

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 299 of 2022

Applicant :- Dr. Rajeev Gupta M.D.

Opposite Party :- State Of U.P. Thru. Sp Cbi/Acb Naval
Kishore

Counsel for Applicant :- Purnendu Chakravarty

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Krishan Pahal,J.

1. Heard Sri Purnendu Chakravarty, learned counsel for the applicant and Sri Dharmendra Pratap Singh, Advocate holding brief of Sri Anurag Kumar Singh, learned counsel for the C.B.I.

2. The present anticipatory bail application has been filed on behalf of the applicant in Criminal Case No.690 of 2021, Crime No. RC0062019A0008, under Sections 13(2) r/w 13(1)(e) of PC Act, 1988 and Section 109 IPC, Police Station CBI/ACB, District Lucknow, with a prayer to enlarge him on anticipatory bail.

Brief Facts:-

3. The present case has been registered on the basis of a written complaint by Shri Anmol Sachan, PI/CBI/ACB/Lucknow, dated 23/05/2019 against Dr. Sunita Gupta, the then Sr. D.M.O., Northern Railway (N.R.), Divisional Hospital, Charbagh, Lucknow and her husband Dr. Rajeev Gupta, Professor, KGMU, Lucknow, U/s 109 IPC & Section 13(2) r/w 13(1)(e) of P.C. Act, 1988. It is alleged in the complaint that Dr. Sunita Gupta, the then Sr. D.M.O., Northern Railways, Divisional Hospital, Charbagh, Lucknow was in possession of disproportionate assets to her known sources of income to the tune of Rs 1,80,96,585.33 during the period 01/01/2009 to

12/07/2016, which she can not satisfactorily account for. Dr. Rajeev Gupta husband of Dr. Sunita Gupta also abetted the possession of assets disproportionate to known sources of income by Dr. Sunita Gupta.

4. The investigation revealed that Dr. Sunita Gupta was posted as Sr. D.M.O., N.R., Division Hospital, Lucknow up to October, 2015. She was transferred to Modern Coach Factory, Rae Bareli in same capacity wherein she joined on 16/11/2015 in compliance of Order No. 940E/1A/Medical Officer, dated 05/11/2015, DRM, Lucknow. Since then she is serving in MCF, Rae Bareli and staying in the Guest House of MCF, Rae Bareli. Occasionally, she comes to Lucknow. Dr. Sunita Gupta retained Government Accommodation allotted to her at Lucknow, with due permission from competent authority. While Dr. Sunita Gupta resided in Rae Bareli, her husband Dr. Rajeev Gupta resided in her official residence at Type IV-24, Church Road, Railway Colony Lucknow.

5. During investigation of RC/006/2016/A/002, by Shri Anmol Sachan, searches were conducted by Sh Sandeep Pandey. PI/CBI/ACB/Lko in presence of the CBI Team & independent witnesses at official residential premises of Dr. Sunita Gupta at IV-24, Church Road, Railway Colony, near Fatehli Chauraha, Charbagh, Lucknow on 12/07/2016. At the time of searches. Dr. Sunita Gupta was posted at Rae Bareli. Her husband Dr. Rajeev Gupta was present in the official residence of Dr. Sunita Gupta at Lucknow.

6. During the course of house search, a Search List was prepared vide which total six items including documents and cash was seized. Two Steel Almirah were kept in the Drawing Room which were opened with the keys provided by Dr. Rajeev Gupta. The Almirah contained huge currency notes. Total Rs

1,59,00,000/ were found in the Almirah. Enquiry was made from Dr. Rajeev Gupta about the source of money. He took the plea that the said cash has been earned by him through private practice. The plea taken by Dr. Rajeev Gupta was not found satisfactory. Hence, the said amount was seized. In addition to Rs 1,59,00,000/-, an amount of Rs 70,700/- was also found in the Steel Almirah, which was left for their day to day expenditure. During searches various documents pertaining to investments by Dr. Sunita Gupta and Dr. Rajeev Gupta were found and seized vide Search List, dated 12/07/2016 by Sh Sandeep Pandey, the then PI/CBI/ACB/Lko i.e. "List of Insurance Policies & FDs, "List of NSC/KVP", "List of SB A/c detail and PPF A/c, Currency Notes Rs 1.59,00,000/ seized vide "Details of Currency Notes". In the said house of the wife of the applicant, the house hold items/articles a separate Inventory Memo was prepared, annexed with the search list. In the Inventory Memo details i.e. date, time, cost of requisition, mode of acquisition and details of items/articles was noted. During the house search of Dr. Sunita Gupta, a locker key of Locker No 203C, Central Bank of India, Alambagh Branch, Lucknow was seized and the said locker was operated by Sh Atul Dikshit, PI/CBI/ACB/Lucknow, in the presence of Dr. Sunita Gupta and independent witnesses and vide "Bank Locker Operation Cum Seizure Memo", dated 12/07/2019 amount of Rs. 9,43,000/- was seized from the said locker. The I.O. of the present case seized relevant documents. recovered cash amount from Shri Anmol Sachan vide Handing Over/Taking Over taking Memo dated 10/06/2019.

7. The pay details of Dr. Sunita Gupta and Dr. Rajeev Gupta, for the check period were collected and relevant witnesses examined to prove their income Further, Sh Sandeep Pandey, PI/CBI/ACB/Lko and his CBI team including independent

witnesses to the search conducted on the official residence of Dr. Sunita Gupta were examined and they proved the Search List along with Inventory Memo dated 12/07/2016. Dr. Rajeev Gupta was present during the searches and was provided a copy of Search List dated 12/07/2016. They corroborated the seizure of Rs 1.59 crore from the official residential premises of Dr. Sunita Gupta on 12/07/2016 along with other seized documents.

8. During investigation, the I.O. collected the records from various banks pertaining to accounts maintained by Dr. Sunita Gupta & Dr. Rajeev Gupta and examined relevant witnesses for ascertaining balance at the start of the check period and at the end of the check period. The I.O. also calculated the interest received in the account and balance in the account at the end of check period.

9. The I.O. collected the records from School, Colleges to prove the expenditures incurred by Dr. Rajeev Gupta & Dr. Sunita Gupta and recorded the statements of the relevant witnesses. The I.O. collected the records from Post Offices to give the due benefit to accused regarding their income during the check period. The I.O. also collected the records from Post Offices to prove investments in the name of Dr. Rajeev Gupta & Dr. Sunita Gupta during the check period and recorded the statement of relevant witnesses.

10. On 12/07/2019, the CBI team in presence of independent witnesses had found & seized currency notes amounting Rs 1.59 crore from official residence of Dr. Sunita Gupta. At the time of searches, Dr. Sunita Gupta was posted at Rae Bareli and not present in the house. The currency notes were kept in different shelves of almirah. A large number of envelopes of different shape, size & colour were found in the almirah. The envelopes were opened & inside the envelopes currency notes

of different denominations were found tied with rubber bands. On the envelopes some details regarding cash in the envelope was mentioned. All the currency notes were taken out from a large number of different envelopes. Denomination wise the currency notes were segregated, counted with the help of Currency Note Counting Machine. Thereafter, denomination wise bundles were made & seized. The envelopes/paper slips, rubber band were not seized, as the same were not required. Dr. Rajeev Gupta had claimed that every envelope (inside which the currency notes were wrapped with rubber band) had the paper slip containing details of the patient name along with the amount received by the individual patient and that the CBI team took the cash from the envelopes and taken the envelopes with slip and left rubber bands. However, the CBI team stated that only Rs. 1.59 crore cash was seized and no such slip or envelope was taken/seized by them. Hence, accused Dr. Rajeev Gupta was having all the opportunity to keep the said envelopes, paper slips with himself in safe custody so that he might produce the same as documentary evidence in his defence, as he has claimed that the said envelope/paper slip were having details of patients and amounts received by him through private practice. This shows that the said envelopes/paper slips were not having any information/details of patients/amount as claimed by Dr. Rajeev Gupta.

11. Dr. Sunita Gupta has taken the plea that the amount of Rs. 1.59 crore seized in the case has no relation with her and stated that as the amount was seized from the almirah of Dr. Rajeev Gupta, he will inform the source. Applicant/Dr. Rajeev Gupta had claimed during the searches that the recovered amount of Rs. 1.59 crore from the official residence of Dr. Sunita Gupta belonged to him, earned by him through private practice. He was issued Order (U/s 91 Cr.PC.) to produce documents/source

showing income pertaining to recovery of cash amount of Rs. 1.59 crore on 12/07/2016.

