

HIGH COURT OF MADHYA PRADESH: JABALPUR**(DIVISION BENCH)****MCRC No. 25198/2017**

N.M. Shrivastava Petitioner
Versus
 Central Bureau of Investigation Respondent

WITH

MCRC No. 25774/2017

Dr. S.C. Tiwari Petitioner
Versus
 CBI, Bhopal (M.P.) Respondent

Coram:

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

Shri Anil Khare, Senior Advocate with Shri Ajay Gupta, Shri Jasneet Singh Hora and Ku. Pallavi Khare, 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:

Criminal proceedings initiated against the petitioners are not for violating the orders passed by the Supreme Court but as a factor to determine conspiracy in scheduling the second counselling for the extended period and permitting the candidates to be admitted on the last date. Thus, fixing of schedule by the petitioners cannot be an honest and *bona fide* exercise of administrative action but it is shaded with suspicion as it was not modified even when their attention was drawn that late admission will lead to admission of bogus candidates.

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 therefore, for the same and additional reasons coupled with the allegations against the petitioners in the present case, the applications for anticipatory bail are rejected.

Significant para: 3, 4, 7 to 10 and 12

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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 the above-mentioned 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.25198/2017 and MCRC No.25774/2017 filed on behalf of the petitioners – N.M. Shrivastava and Dr. S.C. Tiwari 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 409/419, 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. Petitioner – N.M. Shrivastava in MCRC No.25198/2017 was the Joint Director posted in the office of Director, Medical Education and Dr.S.C. Tiwari – petitioner in MCRC No.25774/2017 is the then Director, Medical Education, Government of M.P. 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. The role of the petitioners as per the charge-sheet is that schedule of second counselling was prepared by the petitioners on 13.09.2012, which was to last for six days as against the counselling in Government Medical Colleges, which was to last for three days. The delay was intended to shift the allotment process and admission of allotted candidates towards the last date i.e. 30.09.2012 with the intention to help the private medical colleges. The schedule of second counselling was from 18.09.2012 till 25.09.2012 and the last date for the allotted candidates to report in the college was 29.09.2012 but many candidates did not join the college. This enabled the medical colleges to fill these seats through their own preferred candidates without any due process and without following any merit. It is also pointed

out that Dr. J.K. Sharma, Dean of R.D. Gardi Medical College, Ujjain informed the Director, Medical Education on 14.09.2012 that the schedule of admission has to be strictly followed as per the judgment of the Supreme Court reported as **(2012) 7 SCC 433 (Priya Gupta vs. State of Chhattisgarh and others)** and has to be completed by 15th September. The second round of counselling from 18.09.2012 to 25.09.2012 would be in contravention to the orders of the Supreme Court. Dr. Sharma further suggested that the Director, Medical Education must direct the candidates to report to the college on 26.09.2012 by the last working hours and that the candidates should bring the required fee, caution money and original documents but the investigation reveals that the petitioners ignored the suggestion and the private medical colleges made admission without due process on 30.09.2012. Even as SAIMS Medical College, Indore vide communication dated 27.08.2012 requested the Director, Medical Education to complete the process of allotment of students to the colleges for the State quota as per stipulations of Medical Council of India and the order of the Supreme Court. The report is Dr. J.K. Sharma and S.D. Joshi of SAIMS stated that they met the petitioner Dr. S.C. Tiwari and requested to complete the process of allotment at an early stage otherwise middleman and some private colleges would try to conduct illegal admissions. They also expressed fear that late schedule will lead to bogus admissions by some private colleges on 30.09.2012.

4. In the face of such report, the argument of the learned senior counsel for the petitioners is that the failure to adhere to the schedule fixed by the Supreme Court in **Priya Gupta's case** (supra) contemplates the consequences as mentioned in the said judgment, therefore, the petitioners cannot be prosecuted for any offence, which is not contemplated in the judgment. The relevant extract of the judgment, on which reliance has been placed by the learned counsel for the petitioners, is reproduced as under:-

“46. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the action that is necessary to ameliorate the process of selection. Thus, we issue the following directions in rem for their strict compliance, without demur and default, by all concerned:

46.7 If any seats remain vacant or are surrendered from All India Quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counseling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

47. All these directions shall be complied with by all concerned, including Union of India, Medical Council of India, Dental Council of India, State Governments, Universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the following consequences and penal actions:-

47.1 Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions stricto sensu shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out the contempt proceedings before the High Court having jurisdiction over such Institution/State, etc.

