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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 8309/2024 & CRL.M.A. 31732/2024 (stay)

DR VIJAYA RAJAKUMARI

.....Petitioner

Through: Dr. Harshvir Pratap Sharma, Sr. Adv.
with Mr. Akul Krishnan &
Mr. Deepkav Srivastava, Advocates

versus

THE STATE GOVT OF NCT DELHI AND ANRRespondents

Through: Mr. Amit Ahlawat, APP for State
Insp. Satendra Mohan & SI Gulab
Singh ISC, Crime Branch Chankya
Puri

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **21.10.2024**

Crl. M. A.31733 /2024 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 8309/2024

1. This petition has been filed assailing charge-sheet dated 14th August 2024 in FIR No.124/2024 PS Crime Branch.
2. The charge-sheet filed on the basis of a complaint registered on basis of statement made by Inspector Kamal Kumar that on 16th June 2024, when he was at Crime Branch, Chankya Puri, a special informant came to the office and stated that a person know as Rasel along with his other accomplices lures poor people from Bangladesh and North East States to pay them money and invite them and remove their kidneys for Rs.4-5 lakhs and sell them to needy people for Rs.25-30 lakhs. He stated that transplantation of kidney takes place in various popular hospitals in Delhi and NCR and huge amounts have been earned out of the said business. As



per his information, doctors and staff of hospitals are also acting collusively. Information was given that donors were kept in Jasola, Delhi and tests were being conducted on them.

3. A raid was conducted in the premises at Jasola and certain documents including passports and registers were found in Rasel's room; investigation ensued. As per the investigation, a disclosure was made by one of the donors Shri Shankar, who stated that he had donated one of his kidneys for one Bangladeshi Dulal Chandra Das through Yatharth Hospital, Noida, a month ago. On this basis, investigation was done and as per investigating agency, FIR was lodged including against the current petitioner.

4. Senior Counsel for petitioner however contends that the petitioner is a surgeon and had only operated at Yatharth Hospital, Noida and was simply doing her work and is not involved in any of these alleged conspiracies.

5. As per order dated 23rd August 2024, this Court had also granted bail to petitioner in BAIL APPL. No.2742/2024. He further points out to the provisions of Transplantation of Human Organs & Tissues Act, 1994 (TOHO), in particular to Section 9, 13, 19 and 22 to contend that *firstly*, transplantation of organs can only be conducted after due authorisation of the Authorisation Committee, which in the present case is headed by the CMO, Noida, U.P; *secondly*, per Section 13 (3)(iv) Governments, both central and State, shall appoint by notification one or more officers as Appropriate Authorities for this purpose with one of their functions being to investigate any complaint of breach of any provision under this Act and to take appropriate action. The Appropriate Authority for this purpose and this case is Director General Medical Education & Training, U.P. to whom a communication has already been addressed by the Crime Branch on 10th July 2024; *thirdly*, no cognizance can be taken by any court except on a



complaint by an Appropriate Authority or any officer authorized.

6. Senior Counsel for petitioner also points to decision in ***Jeewan Kumar Raut v. CBI*** (2009) 7 SCC 526 in particular para 20 to 23 where the Supreme Court observed that TOHO being a Special Act, investigation has to be conducted by an authorised officer and no other person can do the same.

7. APP for the State submits that charge-sheet has been filed pursuant to said investigation and offences with which accused have been charged are beyond TOHO and include Sections 419/420/467/468/471/474/201/120B of IPC as well. He states that permission has been granted by letter dated 9th July 2024 to the ACP Interstate Cell, Crime Branch, Chankya Puri to conduct investigation. He seeks time to file a status report in this regard; same be filed before the next date of hearing.

8. Accordingly, issue notice.

9. Notice is accepted by the APP for the State.

10. Senior counsel for petitioner states that since petitioner is just a surgeon, she may be exempted from hearing before the Trial Court. Considering that the petitioner is a practising surgeon, she is allowed to appear before the Trial Court through VC, unless her personal appearance is necessitated by the Trial Court for a specific purpose.

11. Senior counsel for petitioner also seeks leave to file on record written synopsis on legal issues which arise in this matter; be filed before the next date with copy to the APP for the State.

12. List on 19th December 2024.

13. Order be uploaded on the website of this Court.

ANISH DAYAL, J

OCTOBER 21, 2024/sm