

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 2715/2024

1. Dr. Jyoti Bansal Son of Shri Babu Lal Bansal, Aged About 39 Years, Resident of 34/68, Kiran Path, Mansarovar, Jaipur, At Present Posted As Medical Officer At Fortis Hospital, Jaipur (Raj.)
2. Dr. Jitendra Goswami Son of Shri Ghanshyam Das, Aged About 45 Years, Resident of 9, Nehru Nagar, Beawar, Ajmer, At Present Posted As Medical Officer At Fortis Hospital, Jaipur (Raj.)

----Petitioners

Versus

1. State Of Rajasthan, Through Public Prosecutor
2. Dr. Rashmi Gupta Wife of Shri Akhil Kumar Sharma, Aged About 47 Years, Resident of Plot No. 26, I.s. Nagar, Murlipura Scheme, Police Station Murlipura, Jaipur At Present Appropriate Authority, Human Organ And Tissue Transplantation, Director Medical Education, Jaipur (Raj.)

----Respondents

For Petitioner(s) : Mr. Sumer Singh Ola,
Ms. Komal Kumari Giri &
Mr. Bajrang Sepat

For Respondent(s) : Mr. G.S. Rathore, GA-cum-AAG,
Mr. Laxman Meena, PP

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

30/05/2024

1. Two petitioners have jointly filed the present criminal misc. petition u/s. 482 Cr.PC, for quashing of FIR No.319/2024 registered at Police Station, Jawahar Circle, District Jaipur City (East) for offences u/s. 420, 419, 471 and 120-B IPC.
2. Learned Government Advocate-cum-AAG, on the strength of case diary of the impugned FIR, at the outset, has pointed out



that during course of investigation in the impugned FIR, since an international racket came to be busted in respect of illegal transplantation of the human organ (kidney) at Fortis Hospital, Jaipur, offences u/s. 370 IPC as also under Sections 18 and 19 of the Transplantation of Human Organs and Tissues Act, 1994 (hereinafter for short "the TOHO Act, 1994"), have also been added and in view of Section 13(3)(iv) of the TOHO Act, 1994, investigation in the impugned FIR has been entrusted to the "Appropriate Authority" namely Shri Lal Meena, Additional Deputy Commissioner of Police, Crime Police Commissionerate, Jaipur, appointed by the Government of Rajasthan vide order dated 06.05.2024.

3. A progress report of investigation dated 29.05.2024 has been placed on record by the Government Advocate, in order to show the progress of investigation in the impugned FIR that as many as 12 accused persons, including petitioner No.2-Dr. Jitendra Goswami, have been arrested and they are in judicial custody and as far as petitioner No.1-Dr. Jyoti Bansal is concerned, he is an Urosurgeon at Fortis Hospital, Jaipur and is a team member of petitioner No.2-Dr. Jitendra Goswami, as much as he is also one of the suspicious accused in the present criminal case, as in the investigation so far, facts regarding his telephonic contact with brokers and money transaction with one Mr. Giriraj Sharma, who is kidney transplant coordinator at Fortis Hospital, have come to light and the investigation against him is underway.

4. Heard learned counsel for parties and perused the material placed before this Court along with case diary.

5. It appears from the record that a written report was submitted by the complainant-non-petitioner No.2-Dr. Rashmi Gupta, being Appropriate Authority, Human Organ And Tissue Transplantation, Director Medical Education, Jaipur, that after preliminary investigation on the report published in daily newspaper "Dainik Bhaskar" in respect of operation of an international racket of illegal transplantation of kidney at Fortis Hospital, Jaipur, it has been found that one criminal complaint No.239/2024 for offences u/s. 420 and 120-B IPC and Section 19 of the TOHO Act, 1994, is registered at Police Station Sadar Gurugram. It further revealed that the administration and doctors of the Fortis hospital, are indulged in raising huge money by committing fraud and having collusion with the kidney donors & receivers, to transplant the human organ (kidney), without any approval of the Authorization Committee, as much as forged NOCs of the Authorization Committee have also been prepared, after obtaining signatures of donors & recipients on blank papers. It further revealed that the staff of Fortis Hospital, is in collusion with brokers, who arranged donors & receivers of the human organ (kidney). In the investigation, it has revealed that no NOC by the State Level Authorization Committee of SMS Hospital, Jaipur, was issued for kidney transplantation after 2021 and even no meeting of authorization committee held, however, forged NOCs have been issued from the SMS Hospital under collusion of coordinators of the Fortis Hospital. In that respect, an another criminal complaint No.54/2024 under Sections 7, 8 and 12 of the Prevention of Corruption Act, 1988 (amended 2018), has been registered separately at Anti Corruption Bureau, Jaipur.

6. It appears from the record that as far as present petitioners are concerned, it has transpired that petitioner No.2-Dr. Jitendra Goswami, who is a nephrologist, was earlier rendering services at Manipal Hospital, Jaipur, where he did several cases of kidney transplantation and petitioner No.1-Dr. Jyoti Bansal, who is an urosurgeon, is member of his team. After expiry of license period at Manipal Hospital, both petitioners joined at Fortis Escort Hospital along with one Giriraj Sharma, who is the coordinator of human organ transplant. At Fortis Hospital, there are two teams; Team-A comprises, Dr. Sandeep Gupta (Urosurgeon), Dr. Rajesh Garssa (Nephrologist) and Mr. Vinod Singh (transplant coordinator); and Team-B comprises, Dr. Jyoti Bansal (petitioner No.1 herein), who is Urosurgeon, Dr. Jitendra Goswami (petitioner No.2 herein), who is nephrologist, and one Mr. Giriraj Sharma, who is transplant coordinator. It further revealed in the investigation that several kidney transplantation operations on Indian as well as on foreign citizens, have been performed and people come from Bangladesh and Cambodia through brokers, to donate kidney against payment, which is transplanted to kidney recipient, from whom, hospital administration and doctors, receive commission with the collusion of brokers. Thus, a business racket of dealings in human organs for financial gains has been found to be operative at Fortis Escort Hospital, Jaipur.