47.2 The person, member or authority found responsible for any violation shall be departmentally proceeded against and punished in accordance with the Rules. We make it clear that violation of these directions or overreaching them by any process shall tantamount to indiscipline, insubordination, misconduct and being unworthy of becoming a public servant.

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5. It is further argued that while examining the role of Private Medical Colleges, the CBI itself has stated that they have not sought permission from the Director, Medical Education, therefore, the allegations against the petitioners are in contradiction to the report as per the investigations in respect of Private Medical Colleges.

6. The prime reliance of the learned senior counsel for the petitioners is on the judgment of **Priya Gupta's case (supra)** wherein consequences of not complying with the admission schedule are contemplated. The argument is that the consequences, as mentioned in the judgment alone can be initiated against the persons who have violated the directions but the judgment does not contemplate any criminal action, therefore, criminal prosecution for violating the directions of the Supreme Court in **Priya Gupta's case (supra)** is not justified.

7. We do not find any merit in such argument. It is pertinent to note that the criminal proceedings initiated against the petitioners are not for violating the orders passed by the Supreme Court but as a factor to determine conspiracy in scheduling the second counselling for the extended period and permitting the candidates to be admitted on the last date. Such schedule is, in fact, contrary to the Madhya Pradesh Private Medical and Dental Under Graduate Course Entrance Examination Rules, 2012 published vide Notification dated 3rd April, 2012 in respect of PMT-2012. The Notification 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 schedule for admission process contemplated first counselling by July, 2012, commencement of academic session by 1st August, 2012 and second counselling by August, 2012. Relevant clauses from the notified Rules read as under:-

“10. Declaration of Result:- The Board shall conduct the examination and evaluate the answer sheets. Thereafter, the result will be declared along with the publication of merit list.

The allotment of a seat to eligible candidate in course and college shall be done by online counselling on merit-cum-option basis.

13. ADMISSION

Candidates who are allotted a subject course and a college by Counselling shall report on the notified date and time to the Dean/Principal of the College concerned.

13.1 The College admission committee consisting of Dean/Principal, two Professors and at least two Medical Teachers belonging to the reserved category shall also verify the original documents and shall give admission in the course and the college allotted to the candidate.

14.1. SCHEDULE FOR ADMISSION PROCESS FOR THE YEAR 2012

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| 1. | First counselling | -By July 2012 |
| 2. | Commencement of Academic session | -By 01.8.2012 |
| 3. | Second Counselling | - By August, 2012 |
| 4. | Last date up to which students-
can be admitted against vacancies
arising due to any reason | 30-09-2012 |

Note:-

1. As per the order dated 11.09.2002 of Hon'ble Supreme Court in Madhu Singh Vs. MCI, no admission shall be made in any condition beyond 30th September of the concerned year. After 30-09-2012 the admission process will come to an end, irrespective of any vacancy.
2. The detailed programme of the online counselling will be advertised in the leading News papers and DME website 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.”

8. In view of the said Notification, not only the time schedule fixed by the State Government was not adhered to by the petitioners but they refused

to accept the suggestion of Dr. J.K. Sharma and Shri S.D. Joshi when it was pointed out that late schedule will lead to admission of bogus candidates. Therefore, fixing of the schedule by the petitioners cannot be an honest and *bona fide* exercise of administrative action but it was shaded with suspicion as it was not modified even when the attention of the petitioners was drawn to the fact that the admission process will lead to admission of bogus candidates.

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 of the petitioners in facilitating admission of bogus candidates in the private medical colleges. 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. The entire admission 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.

11. The Supreme Court 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 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 process of admission is not only the notification published by the State Government but also against the schedule of admission stipulated by the Supreme Court in **Priya Gupta's case (Supra)**. 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. 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.

13. 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 are quite serious by exploiting the admission process.

14. 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.

15. 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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