

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2912 OF 2015

Vaijinath s/o Atmaram Pathakrao
Age 35 years, occ: Service
R/o Banai nagar, Ambajogai
District Beed

... **Applicant**

Versus

The State of Maharashtra
Through P.S. Ambejogai (City)
Tq. Ambejogai, Dist. Beed.

... **Respondent**

Mr. M.V. Salunke h/for Mr. V. D. Salunke, Advocate for the applicant
Mr. U. S. Mote, APP for the Respondents-State.

CORAM : V. M. DESHPANDE, J.

DATE : 11th June, 2015

PER COURT :

1. By the present application, the applicant is seeking pre arrest bail, in view of his apprehension that he will be arrested in connection with Crime No. 87/2015, registered at Police Station Ambejogai (City), District Beed for the offences punishable under sections 312, 316, 201, read with 34 of the Indian Penal Code and under sections 3, 4, 5 of the Medical Termination of Pregnancy Act, 1971.

2. I have heard Shri. M. V. Salunke, learned counsel for the applicant and Shri U. S. Mote, learned Additional Public Prosecutor for the State, in extenso.

3. According to the prosecution, one lady by name Sunita w/o Vaijnath Pathakrao who was carrying pregnancy came to S.R.T.R. Medical College and Hospital, Ambejogai on 01.05.2015 with excessive bleedings from her private part.

4. The attending Medical Officer noticed that it was medico legal case. Therefore, he requested the police on duty to record the statement of Sunita. Accordingly, on 03.05.2015, statement of Sunita was recorded. In her statement, she disclosed that on 01.05.2015, when she was cleaning tiles in her house, accidentally she fall on the ground, resulting into serious injuries to the foetus of 4 ½ months which she was carrying. According to her statement, in her house itself, she was aborted and thereafter excessive bleeding was started. Therefore, she was hospitalized at Ambejogai.

5. On 05.05.2015, the Police Station Officer of Ambejogai gave a communication to the Medical Superintendent of S.R.T.C. Hospital, Ambejogai and requested to give his opinion as to whether

the abortion was natural one due to falling or otherwise.

Upon receipt of the same, the Superintendent has given his opinion. On receipt of the opinion from the Medical Superintendent, Devkanya Vitthal Maindad, Police Sub Inspector, Ambejogai lodged a report, which was registered as Crime No. 87/2015.

6. Perusal of the first information report reveals that in the first information report itself, the opinion of the Medical Superintendent of SRTR Hospital is reproduced. As per the same, when Sunita was brought to the Hospital on 01.05.2015, that time one Nurse by name Dhanashree was accompanying her. It was found that on 30.04.2015 for abortion, Sunita was given a tablet by name Misoprost and injection Pitocin. According to the Medical Superintendent, these are normally given for termination of pregnancy. In the opinion of the Medical Superintendent, when excessive bleeding was started to the patient, an attempt was made to drag the live foetus from womb of the patient and in the said process, partial organs of the said foetus were removed. According to the Doctor, Faecal matter was noticed in the genital track by which it is clear that there was injury to the intestine through womb.

Doctor also noticed that there were serious injuries to the womb and also to gastro intestinal tract of caecum, ascending colon, transverse colon, descending colon, mesentery, colorectal junction. According to the Doctor, since these injuries were of very serious, to save life of the patient, she was operated and the womb and aforesaid parts of the patients were removed. Doctor also pointed out that while doing operation, it was noticed that partial body of foetus was there which is also removed. The Doctor noticed that genital organ of the said foetus was chopped. Therefore, the Doctor expressed that he is unable to give sex of the said foetus. Patient Sunita was referred to Mumbai for better treatment.

7. According to the Doctor, the abortion was neither natural nor accidental or can be caused due to fall on tiles while cleaning the tiles, as claimed by the patient. The opinion of the Doctor was that abortion was intentional and was attempted to be made by improper manner.

8. The applicant is husband of Sunita. According to the applicant, he was not present in the home when Sunita fell down. He got telephonic message from his mother when he was attending training, he being primary teacher. Thus, it is the submission of

learned counsel that the applicant was not present at all at Ambejogai, as claimed by the prosecution.

Thus, the applicant is claiming alibi. Alibi is always a defence which will have to be proved by the applicant at appropriate stage.

9. From the statement of Sunita it is clear that the submission of applicant that he was not present is incorrect. Her statement would reveal that she was brought to Hospital by her husband.

10. Seriousness of the matter is writ large as it is evident from the opinion of the Medical Superintendent of S.R.T.R Hospital which is reproduced in the F.I.R.

In view of the destruction of genital organ of the foetus, the matter becomes very serious. It appears that the applicant has influenced the statement of Sunita in order to screen the concerned persons from the process of law.

11. The investigation is at very primary stage is the submission of learned Additional Public Prosecutor, for detail investigation and in view of the seriousness of the matter, I am of

the considered opinion that custodial presence of the applicant is required.

No case is made out for exercising discretion in favour of the applicant. Hence, the application is rejected.

(V. M. DESHPANDE, J.)

JPC