12. In response to notice U/s 91 Cr.P.C., applicant/Dr. Rajeev Gupta stated that after marriage in 1993, he himself & his wife Dr. Sunita Gupta started a clinic at their residence at Mahanagar ("Mamta Mother & Child Care Center"). On 24/03/2000, they shifted to the Railway Quarter allotted to his wife and he was doing practice from there. Patients were coming to him for treatment of Cancer, consultancy in emergency and he charged regular fees from the patients. He is paid by various Doctors, owners of Nursing Home & patients for his professional advice, wherein he treated cancer patients after office hours. He named such Doctors and Nursing Homes. The amount received from such practice always became a handsome amount every month. He also visited some patients for their treatment. He attended Hepatitis B Immunization & Cancer Awareness Program in Lucknow in 2005 along with Dr. Uttam Tiwari, who used to run NGO Research India. He gave consultancy to patients and earned money. He used to get large number of patients through this NGO for treatment of Cancer disease. Dr. Rajeev Gupta further named various Doctors and Hospital owners who sent him Cancer patients for consultation, prescription of medicine/test. chemotherapy, radiation etc. and requested for their examination.

13. The statements of the following witnesses were taken under Section 161 Cr.P.C. by the I.O.:-

(a) Dr. Rakesh Mishra, BSc, MBBS, MD. (Physician), "Urmila Hospital", Priyadarshani Colony, Sitapur Road, (In front of Vidhyanchal Mandir Railway Crossing), Lucknow.

(b) Dr. Rajesh Yadav, M.B.B.S., M.D., Managing Director

Autar Hospital Diabetic & Trauma Centre, adjacent Diamond Palace & Petrol Pump. Talkatora Road, Lucknow.

(c) Dr. Rukhsana Khatoon, Managing Director "Rukhsana Medical & Trauma Centre, 20 Deen Dayal Road, Ashaarfabad, Lucknow.

(d) Dr. Ishtiyaq Ahmed, BUMS, Managing Director "Star Hospital", Hardoi Road, Tahseenganj, P.S Thakurganj. Lucknow.

(e) Dr. Maroof Ahmed, R/o 498/5KA, Nawab ganj, Barabanki, U.P.

(f) Dr. Neeraj Tandon, Prop. "Day Care Chemo Therapy Center" from 25 to 27 Vasundhara Complex, Sector 16, Behind Easy Day, Near Petrol Pump, Lucknow.

14. The aforesaid witnesses have stated that Dr. Rajeev Gupta attended patients in their hospital, after office hours, gave consultation, prescriptions for medicines/tests & also conducted Chemotherapy of the patients. If any patients treated by Dr. Rajeev Gupta needed Radiation, he helped in getting Radiotherapy treatment at KGMC for which patient made payments to KGMC Hospital. Dr. Rajeev Gupta received payments from patients for their treatment, through the hospital staff. They furnished the estimated payments made to Dr. Rajeev Gupta towards treatment of cancer patients done by him. Dr. Uttam Tiwari, who used to run NGO Research India could not be examined as he has already expired around 2015. Further Dr. Ranjeet Singh, MBBS, MS., S/o S. P. Singh, Managing Director "Amrit Hospital". Super Specialty Hospital & Trauma Center, Gandhi Colony, Kashipur Road, Rudrapur, Uttarakhand and Dr. Mahender Pal, S/o Sh Pritam Ram, Ex MLA, R/o Vill

Ami, PO Gahluya, PS Jahanbad, Pilibhit, U.P. on examination stated that they sent a large number of patients to Dr. Rajeev Gupta for their treatment of cancer and Dr. Rajeev Gupta took his consultation/treatment charges on his own. Dr. Pankaj Agrawal, M.S., FIAGES, Managing Director "Rajchandra Hospital. 554, Ga/256 Damodar Nagar, VIP Road, Alambagh, Lucknow also stated that Dr. Rajeev Gupta treated few cancer patients at his hospital. The above said Doctors were directed to furnish the documentary evidence pertaining to details of the patients treated in their hospitals/clinic/on their reference by Dr. Rajeev Gupta. However, they could not furnish any documentary evidence in this regard to prove the treatment of the cancer patients by Dr. Rajeev Gupta, they expressed their inability to furnish the records of patient treatment sought for the period 2010-2016. The same being very old one and due to lack of storage area and Medical Council of India guidelines they are not required to maintain records of the period more than 3 years and as such the same is burnt/destroyed.

