REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos.660-662 OF 2020
[Arising Out of Special Leave Petition (Crl.) Nos.3083-3085 of 2020]

ANKITA KAILASH KHANDELWAL AND ORS. …Appellants

VERSUS

STATE OF MAHARASHTRA AND OTHERS …Respondents

J U D G M E N T

Uday Umesh Lalit, J.

1. Leave granted.

2. These appeals arise out of the common judgment and order dated 21.02.2020 passed by the High Court[1] in Interim Application Nos.2, 3 and 4 of 2019 (preferred by Dr. Ankita Kailash Khandelwal, Dr. Hema Suresh Ahuja and Dr. Bhakti Arvind Mehare – respectively; who are collectively referred to as the Appellants hereafter) in Criminal Appeal No.911 of 2019.

1 The High Court of Judicature at Bombay.

3. The Interim Applications were preferred by the Appellants seeking relaxation of condition nos.(iii), (iv) and (v) imposed upon them in order dated 09.08.2019 passed by the High Court while granting them bail.

4. The basic facts leading to the filing of said Criminal Appeal No. 911 of 2019, in brief, are as under:-

a) The Appellants after completing MBBS course were pursuing Post Graduate Degree course (M.D.) in Gynaecology and Obstetrics in Topiwala National Medical College, Mumbai ('the College', for short). They completed two years out of three years of course in April, 2019 and were working as residents in B.Y.L. Nair Charity Hospital ('the Hospital', for short) attached to the College.

b) Dr. Payal Tadvi was also student of Post Graduate Degree Course (M.D.) in Gynaecology and Obstetrics in the College and completed first year of the course in April, 2019. She was thus a year junior to the Appellants and all of them were residents in the same Department and pursuing the same course.

c) On 22.05.2019 at about 9:00 p.m., Agripada Police Station, Mumbai received an information that Dr. Payal Tadvi had committed suicide by hanging herself in her room. Initially a case under Section 174 of the Code of Criminal Procedure, 1973 ('the Code', for short) was

recorded. After the complaint was lodged by the mother of Dr. Payal Tadvi that her daughter was harassed by the Appellants and that they were directly responsible for the suicide committed by her daughter, Crime No.157 of 2019 was registered against the Appellants under Section 306 read with Section 34 of the Indian Penal Code ("IPC", for short), under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities), Act, 1989 and also under Section 4 of the Maharashtra Prohibition of Ragging Act, 1999 (hereinafter referred to as '1999 Act').

d) By communication bearing No. NDN/172 dated 27.05.2019, taking cognizance of the FIR registered against them, the Appellants were suspended by the Dean of the Hospital and the College. The relevant text of the communication addressed to Dr. Bhakti Arvind Mehare, one of the Appellants was as under:-

> "It has come to our notice that you have unofficially been absent from work since 22.05.2019. The Professor and the Head of department of Obstetrics and gynaecology have informed our office that you have been absent.
>
> On 22.05.2019, Dr. Payal Salman Tadvi, who was pursuing Post Graduation at the Obstetrics and Gynaecology Department of Nair Hospital has committed suicide in hostel room no. 806. Abeda Salim Tadvi, the mother of Dr. Payal, has lodged a complaint with Agripada Police Station. Based on the complaint, an FIR has been lodged against Dr. Bhakti Mehere. Cr.Reg.No.157/99 under Section 306, Section 34 of Indian Penal Code, read with Section 4 of Maharashtra Prohibition of Ragging Act, 1999 read

> with Section 3(10) of SC, ST Prevention of Atrocities Act, 1989; read with Section 67 of Information Technology Act, 2000.
>
> Instead of cooperating with the investigation by the State in such a serious incident, you have gone missing from work as well as your residence with the intention to avoid the police investigation and without informing any of the officials and without taking prior permission. This has therefore, created hurdles in the inquiry being conducted by the Police/ Administration. In addition to this, an FIR against you has been lodged in Agripada Police Station. Taking cognizance of this, you are being suspended from 27.05.2019, till further orders."

e) On the same date, report bearing no. NDN/183 dated 27.05.2019 under the signature of the Dean of the Hospital and the College, was made which noted the opinion of Ragging Prevention Committee and recommended that the Appellants be immediately suspended. Action was also recommended against the related Unit Head and Unit Head of Gynaecology and Maternity Ward.

f) The Appellants were arrested on 29.05.2019. The investigation was thereafter transferred to the Crime Branch and the case was renumbered as Crime No.49 of 2019. During the course of investigation, statements of more than 100 witnesses were recorded by the Crime Branch. After completion of investigation, charge sheet running into 1200 pages was filed and the matter is still at the stage of consideration whether the charges are required to be framed or not.

g) Bail Application No.1338 of 2019 preferred by the Appellants was rejected by the Court of Sessions (Gr. Bombay) at Bombay by order dated 24.06.2019. The Appellants, being aggrieved, filed Criminal Appeal No.911 of 2019 under Section 14A (2) of 1989 Act in the High Court.

