

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

2 CRIMINAL APPLICATION NO. 3642 OF 2016

KAMAL BHIMRAO SALVE

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. R.J.Nirmal, Advocate for Applicant.

Mr. A.S.Shinde, A.P.P. for Resp. – State.

Mr. S.G.Kawade, Advocate for co-accused

D.N.Bhalsing.

.....

CORAM : A.M.BADAR, J.

DATE : 25th AUGUST, 2016

.....

PER COURT :

1. Applicant/accused in Crime No. 178/2016 registered at Kadim Jalna police station, Jalna, Dist. Jalna for the offences punishable U/ss 312,313,511 of the Indian Penal Code, u/ss 3 & 4 of M.T.P. Act and under Rules 4 & 5 of M.T.P. Rules, 2003, by this application is seeking pre-arrest bail.

2. This Court by Order dated 27/07/2016 had issued notice to co-accused Dnyaneshwar Narayan Bhalsing as to why

his pre-arrest bail granted by the Additional Sessions Judge – 2, Jalna should not be cancelled.

3. Heard learned counsel appearing for the applicant. By taking me through the averments in the F.I.R. Learned counsel argues that only non bailable offence alleged against the present applicant is that punishable u/s 313 of the Indian Penal Code, which relates to causing mis-carriage of woman without her consent. He submits that the F.I.R. itself shows that mis-carriage of Rekha was with her consent. Therefore, according to the learned counsel for the applicant, as rest of the offences are bailable in nature, her liberty needs to be protected.

4. Learned counsel appearing for co-accused Dnyaneshwar Narayan Bhalsing reiterated the same submissions.

5. Learned A.P.P. opposed the application by contending that the crime in question is registered on the basis of the report lodged by the District Civil Surgeon and the same is serious, because after sex selection there was attempt to abort Rekha.

6. Perused F.I.R. lodged by Sarita Damodhar Patil, so also the papers of investigation.

7. *Prima facie*, it is seen that co-accused Rekha was having 3 daughters. After she became pregnant, she decided

to terminate her pregnancy. Papers of investigation does not show that attempt to terminate pregnancy of Rekha was without her consent. Therefore, applicability of penal provisions of Section 313 of the Indian Penal Code is seriously doubtful.

8. So far as present applicant Kamal is concerned, allegations against her are to the effect that she gave one tablet viz. Mefiproston to co-accused Rekha for consumption. So far as Dnyaneshwar Narayan Bhalsing is concerned, allegations against him are to the effect that he supplied that tablet to co-accused Rekha. As *prima facie*, there is no material to infer commission of offence punishable u/s 313 of the Indian Penal Code against accused persons and as other sections invoked by the Investigating Officer appears to beailable, liberty of the applicant Kamal needs to be protected. So also, there seems to be no reason for cancelling pre-arrest bail of co-accused Dnyaneshwar Narayan Bhalsing. Hence, the following order.

(i) The application is allowed.

(ii) In the event of her arrest in Crime No. 178/2016 registered at Kadim Jalna police station, Jalna, Dist. Jalna for the offences punishable U/ss 312,313,511 of the Indian Penal Code, u/ss 3 & 4 of M.T.P. Act and under Rules 4 & 5 of M.T.P. Rules, 2003, applicant Kamal Bhimrao Salve be released on bail on executing P.R. Bond of ₹ 5,000/- [Rupees Five Thousand] and on furnishing surety in the like

amount.

(iii) As a condition of this Order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of the prosecution.

(v) The applicant shall attend concerned police station on 04/09/2016 in between 11.00 a.m. and 12.00 noon and she should co-operate the Investigating Officer in the investigation of the crime in question.

(vi) Notice of cancellation of pre-arrest bail issued to Dnyaneshwar Narayan Bhalsing stands discharged.

[A.M.BADAR, J.]