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

+ BAIL APPLN. 1556/2010

SUBHASH GUPTA

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Adv. with
Mr. Bharat Sharma, Mr. Sumit
Arora and Mr. Tarun Walia, Advs.

versus

STATE

..... Respondent

Through: Mr. Arvind Kr. Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

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27.09.2010

1 On the basis of statement made by Ms. Bharti on 18th June, 2010, FIR No.197/2010 Police Station Sarai Rohilla under Sections 313/506/34 IPC has been registered. The relevant portion of the said FIR reads as under:-

“I reside at above mentioned address along with my husband, parents-in-laws and my daughter. My marriage was solemnized on 11.05.2006 (sic) as per Hindu rites and ceremonies. On 21.10.2007, a girl Aashi was born whose father is my husband Hariom @ Harish S/o Badri Prashad. Thereafter, for last about three months, I was pregnant. My husband and my mother-in-law Smt. Bhagwani Devi asked me to get the sex determination test done by a Doctor. My husband and my mother-in-law forcibly took me to S.C. Agarwal Nursing Home, Shastri Nagar where my husband and my mother-in-law made me sit in the waiting room of Nursing Home and went to meet the Doctor in his chamber. After consulting for 10-15 minutes with the doctor, my husband and my mother-

in-law took me to doctor where the doctor checked me up (Ultrasound). The doctor told my husband and mother-in-law that the fetus in the womb of their daughter- in- law is female, upon which my husband and mother in law consulted with the doctor and advised for my abortion. Doctor Agarwal also said to me that this time again you have a female fetus in your womb and your mother-in- law and your husband want to get this female aborted. I declined and told the doctor that I would not be doing this and doctor made me sit in the in the waiting room. Thereafter, my mother in law came to me with three tablets in her palm and my husband came with a glass of water and asked me to have those pills. When I refused to have the pills then my mother in law and my husband threatened to hurt me. They started pressurizing me to consume those pills. Thereafter, the doctor called me inside and asked me to have the pills and told me that no harm would be caused to my health. I protested against the suggestion given by the doctor but my mother-in-law forcibly put these pills in my mouth and my husband made me drink water. This entire incident took place at around 8 AM on 14.6.2010. Thereafter, I started getting dizzy. I kept crying and told my mother in law and husband that even if I give birth to another girl child, I would bring her up. Nobody paid attention to what I was saying. I became unconscious. In my unconscious state I saw the Operation Room and as I was still-conscious, I was injected by the doctor, and I became unconscious. When I regained consciousness after 3-4 hours, I saw myself bleeding due to periods, my abdomen felt lighter and there was a severe pain in my private parts and my abdomen. Thereafter my mother- in- law and husband took me home and asked me not to tell anything to anybody about this incident. I kept lying down quietly. Today I came out of the house on the pretext of buying medicines.”

2 Learned senior advocate submits that the petitioner Dr. Subhash Gupta is entitled to anticipatory bail on the following grounds:-

(i) There is delay in recording of the FIR as the incident / abortion had taken place on 14th June, 2010.

(ii) The complainant has concealed the fact that she had gone to Sunder Lal Jain Hospital on 12th June, 2010 where Ultrasound was done. He states that the ultrasound in Sunder Lal Jain Hospital could have been only undertaken in case one of the 23 stipulated conditions in Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 were satisfied. He states that the Diagnostic Report of Sunder Lal Jain Hospital dated 12th June, 2010 shows that the fetal heard rate was 170 B.min., which is more than the normal fetal heard rate as per the standard medical books. It should be 110 to 150 B. per minute. The complainant had also come to the petitioner's hospital on 13th June, 2010.

(iii) In the present case, there was inevitable abortion and even consent form was taken. It was submitted that this is a case for harassment of doctors and he relies upon *Pt. Parmanand Katara Vs. Union of India*, 1989 (4) SCC 286 and the observations of the Supreme Court in the said case.

3 I have noticed and reproduced the allegations made by the complainant which has resulted in registration of the FIR No.197/2010. The complainant has made specific allegations with regard to the petitioner, who has been named as Doctor Aggarwal in the complaint. She was forced and coerced to abort the fetus because it was of a girl child. She has made an allegation that her ultrasound was undertaken on the said date i.e. 14th June, 2010. The said hospital or the petitioner has not produced records of the said ultrasound. It is urged that no ultrasound was conducted on the said date i.e. 14th June, 2010. Along with the petition, a hand written consent note dated 14th June, 2010 has been placed on record as Annexure K at page No.71. This purported consent note is signed by the complainant, her mother-in-law and her husband. It is stated that this consent form was prepared by Dr. Wajita. The said hand written note refers to ultrasound in the said hospital.

4 The contention of the petitioner that the condition of the complainant

was emergent and it is a case of involuntary or inevitable abortion has been denied by the State. It is stated that this is the reason why ultrasound report/slides dated 14th June, 2010 have not been produced.

5 Learned APP has drawn my attention to the consent form relied upon by the petitioner dated 14th June, 2010. It is submitted that consent form for abortion was not required in case the complainant had already aborted the fetus or was having involuntary or inevitable abortion. My attention is also drawn to the reply given by the hospital to the queries raised by the Investigating Officer. In response to the questions whether abortion was done or whether the fetus was male or female and the age, the reply is as under:-

“Que : When abortion was done, whether fetus was female or male and age?

Ans : Her abortion has happened on his own and as a Doctor we do not see that whether fetus is male or female.”

6 Learned APP has also drawn my attention to the Diagnostic report of the Department of Radio Diagnosis of Sunder Lal Jain Hospital dated 12th June, 2010, which is two days before the 14th June, 2010. The said report records the composite gestational age of the fetal as 16 weeks 3 days and estimated fetal weight was 152 grams +/- 22 grams. It further records as under:-

“Placenta : Location fundal posterior not low lying.

No retroplacental clot seen. Maturity Grade 1

Liquor adequate for period of gestational age.

No gross congenital anomaly.

Nochal thickness normal.

Imp : Single live fetus of 16 wks + 3 day (s).”

7 It is submitted that the said Diagnostic Report completely belies and points out the false stand taken by the petitioner that it is a case of involuntary or inevitable abortion and that the petitioner was not involved in the aforementioned illegal act of conducting abortion. Heart beat is one of the factors but other parameters were normal. There was no bleeding.

8 As per the allegations made by the complainant, she was forced to abort the female fetus by her in-laws and the allegation is that the petitioner had helped them and had conducted the said abortion. With regard to the so-called delay in lodging of the FIR, it is stated by the learned APP that the same can be explained. The complainant was residing and living with her in-laws and she was taken to the hospital by her in-laws. It required courage and determination of her part to make the police complaint. In *Pt. Parmanand Katara Vs. Union of India* Supreme Court has made observations as it was noticed that there was reluctance on the part of doctors to treat accident victims due to subsequent harassment as they have to appear in court cases. The observations are relevant and have been noticed but do not in the facts of the present case help the petitioner.

9 Looking at the nature of allegations and the gravity of offence, I am not inclined to grant anticipatory bail. The present anticipatory bail application is dismissed.

10 It is clarified that the observations made in this order are for the purpose of the disposal of the present bail application and will not be construed as expression of opinion on merits binding on the trial court.

SANJIV KHANNA, J.

SEPTEMBER 27, 2010

J