5. When the appeal was taken up for hearing by the High Court, the grant of bail to the Appellants was not seriously objected to as is clear from paragraph 4 of the order dated 09.08.2019, which was to the following effect:-

> "4. Mr. Ponda submits that having regard to the fact that the investigation is complete and charge-sheet is filed, the appellants deserve to be enlarged on bail. The learned Special Public Prosecutor Mr. Thakre has also been fair enough to consider that he has no serious objection to grant of bail to the appellants. This Court has perused the charge-sheet, which runs into not less than 1200 pages. The Crime Branch has recorded the statements of about more than 100 witnesses who have implicated the Appellants-accused. Although, this Court is of the opinion that the Appellants are entitled to grant of bail, the same would be subject to stringent conditions."

5.1. The order also recorded in paragraph 13 that statements of material witnesses were recorded under Section 164 of the Code. Said paragraph was:-

> "13. During the course of hearing of this appeal for bail, this Court had made a query as to whether the statements of material witnesses had been recorded

> under Section 164 of the Code of Criminal Procedure, 1973. As the answer was in the negative, this Court ensured that the statements of the material witnesses such as Dr. Snehal Shinde, Dr. Geeta Kulkarni and others were recorded under section 164 of the Code of Criminal Procedure, 1973, in order to ensure that the witnesses are not won over by the accused person after being enlarged on bail."

5.2. However while granting bail to the Appellants, certain conditions were imposed by the High Court in its order dated 09.08.2019 with following observations:-

> "18. The Apex Court has also directed the Courts to consider as to whether the investigation is completed and whether the accused has cooperated with the investigation. In the present case, the investigation is completed, statements of the witnesses are recorded under section 164 of the Code of Criminal Procedure, 1973 and charge-sheet is filed. Moreover, the appellants had joined investigation. Hence, the appellants deserve to be enlarged on bail.
>
> 19. Learned Counsel for the appellants submits that the appellants in the present case are not accused of Section 302 or 307 of the Indian Penal Code or any terrorist activities and the extreme steps taken by the deceased Dr. Payal would reflect upon her psyche and her ability to handle pressures in the medical profession and therefore, according to him, the appellants deserve bail. Even if this submission is accepted, the Court cannot be oblivious of the fact, that mental injury can be more serious than physical injury. Mental injury may drive a person to any extreme step like the present one since it can never be seen, but it is only reflected by overt action or silence on the part of the victim. The question whether the appellants had the intention to drive Dr. Tadvi to commit suicide is a matter which will be decided by the Trial Court.

20. Having regard to what is stated hereinabove, the appeal deserves to be allowed.

21. Hence, following order is passed :

ORDER

(i) The appeal under section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act for seeking enlargement on bail is allowed after imposing certain stringent conditions.

(ii) The appellants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.2,00,000/- (Rs. Two Lakhs only) each and one or more solvent local sureties.

(iii) The appellants shall not leave Mumbai without the permission of the Court. The appellants shall report to the office of Crime Branch, Nagpada every alternative day till framing of charge.

(iv) The appellants shall not enter into the jurisdiction of Agripada Police Station and more particularly, Topiwala National Medical College (B.Y.L. Nair Ch. Hospital).

(v) The licences of the appellants issued by Medical Council of India as well as Maharashtra Medical Council shall be remained suspended till conclusion of the trial.

(vi) The appellants shall attend the trial Court on every date unless exempted by the trial Court.

(vii) Upon committing breach of any condition imposed herein, the investigating agency would be at liberty to seek cancellation of bail.

(viii) The applicant shall be released on provisional cash bail of Rs.2,00,000/- (Rs. Two Lakhs only) each for a period of 8 weeks, within which they shall furnish solvent local sureties to the satisfaction of the Special Court, Mumbai.

> (ix) It is made clear that even while on provisional cash bail, all the above said conditions would apply.
>
> (x) The appellants shall file an undertaking with respect to aforesaid clauses (iii) and (vi) in the trial Court within two weeks from the date of release.
>
> (xi) The Special Court, Mumbai shall not be influenced in any manner with the observations made by this Court in this Appeal under section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, as all the observations are restricted to the grant of bail and not otherwise.
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> 23. The appeal is disposed of accordingly."

6. On 25.10.2019, the request made by the Appellants for revocation of their suspension was rejected by the Dean of the Hospital and the College stating as under:-

> "… …In this letter you have requested to revoke the suspension. But as per the order of Honorable Court on dated 9/08/2019 it is not possible to revoke the suspension at this point."

