

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-18047 of 2016

Date of decision : 07.06.2016

Pinki

..... Petitioner

Versus

State of Haryana

... Respondent

CORAM:- HON'BLE MR. JUSTICE DARSHAN SINGH

1. *Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
2. *To be referred to the Reporters or not ? Yes*
3. *Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Sachit Punia, Advocate for petitioner.

Ms. Neelam Kashyap, DAG, Haryana.

DARSHAN SINGH, J.

This is the first application filed by the petitioner before this Court for grant of regular bail in case FIR No.249 dated 30.03.2016 under Sections 3, 4 & 5 of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (for short 'the Act') and Section 13 of the Prevention of Corruption Act, 1988, Police Station City Hansi.

2. As per the prosecution allegations, the petitioner indulges in conducting ultrasound from someone to determine the sex of foetus. On this information, the team of the health and police officials was constituted.

ASI Ramesh and Staff Nurse Anju were constituted as false decoy. They contacted the petitioner on 12.03.2016. She demanded Rs.20,000/- for getting the test conducted, which was paid to her. It is further the prosecution story that she asked the decoy couple to go to Kaithal on 27.03.2016 for ultrasound for sex determination. They were further sent from Kaithal to Karnal and at Karnal, one Roshan met them and he took them at Samli Road, Karnal bypass and was taking them to Uttar Pradesh for conducting the test. The decoy lady came back due to bad health. The telephonic conversation between them was recorded. Ultimately, the petitioner was apprehended on 30.03.2016 and the present case was registered. Her application for grant of regular bail has been dismissed by the learned Additional Sessions Judge, Hisar. Hence, this petition.

3. Learned counsel for the petitioner contended that even as per the allegations in the FIR, the ingredients of the offence punishable under Sections 3, 4 and 5 of the Act are not made out as no test for sex determination was conducted. He contended that the police was not competent to investigate the case, as in view of Section 28 of the Act, the Court can only take the cognizance on the basis of a complaint made by the appropriate authority or the officer authorised in this behalf by the Central Government or the State Government. Thus, he contended that the entire investigation and detention of the petitioner is illegal. He further contended that no offence punishable under Section 13 of the Prevention of Corruption Act is made out as even as per the allegations of the prosecution, the petitioner has not accepted any money for showing any favour with respect

to her official function. He conducted that the petitioner is a lady and is in custody since 30.03.2016.

4. On the other hand, learned State counsel contended that the accused-petitioner was systematically indulging in illegal activities to determine the sex of foetus in connivance with her co-accused. She has accepted Rs.20,000/- for this purpose from the decoy couple. She is a Government employee being Auxiliary Nurse Midwife (ANM) in the Health Department. Thus, she is not entitled for any concession of bail.

5. I have duly considered the aforesaid contentions.

6. The contentions raised by learned counsel for the petitioner that the police was not competent to investigate the case and arrest the petitioner, in view of Section 28 of the Act, is to be determined by the learned trial Court at the appropriate state. At this stage, in order to decide the petition for grant of bail, it is suffice to mention that even as per the prosecution allegations the sex determination test was not conducted, though it is alleged that the petitioner had taken Rs.20,000/- from the decoy couple and sent them to Kaithal for that purpose. The applicability of Section 13 of the Prevention of Corruption Act is quite debatable.

7. The petitioner is in custody since 30.03.2016 and is no longer required for the purpose of investigation. Her further detention in jail will not serve any purpose. The petitioner is a lady. The conclusion of the trial will take time. So, the petitioner deserves the concession of bail.

8. Thus, keeping in view my aforesaid discussion, the present petition is hereby allowed. Accused-petitioner Pinki is ordered to be

released on bail on furnishing bail bonds/surety bonds to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Hisar.

9. This bail is subject to the condition that the petitioner will not indulge in any such activity in future. If she is found to have indulged in any such activity, the prosecution shall be at liberty to move the application before the learned trial Court for cancellation of her bail.

07.06.2016

sunil yadav

(DARSHAN SINGH)
JUDGE