7. Counsel for petitioners vehemently argued that both petitioners are innocent and they are salaried doctors at Fortis Hospital, where they performed operations of kidney transplantation, being authorized and degree holder doctors, under instructions of the coordinator and petitioners have no



nexus with preparing forged NOCs, if have been prepared by the coordinator with the connivance of the concerned person of the State Level Authorization Committee at SMS Hospital, Jaipur, nor petitioners have any connection/nexus with brokers or patients, nor they received any extraneous benefits or consideration to perform such operations of kidney transplantation, except receiving their monthly salary from the hospital. The contention of counsel for petitioners is that petitioners, more particularly petitioner No.1, has been sought to be implicated arbitrarily in the present criminal case with an ulterior motive. Hence, he prayed that the impugned FIR deserves to be quashed qua petitioners.

8. Per contra, learned Government Advocate-cum-AAG has opposed the petition and argued that investigation in the impugned FIR, is underway. In the investigation so far, clear evidence against petitioner No.2-Dr. Jitendra Goswami, having involved in the present criminal case, has come on record and he has been arrested on 11.05.2024. As far as petitioner No.1-Dr. Jyoti Bansal is concerned, he was working in the team of petitioner No.2-Dr. Jitendra Goswami and the coordinator of their team Mr. Giriraj Sharma has also been arrested. Petitioner No.1 has been found to be in touch with brokers namely Akash, Prashant Yadav and Gopal and money transaction in his bank account apart from salary, has come to fore, with the coordinator Giriraj Sharma, and such amount seems to be received against performing operation of illegal kidney transplantation, with petitioner No.2. Thus, petitioner No.1 is one of the suspicious accused in the present case, therefore, instant petition for quashing of the FIR, deserves to be dismissed.

9. Having heard counsel for both parties, and from perusal of the progress report of investigation dated 29.05.2024 as also having gone through the case diary, it cannot be held that both petitioners have been sought to be involved in the present case without there-being any iota of evidence against them, to connect petitioners with the scam of illegal transplantation of human organ (kidney) at Fortis Hospital, Jaipur, for commercial benefits. The investigation in the FIR by the appropriate authority, appointed by Government of Rajasthan, is underway. Petitioner No.1 has been found to be a suspicious accused and petitioner No.2 has already been arrested on 11.05.2024. In the opinion of this Court, no *prima facie* case is made out in favour of petitioners to quash the impugned FIR. As per the investigation report, petitioner No.1 has been found to be in telephonic contact with brokers namely Akash, Prashant Yadav and Gopal, as much as money transaction from his bank account with the Giriraj Sharma, has also come on record. Such money transaction is apprehended to be part of payment apart from salary, for performing operation of kidney transplantation illegally. It has revealed in the investigation that petitioner No.1 performed operation of kidney transplantation as a team member of petitioner No.2, and both petitioners, as also coordinator Mr. Giriraj Sharma were working at Manipal Hospital, Jaipur and have joined Fortis Escort Hospital, Jaipur together. In the present case, offences under the Indian Penal Code u/s. 419, 420, 370, 467, 468, 471 and 120-B and offences u/s. 18 and 19 of the TOHO Act, 1994, both are involved, therefore, it may not be said that cognizable offence is not involved in the impugned FIR.



10. Counsel for petitioners has relied upon the copy of order dated 14.05.2024 whereby and whereunder, bail application filed by petitioner No.1- Dr. Jyoti Bansal under Section 438 Cr.PC was dismissed by the Sessions Court, in order to show that before the Sessions Court, the Investigating Officer made a statement that from investigation till now, no *prima facie* offence is established against Dr. Jyoti Bansal, but perusal of the order itself indicates that it is admitted case that petitioner No.1 has performed operation of kidney transplantation at Fortis Hospital, and his role has been found to be suspicious in the present criminal case, accordingly, his anticipatory bail application was rejected.

11. It is settled proposition of law that inherent jurisdiction by the High Court u/s. 482 Cr.PC for quashing of FIR/ complaint should be exercised sparingly, with care and caution in rarest of rare cases, where *prima facie* it is established that no cognizable offence is made out against accused persons or their involvement is without any basis or with malicious intent for wreaking vengeance, with a view to spite them due to private and personal grudges. It is no more *res integra* that remedy for quashing of FIR/ complaint is not a matter of routine, but can be invoked only in exceptional circumstances.

12. In the opinion of this Court, the instant petition filed by and on behalf of petitioners, does not fall within the exceptional category and the case of petitioners does not fall in any of the category as expounded by the Hon'ble Supreme Court in case of **State of Haryana Vs. Choudhary Bhajan Lal [1992 Supp. (1) SCC 335]**.



13. Consequently, the present criminal misc. petition, seeking to quash the impugned FIR, is hereby dismissed.

14. All pending application(s), if any, stand(s) disposed of.

(SUDESH BANSAL), J

Sachin/262