7. The undertakings as contemplated by sub-para 9 of paragraph 21 of the Order dated 09.08.2019 were filed by the Appellants and it is accepted that the conditions imposed by said order were not violated by the Appellants. However, as a result of condition no.(v), their licences to practice as medical professionals stood suspended; and by virtue of condition no.(iii) they could not leave the city of Mumbai without the

express permission of the Court. Further, as a result of condition no.(iv) they could not enter the Hospital and the College where they were pursuing their Post Graduate courses. In the circumstances, in November, 2019, Interim Applications No.2, 3 and 4 of 2019 were preferred by the Appellants seeking relaxation of condition nos.(iii), (iv) and (v) imposed in order dated 09.08.2019 passed by the High Court.

8. On 10.01.2020, the Maharashtra Medical Council suspended the licence of Dr. Ankita Kailash Khandelwal and Dr. Bhakti Arvind Mehare. There was no such order of suspension with respect to Dr. Hema Suresh Ahuja, as she was not registered with the Maharashtra Medical Council.

9. While considering Interim Applications 2, 3 and 4 of 2019, the High Court summoned Dr. Ganesh Shinde, Head of Department, Gynaecology, whose submissions as well as the submission of the learned Senior Counsel for the State were recorded thus:-

> "2. As on today, Dr. Ganesh Shinde, was summoned by this Court to ascertain the effect of relaxation of the said condition. Dr. Shinde is present before the Court. He has submitted that pursuant to the order dated 28th February, 2019, he had called a meeting of the staff members, the faculty members, nurses and other persons who are witnesses in the present case. There is a grave hostility towards the applicants. It is submitted that their presence in the B.Y.L. Nair Charity Hospital may change the facet of the trial and that possibility of the witnesses being won over

> cannot be ruled out and the at the same time the hospital will not take the responsibility of any harm caused to the accused applicants at the hands of the witnesses as a reaction to the incident which occurred on 22nd May 2019 in which Dr. Payal Tadvi had committed suicide in the residential quarter of B.Y.L. Nair Charity Hospital. The Senior Counsel also submits that in any case the accused-applicants are graduates in medical discipline and that they can prosecute their post graduation at any time in future even after the conclusion of the trial and therefore, there is no pressing urgency to allow the applicants to enter into the premises of B.Y.L. Nair Charity Hospital to complete their post-graduation"

9.1. The High Court by its order dated 21.02.2020 relaxed condition no.(iii). It also recalled condition no.(v) as in its view, suspension of licences as ordered by the High Court was without jurisdiction and that in terms of Section 22(1) of the Maharashtra Medical Council Act, 1965 the action in that behalf could be taken by the Council. The High Court had issued notice to the Medical Council of India to explore the possibility as to whether the Appellants could seek migration to any other Colleges. However, in view of the submission by the State, the High Court refused to relax condition no.(iv). It observed in paras 10 to 12 as under:-

> "10. The learned counsel appearing for the complainant seeks expeditious trial. It is a matter of record that most of the witnesses are students who are prosecuting their Post Graduation in B.Y.L. Nair Charity Hospital and after completion of Post Graduation they may not reside in Bombay and therefore, it would be necessary to expedite the trial

> accordingly. The learned Special Judge (Special Court SC and ST) seized with Sessions Case No.7 of 2019 shall make every endeavour to conclude the recording of evidence as far as possible within ten months from the date of framing of charge.
>
> 11. Needless to reiterate that the applicants herein would be at liberty to pursue their further education after the conclusion of the trial.
>
> 12. This Court had also issued notice to Medical Council of India to explore the possibility as to whether the present applicants could seek admission in any other college. The learned Counsel Mr. Gole has drawn the attention of this Court to the regulations of Maharashtra Medical Council of India that the applicants cannot migrate to any other college for Post Graduation since they were doing their Post Graduation in B.Y.L. Nair Charity Hospital in Maharashtra. It is submitted that migration is not permissible."

10. In tune with the withdrawal of condition no.(v) by the High Court, the Maharashtra Medical Council by communication dated 16.03.2020 revoked the suspension of Dr. Ankita Kailash Khandelwal and Dr. Bhakti Arvind Mehare and set aside the earlier order dated 10.01.2020.

11. These appeals, thus, challenge non-relaxation of condition no. (iv) by the High Court.

12. While issuing notice on 09.07.2020 following order was passed by this Court:-

> "Mr. Sidharth Luthra, learned Senior Advocate appearing for the petitioners submitted inter alia that;
>
> (i) the petitioners have completed two years out of three years' course and that they be allowed to complete the entire course. He stated that normally the students must go back to the same college but if permitting the petitioners to resume their studies in the same college is not feasible, the petitioners be accommodated in any other college to enable them to complete their studies.
>
> In support of the submission, reliance is placed on two examples cited by the petitioner at page "C" of the list of dates and synopsis.
>
> (ii) the observation in para 10 of the order pre-suppose that the charges had to be framed. It was submitted that the matter be left for the consideration of the concerned Court whether the charges need to be framed or not."