15. The applicant or any other person (Doctors/Hospital Owners) summoned/examined during the investigation could not produce any valid documentary evidence in support of their statement or explanation offered by applicant that the total amount of Rs. 1.59 crore seized from the official residence of Dr. Sunita Gupta on 12/07/2016 was actually earned by applicant by indulging in private practice, after office hours.

16. In respect of the applicant, the Sanction for Prosecution, has been accorded by the competent authority and the same has been received vide Letter No. KGMU/C/79/2021, dated 30/06/2021, issued by Lt. Gen. (Dr.) Bipin Puri. Vice Chancellor, King George Medical University, U.P., Lucknow for launching prosecution U/s 109 IPC r/w 13(2) r/w 13(1)(e) of

Rival Contentions:-

17. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the matter. The money recovered from his possession is his genuine and hard earned money. Learned counsel for the applicant has further placed reliance on the statement of various doctors which have been examined by the Investigating Officer during investigation, who have categorically stated that the applicant used to treat various cancer patients in private and the money is a result of the said private practice.

18. Learned counsel for the applicant has further stated that the applicant is the Head of Department (Radio Therapy) in K.G.M.U., Lucknow. In case, the applicant is released on anticipatory bail, he will not misuse the liberty of bail and the applicant is ready to cooperate in trial.

19. Per contra, Sri Dharmendra Pratap Singh, Advocate holding brief of Sri Anurag Kumar Singh, learned counsel for the C.B.I. has vehemently opposed the anticipatory bail application on the ground that the accused has not appeared in court on summons. The present application has been filed after the bailable warrants have been issued against the applicant. The sanction for prosecution has already been received and the charge-sheet has been filed in court.

20. Learned counsel for the CBI has further stated that the applicant is a radio therapist and in the said field of radio therapy, no private practice is ever seen. The said field is a specialized field and is undertaken in large Institutions and the set up required for practicing in radio therapy goes to the tune

of multi crores.

Conclusion:-

21. Learned counsel for the applicant has failed to accord any tenable explanation for the recovered amount. He has further argued that the applicant is not authorized to take private practice as he is employed in a Government institution.

22. The Apex Court in para 92.3 and 92.4 of ***Sushila Aggarwal and Others vs. State (NCT of Delhi) and Another*** reported in **(2020) 5 SCC 1** has observed as under:-

"92.3.While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified - and ought to impose conditions spelt out in Section 437(3), Cr. PC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

23. In the case of ***P.S. Kirupanandhan Vs State, Cri. A. No. 381 of 2017 and Cri MP No. 8256 of 2017***, the Hon'ble Madras High Court has rejected the submissions made by the accused/applicant and decided that in DA cases, the explanation offered by the accused must be supported with valid documentary evidences. Hence, the explanation/argument of the accused/other person cited in defence is not tenable/valid and lawful. The arguments tendered on behalf of the applicant are not based on concrete facts but are vague and general. The case is not fit for the anticipatory bail.

24. The medical practitioner administer an oath at the time of

convocation as provided by Indian Medical Association which is an extension of Hippocratic oath taken the world over. The oath is not merely a formality. It has to be observed and followed in letter and spirit. It is on these lines that the apex medical education regulator, National Medical Commission has suggested that the Hippocratic oath be replaced by 'CHARAK SHAPATH' during the convocation ceremony for graduates in medical services. The medical and legal fields are more a service than a profession especially the stream of oncology which deals with life and death.

25. Corruption is a termite in every system. Once it enters the system, it goes on increasing. Today, it is rampant and has become a routine. Corruption is root cause of all the problems, such as poverty, unemployment, illiteracy, pollution, external threats, underdevelopment, inequality, social unrest. The menace has to be put to account. The offence is against the society. The Court has to balance the fundamental rights of the accused to the legitimate concerns of the society at large vis-a-vis the investigating agency.

26. The task of the Court is manifold. Firstly, it has to ensure that there is no unwarranted misuse or abuse of process to encroach upon life and liberty of the applicant as enshrined under Article 21 of the Constitution. Secondly, it has to see that the Rule of law is followed and the administration of justice is not hampered, the guilty is brought to book.

27. In view of the above, the present anticipatory bail application is **dismissed**.

Order Date :- 25.2.2022

Ravi Kant