the Code are hereby **dismissed**.

(HEMANT GUPTA)
Chief Justice

(VIJAY KUMAR SHUKLA)
Judge

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