Notice was confined to these submissions. Two examples given at page 'C' of the list of dates and synopsis were:-

> "The Petitioners have recently after passing of the impugned judgment on enquiries learnt that last year or so, various students (around 30 of them perusing PG course, including Gynaecology, from one ESI-PGIMSR College, Andheri, which had a fire, have been accommodated in Grant Medical College, J.J Hospital, Byculla. The same was done by the State of Maharashtra with the consensus of the Medical Council of India.
>
> That the Petitioners have also recently learnt that the passing of the impugned Judgment and final order that students of their very college had also been accommodated in another hospital i.e. Sion Hospital, when there was a blast in their MRI center and the

> same continued for about 6 months, till the said center was again made functional."

13. Thereafter, the order dated 11.08.2020 passed by this Court recorded the submissions advanced on behalf of the Medical Council of India and the Complainant as under:-

> "Mr. Gaurav Sharma, learned Advocate for the MCI submitted that migration would not be permissible and two instances adverted to by the petitioners, namely, of (i) College at Jhajjar Haryana and (ii) ESI-PGIMSR College, Andheri at Mumbai were in the peculiar facts and circumstances of those cases. He submitted that in the first case, the College itself was closed and therefore the entire batch of the students was accommodated in different colleges while in the second case there was a fire at the institution and therefore the students were temporarily shifted to another institution.
>
> Ms. Indira Jaising, learned Senior Advocate submitted that the issue of migration was completely unrelated to the matter concerning bail and the conditions imposed at the stage of grant of bail; that in case the petitioners were denied migration, the remedy was in taking appropriate proceedings in a manner known to law and that since the Regulations were very clear that no migration would be permissible, the Court ought not to pass any orders on the plea of migration."

By same order, this Court also impleaded B.Y.L. Nair Charity Hospital; and sought information from the State as regards the status of trial.

14. The stands taken by the respective parties in their affidavits-in-reply are to the following effect:-

A) Deputy Secretary, Medical Education and Drugs Department, Government of Maharashtra stated:-

> "9. It is submitted that, petitioners are holding MBBS Degree and they are at liberty to practise their medical profession. Petitioners can prosecute their Post Graduation at any time in future after conclusion of the trial, therefore, there is no pressing urgency to allow petitioners to permit their migration / accommodation in any other college / hospital. It is submitted that, Hon'ble High Court has already expedited trial in the present case and directed that, trial should be concluded within 10 months from the date of framing of charges."

B) The Dean of the College and the Hospital relied upon the Medical Council of India Post Graduate Medical Education Regulations, 2000 ('2000 Regulations', for short) framed by the Medical Council of India, to submit that no migration/transfer of student undergoing any Post Graduate Degree/Diploma/Super Speciality course is permitted. In the additional affidavit it was asserted:-

> "7. All the candidates joining the post-graduate training programme shall work as 'Full Time Residents' during the period of training and shall attend not less than 80% (Eighty percent) of the imparted training during each Academic Term of six

> months including assignments assessed full time responsibilities and participation in all facets of the educational process."

C) The Complainant placed on record copy of the Order of Suspension dated 27.05.2019 and the provisions of 1999 Act and Regulations of the Medical Council of India on the issue of prohibition of ragging in Medical Colleges.

15. One of the submissions urged by the Appellants is that the observations of the High Court in the last sentence of para 10 are capable of being construed as a direction to the Special Judge seized of the matter to frame the charges and thereafter conclude the proceedings within ten months. It is submitted that the trial is still at the stage of compliance of Sections 207 and 208 of the Code and that the Appellants would be within their rights to file an application for discharge. However, the last sentence in para 10 may hamper consideration of their application for discharge.

We do not think that said sentence can be considered as a mandate to the Special Judge to frame charges. For the sake of clarity, we direct that the matter shall be considered purely on merits at the stage of consideration whether charges need to be framed or not. If any

application for discharge is preferred by the appellants, the same be considered in accordance with law.

16. We now come to the submissions of Mr. Siddharth Luthra, learned Senior Advocate for the Appellants which are to the following effect:-

i) Relying on the decisions of this Court in ***Sumit Mehta vs. State (NCT of Delhi)***[2] and ***Kunar Kumar Tiwari alias Kunar Kumar vs. State of Bihar and another***[3]**,** it is submitted that in terms of Section 437(3) of the Code, the courts undoubtedly are entitled to impose conditions which are necessary "*otherwise in the interest of justice"*. However, as held by this Court, such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision.

ii) Condition no.(iv), as imposed, is resulting in negation of the rights of the Appellants to continue their studies in the College and thus directly infringes their rights guaranteed under Article 21 of the Constitution of India.

iii) The Appellants are not insisting that they be allowed to go back to the College, if the Appellants can be allowed

2 (2013) 15 SCC 570
3 (2018) 16 SCC 74

transfer/migration to any other college in the city of Mumbai. Apart from the College, there are two other Medical Colleges run by the Municipal Corporation of Greater Mumbai and one more College run by State of Maharashtra located in Mumbai and there are various other Health Care Centres and Hospitals. The Appellants can be attached to any of these institutions so that they can complete their course of study.

iv) The Appellants have completed two years of three years' course and what they may be required to put in for the third year of course will be just about nine months of actual residency as the students are normally entitled to study leave for three months. Thus, it would be a question of accommodation for nine months.

v) Out of the witnesses cited in the charge sheet to be examined by the prosecution, there are 12 Post Graduate students who are not permanently in employment of the College and the Hospital. Out of those 12 witnesses, 5 have already completed their course and passed out in May, 2020, while other 5 will pass out in May, 2021 and remaining 2 students will pass out in May 2022. All the other

witnesses are permanently in employment of the College and the Hospital.

vi) In any case, as observed by the High Court in the order dated 09.08.2019, statements under Section 164 of the Code of all material witnesses having been recorded, there would be no occasion even to apprehend any attempt on part of the Appellants to influence any of the witnesses.

vii) By whatever modality that the Court deems appropriate to direct, an avenue be created whereunder the Appellants are allowed to pursue and complete their course of study. The stand taken by the Deputy Secretary, Medical Education and Drugs Department, Government of Maharashtra, which was reflected in para 11 of the order under appeal, is not correct and the suggested course of action will completely jeopardise the career of the Appellants.

viii) The Order of Suspension dated 27.05.2019 was purely based on the FIR lodged against the Appellants. The suspension of two of the Appellants by the Maharashtra Medical Council was again based on direction (v) issued by the High Court in order dated

09.08.2019. In any case, said suspension by the Maharashtra Medical Council now stands revoked.

17. It is submitted by Mr. Sachin Patil, learned Advocate for the State that this Court had initially issued notice to see whether the Appellants could be transferred or allowed migration to any other college/institution and that two examples relied upon by the Appellants are completely distinguishable. He has submitted that the Suspension Order dated 27.05.2019 issued under the signature of the Dean of the Hospital and the College still being in existence and force, the Appellants cannot be allowed to go back to their course of study. It is further submitted that though the statements of more than 100 witnesses were recorded during investigation, the prosecution may confine itself to examination of only 60 witnesses and with the observations by the High Court expediting the process of trial, the trial will get over at an early date.

18. Mr. Gaurav Sharma, learned Advocate for the Medical Council of India has submitted that for a student undergoing Post Graduation course, he/she must be attached to a particular Guide and the student is not allowed to change the Guide during the course. It is submitted that the examples relied upon by the Appellants were examples of an extraordinary situation

where the entire batch was permitted to be shifted to another college under the orders of the Medical Council of India. It is reiterated that under the Regulations in question, migration to any other college is not permissible at all. On the question whether there is any time limit for completion of Post Graduation course, Mr. Sharma has responded that there used to be a limit of five years within which the course had to be completed but now there is no such outer limit. He further stated that once a candidate is registered for a Post Graduate course, he/she cannot take up any other course while such registration is continuing.

19. Ms. Indira Jaising, learned Senior Advocate, appearing for the Complainant has submitted that the Order of Suspension dated 27.05.2019 was based on the report of the Anti-Ragging Committee and that neither there was any challenge to the Order of Suspension nor was said suspension revoked. It is submitted that in the face of suspension by the College, the Appellants cannot be allowed to resume their course of study. It is further submitted that once the Order of Suspension is in force, in terms of Regulation 8.1 of 2009 Regulations, the Appellants would not be allowed to attend any class and have academic privileges. It is submitted that the Complainant had not challenged the order granting bail as the order came with the condition that the Appellants would not be allowed to

enter the College. Going by the apprehension expressed by Dr. Ganesh Shinde, if the Appellants are allowed to go back to the College, there is a possibility of witnesses getting influenced.

20. Mr. B.H. Marlapalle, learned Senior Advocate appearing for the College and the Hospital has submitted that as per oral instructions received by him, the Order of Suspension was based on the opinion of the Anti- Ragging Committee.

21. We may now consider the relevant statutory provisions:-

A) Sections 4, 5 and 6 of 1999 Act are to the following effect:-

> "**4.** Whoever directly or indirectly commits, participates in, abets or propagates ragging within or outside any educational institution shall, on conviction, be punished with imprisonment for a term which may
>
> extend to two years and shall also be liable to a fine which may extend to ten thousand rupees.
>
> **5.** Any student convicted of an offence under Section 4 shall be dismissed from the educational institution and such student shall not be admitted in any other educational institution for a period of five years from the date of order of such dismissal.
>
> **6.** (1) Whenever any student or, as the case may be, the parent or guardian, or a teacher of an educational institution complains, in writing, of ragging to the head of the educational institution, the head of that educational institution shall, without prejudice to the foregoing provisions, within seven days of the

receipt of the complaint, enquire into the matter mentioned in the complaint and if, *prima facie*, it is found true, suspend the student who is accused of the offence, and shall, immediately forward the complaint to the Police Station having jurisdiction over the area in which the educational institution is situated, for further action.

(2) Where, on enquiry by the head of the educational institution, it is proved that there is no substance, *prima facie*, in the complaint received under sub-section (1), he shall intimate the fact, in writing to the complainant.

(3) The decision of the head of the educational institution that the student has indulged in ragging under sub-section (1), shall be final."

B) Relevant parts of clauses 13.2 and 13.3 of 2000 Regulations are:-

"All the candidates joining the Post Graduate training programme shall work as 'Full Time Residents' during the period of training and shall attend not less than 80% (Eighty percent) of the imparted training during each academic year including assignments, assessed full time responsibilities and participation in all facets of the educational process."

MIGRATION

Under no circumstances, Migration /transfer of student undergoing any Post Graduate Degree/Diploma/Super Speciality course shall be permitted by any University/Authority."

C) Paras 7 and 8 of the Medical Council of India (Prevention and Prohibition of Ragging in Medical Colleges/Institutions) Regulations, 2009 ('2009 Regulations', for short) read as under:-

> "**7. Regulatory Measures –** The inspecting / visiting committees of MCI shall cross verify that the medical college/institution has strictly complied with the anti ragging measures and has a blemishless record in terms of there being no incident of ragging during the impending period (i.e. from earlier inspection) or otherwise.
>
> **8. Awardable Punishments**
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> **8.1 At the Medical College/Institution level:**
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> Depending upon the nature and gravity of the offence as established by the Anti-Ragging Committee of the institution, the possible punishments for those found guilty of ragging at the institution level shall be anyone or any combination of the following:
>
> 8.1.1 Suspension from attending classes and academic privileges.
>
> 8.1.2 Withholding/ withdrawing scholarship/ fellowship and other benefits
>
> 8.1.3 Debarring from appearing in any test/examination or other evaluation Process.
>
> 8.1.4 Withholding results
>
> 8.1.5 Debarring from representing the institution in any regional, national or international meet, tournament, youth festival, etc.
>
> 8.1.6 Suspension/expulsion from the hostel
>
> 8.1.7 Cancellation of admission

8.1.8 Rustication from the institution for period ranging from 1 to 4 semesters

8.1.9 Expulsion from the institution and consequent debarring from admission to any other institution for a specific period.

8.1.10 Fine of Rs.25,000/- and Rs.1 lakh.

8.1.11 Collective punishment: When the persons committing or abetting the crime of ragging are not identified, the institution shall resort to collective punishment.

8.2 Penal consequences for the heads of the institutions/ administration of the institution who do not take timely steps in the prevention of ragging and punishing those who rag.

The authorities of the institution particularly the Head of the institution, shall be responsible to ensure that no incident of ragging takes place in the institution. In case any incident of ragging takes place, the Head shall take prompt and appropriate action against the person(s) whose dereliction of duty lead to the incident. The authority designated to appoint the Head shall, in its turn, take prompt and appropriate action against the Head.

In addition to the penal consequences, departmental enquiries be initiated against such heads institutions / members of the administration / faculty members / non-teaching staff, who display an apathetic or insensitive attitude towards complaints of ragging."

22. We may also note the relevant portions of the decisions that were relied upon.

A) In ***Sumit Mehta vs. State (NCT of Delhi)***[2], it was observed:-

"**11.** While exercising power under Section 438 of the Code, the court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the court while imposing conditions must be exercised with utmost restraint.

12. The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution.

13. We also clarify that while granting anticipatory bail, the courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the courts are duty-bound to impose appropriate conditions as provided under sub-section (2) of Section 438 of the Code.

14. Thus, in the case on hand, fixed deposit of Rs 1,00,00,000 for a period of six months in the name of the complainant and to keep the FDR with the

investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams, etc.

15. The words "any condition" used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed."

B) In ***Kunal Kumar Tiwari v. State of Bihar and Another***[3], this Court observed:-

"5. Today on behalf of the appellant, it was contended that the High Court while passing the aforesaid order for anticipatory bail, a condition like the one imposed could not have been imposed.

… … …

8. Before we analyse the case at hand, first a word on interpretation. It is well-settled legal proposition that in interpreting a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) should be preferred to an interpretation that would not promote the object.

9. There is no dispute that clause (*c*) of Section 437(3) allows courts to impose such conditions in the interest

> of justice. We are aware that palpably such wordings are capable of accepting broader meaning. But such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision. The phrase "interest of justice" as used under the clause (*c*) of Section 437(3) means "good administration of justice" or "advancing the trial process" and inclusion of broader meaning should be shunned because of purposive interpretation.
>
> **10.** Coming back to the case at hand, from the perusal of the impugned order it is clear that the court exceeded its jurisdiction in imposing such arbitrary conditions. Some of the conditions imposed are highly onerous and are absurd. Such onerous anticipatory bail conditions are alien and cannot be sustained in the eye of the law. The conditions imposed appear to have no nexus with the good administration of justice or advancing the trial process, rather it is an overzealous exercise in utter disregard to the very purpose of the criminal justice system."

23. At the outset, it must be stated that notice was issued to see if going back to the College would not be feasible, whether the Appellants could be allowed migration to any other college/institution so that both the elements viz. *(i)* relating to the career and prospects of the Appellants and *(ii)* the interest of the prosecution in keeping the witnesses away from the possibility of influence by the Appellants; would get satisfied and taken care of. Therefore, focussing attention on two instances given by the Appellants, responses were called for. However, as the situation now obtains, the stand of the Medical Council of India is clear that

"under no circumstances migration is permissible" for students undergoing Post Graduate medical courses. Mr. Gaurav Sharma, learned Advocate, has gone to the extent of emphasizing that the students who register themselves for Post Graduate medical courses, have to be under a particular Guide and complete the entire course under the supervision of that Guide alone. The matter, therefore, has travelled far from what was noted and noticed in the beginning and now the respondents have placed the Order of Suspension of the Appellants on record and insist that so long as the Order of Suspension is in operation, the Appellants cannot be allowed to go back to their course of study.

24. We are, thus, called upon to consider the competing claims in such a way that the individual rights of the Appellants to pursue their courses of study are secured and, at the same time, the conduct of prosecution also runs smoothly and without any interference and possibility of witnesses getting won over. In that view, it must be noted:-

a) The Appellants before us are three lady doctors who are pursuing Post Graduate medical course (M.D.) in Gynaecology and Obstetrics and have completed two years out of three years' of course. The course is well coveted and considered to be a specialty course in that field. The Appellants do not

appear to be original residents of Mumbai and, as such, it cannot be said that they or their families have deep-rooted presence in Mumbai.

b) As noticed by this Court in ***Sumit Mehta***[2], if the law presumes an accused to be innocent till his guilt is proved, the Appellants as presumably innocent persons, are entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution and are entitled to pursue their course of study so long as exercise of said right does not hamper smooth conduct and progress of the prosecution.

c) The stand taken by the State through the affidavit filed by the Deputy Secretary, Medical Education and Drugs Department, Government of Maharashtra, is that the Appellants can prosecute their Post Graduate course in future after conclusion of the trial. Said submission and the observation by the High Court in para 11 of the order, in our view, are not correct. Even a convict is allowed to have academic pursuits while undergoing sentence and develop his potential as a human being to the fullest. The State apparatus must facilitate such pursuits rather than hamper any attempts in that behalf. The

Appellants, therefore, by any standard, are entitled to continue their courses of study subject to the caveat expressed earlier.

d) It is a matter of record that as observed by the High Court in para 13 of its order dated 09.08.2019, the statements of all material witnesses have been recorded under Section 164 of the Code. In fact, the High Court went to the extent of ensuring that such statements are recorded so that witnesses could not be won over by the Appellants after they were enlarged on bail. Therefore, the apprehension that the witnesses could be influenced is not quite correct.

e) The majority of witnesses to be examined by the prosecution appear to be in permanent employment of the College and the Hospital. It will be difficult to imagine that three lady doctors who do not otherwise belong to Mumbai will be able to influence any such witnesses by their mere presence in the College and the Hospital.

f) The Appellants require to put in the last year of their course and as stated by Mr. Siddharth Luthra, learned Senior Advocate, the actual period that they need to undergo by way of training is only nine months.

It is, thus, a question of putting those nine months in one scale and see whether the other scale becomes so weighty that the request to allow them to pursue their courses must be rejected.

25. Another issue raised is about the Order of Suspension passed against the Appellants. The facts on record indicate that the report of the Anti-Ragging Committee and the Order of Suspension were issued on the same date i.e. on 27.05.2019. The submission of Mr. Sidharth Luthra, learned Senior Advocate, that the Order of Suspension was not based on the report of the Anti-Ragging Committee merits acceptance because of following features viz. *(a)* the outward number for the Order of Suspension is NDN/172 while that of the report of Anti-Ragging Committee is NDN/183, which means the Order of Suspension was issued earlier to the report of the Anti-Ragging Committee; *(b)* both the communications are under the signature of the Dean of the College and the Hospital and yet, the Order of Suspension does not make any reference to the report of the Anti-Ragging Committee; *(c)* the Order of Suspension is based purely on the registration of FIR registered against the Appellants which is why "*taking cognizance of this*" the Order of Suspension was passed; and *(d)* when a request for revocation of suspension was made, it was rejected on 25.10.2019 because of order

dated 09.08.2019 of the High court and not because of the report of the Anti-Ragging Committee.

26. The relevant provisions of 1999 Act show that if any student is found guilty of ragging or abetment of ragging, he can, on conviction be punished with imprisonment which may extend to two years and by virtue of Section 5, any student convicted of such offence shall be dismissed from the educational institution and cannot be admitted in any other educational institution for a period of five years. We are not concerned with any eventuality arising or occurring by virtue of Sections 4 and 5 of 1999 Act.

To take appropriate action under Section 6(1) of 1999 Act, the concerned head of the educational institution must *prima facie* be satisfied that the allegations against the student have been found to be true, whereafter, an order of suspension can be passed.

As stated hereinabove, the Order of Suspension does not even record any such finding or *prima facie* view. As a matter of fact, the Order of Suspension was not passed by virtue of power entrusted under Section 6(1) of 1999 Act but was based on the grounds that the Appellants were creating hurdles in the enquiry by the police and that

there was an FIR against them. We, thus, conclude that the Order of Suspension is not referable to Section 6(1) of 1999 Act.

Apart from Section 6(1) as aforesaid, no other statutory provision has been referred to or relied upon.

27. Para 8.1 of 2009 Regulations framed by the Medical Council of India is applicable to cases where a student has been '*found guilty of ragging*' which presupposes valid exercise of power. The effects contemplated by said Para 8.1 come into operation only thereafter.

28. In our considered view, neither the provisions of 1999 Act nor 2009 Regulations get attracted to the present case.

29. We are, therefore, left with a bare Suspension Order dated 27.05.2019 which was not based on the provisions of 1999 Act. A submission is raised by Ms. Indira Jaising, learned Senior Advocate, appearing for the Complainant that in a matter arising from the request for relaxation of condition, no collateral attack on the Suspension Order be permitted. It is submitted by her and Mr. Sachin Patil, learned Advocate for the State that the Appellants are free to challenge the Order of Suspension and so long as that order is not set aside, the Appellants cannot be allowed to come back to the College or the Hospital.

30. We do not find any merit in the aforesaid submissions. Relaxation sought in respect of condition no. (iv) takes within its fold all submissions with respect to matters arising from the registration of the crime and steps undertaken pursuant thereto. Since the Order of Suspension was passed purely as a result of registration of crime and did not have any roots in statutory powers conferred under Section 6 of 1999 Act, in our view, this Court can certainly grant redress to the Appellants.

31. While balancing the competing claims, in our view, the Appellants must be allowed to go back to their courses of study otherwise the pendency of prosecution against them will add further penalty in the form of prejudicing their career. Any such adverse impact will negate their rights under Article 21 of the Constitution.

32. Considering the matter in its entirety and especially when the Appellants have to undergo training under the same guide and in the same institution where they were registered, in our considered view, ends of justice would be met if condition no. (iv) as laid down by the High Court is relaxed and the Appellants are permitted to go back to the College and the Hospital to pursue their studies, subject to the following conditions:-

i) The Appellants shall not, in any manner, influence or even attempt to influence any of the witnesses.

ii) The Appellants shall present themselves on each of the dates that the matter gets posted before the Trial Court, unless their presence is specifically exempted.

iii) If it is permissible, and subject to the appropriate permission from the Dean of the College and the Hospital, the Appellants may not reside in the quarters allocated to the residents in the College and the Hospital. However, if the registration as Post Graduate students requires the Appellants to be full time residents in the College and the Hospital, then the Appellants shall do so.

iv) The Appellants shall avail study leave, as suggested by Mr. Sidharth Luthra, learned Senior Advocate, so that their actual period of stay inside the College and the Hospital gets reduced to the maximum possible level.

v) If there be any holiday or vacation and it is permissible for the residents to be outside the College and the Hospital, the Appellants shall avail that and keep themselves away from the Hospital and the College.

vi) If there be any untoward incident as apprehended by Dr. Ganesh Shinde, Head of Department, or even likelihood of such incident, the concerned authorities shall immediately report to the Police Station of the area and ensure that the life and liberty of everyone including the Appellants are well protected.

33. Subject to the conditions, as stated hereinabove, the Appellants shall be permitted to re-enter the College and the Hospital to pursue their courses of study. This Order shall come into effect at the beginning of the second term of academic session 2020-2021 and if such term has already begun, it shall come into effect from 12.10.2020. It is made clear that the Appellants shall be permitted to pursue their courses of study regardless of the Order of Suspension dated 27.05.2019.

34. Copies of this Judgment shall be sent to the Trial Court and the concerned Police Station for record and compliance.

35. The appeals stand allowed in aforementioned terms.

..…….J.
(Uday Umesh Lalit)

..……..…….J.
(Vineet Saran)

..……..…….J.
(Ajay Rastogi)

New Delhi;
8th October, 2020.