

ITEM NO.33 Court 6 (Video Conferencing) SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).6476/2020

(Arising out of impugned final judgment and order dated 09-12-2020
in BA No. 3836/2020 passed by the High Court of Delhi at New Delhi)

SURESH CHAND GUPTA

Petitioner(s)

VERSUS

NCT OF DELHI

Respondent(s)

(WITH I.R. and IA No.131252/2020-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT and IA No.131254/2020-PERMISSION TO FILE
ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 18-12-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MS. JUSTICE INDU MALHOTRA

HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Ms. Madhusmita Bora, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

- 1 The First Information Report, being FIR No 550 of 2015, registered at Police Station Nangloi (West), Delhi was lodged against the petitioner on 9 July 2015 initially for alleged offences under Section 315 of the Indian Penal Code 1860.
- 2 From the record of this case, it appears that though the FIR was lodged on 9 July 2015 in connection with a death which took place of a patient who was operated upon by the petitioner, the charge sheet has still not been filed.

- 3 The petitioner was by an order dated 17 October 2019 of the Delhi Medical Council, found to be guilty of medical negligence and his name was removed from the State Medical Register of Delhi Medical Council for a period of 180 days with a direction to refrain from undertaking gynecological procedures.
- 4 Ms Madhusmita Bora, learned counsel appearing on behalf of the petitioner, submits that the petitioner was taken into custody on 18 November 2020 and that he is nearly seventy years of age. Learned counsel urged that no purpose would be served in keeping him in judicial custody.
- 5 Learned counsel has also submitted that from the order of the trial court, it is evident that the police did not seek police custody and the only ground on which bail was denied by the Additional Sessions Judge/ Special Judge, Tees Hazari Courts was that the petitioner should not go back to perform surgical procedures for which he lacks competency and knowledge. This, it was urged, is an irrelevant consideration for the grant of bail.
- 6 Learned counsel has relied upon the decision of this Court in **Jacob Mathew v State of Punjab**¹ in support of the proposition that the arrest of a qualified medical doctor - a surgeon in the present case, should not be a matter of ordinary course. Moreover, it was urged that during the previous two months, the petitioner has not been called for investigation.
- 7 We are inclined to require a counter affidavit to be filed by the investigating officer on the reasons why the investigation has not been completed and charge sheet has not been filed for nearly five years.
- 8 Issue notice.

- 9 Dasti on the Standing Counsel for the NCT of Delhi, in addition.
- 10 We direct that a counter affidavit be filed before this Court on or before the next date of listing. The affidavit shall be filed by the investigating officer.
- 11 Having regard to the fact that the petitioner was taken into custody nearly five years after the FIR was lodged, his age, the prevailing pandemic, and the general principles governing the subject area in question, we are of the view that the petitioner should be released on interim bail till the next date of listing. We accordingly order and direct that the petitioner be released on bail, subject to his furnishing a personal bond of Rs 1,00,000 to the satisfaction of the Superintendent of the Mandoli Jail, Harsh Vihar, Central Jail No 14, Delhi.
- 12 List the Special Leave Petition on 18 January 2021.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER