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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.874 OF 2016

Prakash Shivaji Kumbhar	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

CRIMINAL BAIL APPLICATION NO.1141 OF 2016

Sarika M. Sawant	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

Mr.S.B.Shetye for the applicant in BA/874/2016.

Mr.S.G.Deshmukh i/b. Rakesh S.Patil for the applicant in BA/1141/2016.

Ms.R.M.Gadhvi, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 4TH JULY, 2016

P.C. :-

1. Applicant Prakash Kumbhar (BA/874/2016) is the husband of victim Vrushali Kumbhar and applicant Dr.Sarika Sawant (BA/1141/2016) who allegedly operated said victim Vrushali Kumbhar, by these applications are praying for

releasing them on bail in Crime No.133/2015 for offences punishable under sections 312, 313, 315, 316 read with 34 of the Indian Penal Code and under sections 3(1), (2), (3) 5(2), 18, 23 of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and under section 3, 4 and 5(2), (4) of the Medical Termination of Pregnancy Act, 1971 registered with Kodali Police Station, Kolhapur.

2. Heard the learned counsel for applicant Prakash Kumbhar. By taking me through the statement of Vrushali Kumbhar, the learned counsel pointed out that no role is attributed to the present applicant in the crime in question. He argued that Vrushali suffered a fall because of slipping her leg and, therefore, medical treatment was administered to her.

3. Heard the learned counsel appearing for applicant Dr.Sarika Sawant. By taking me through the statement of Vrushali Kumbhar recorded on 15th December, 2015, the learned counsel argued that the role attributed to Dr.Sarika Sawant is only of per vagina examination of the victim and that too for ten minutes. He argued that the victim has not

disclosed the performance of any surgical procedure on her by the applicant / accused. My attention is also drawn to statements of Dr.Shilpa Joshi and Laxman Wakrekar. The learned counsel argued that considering the fact that no surgical procedure was conducted on the victim by Dr. Sarika Sawant, liberty of Dr.Sarika Sawant needs to be restored to her during the pendency of trial.

4. Learned APP opposed the applications by contending that the offence is serious. She further argued that 'Siddhi Nursing Home' is not registered under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and applicant Dr.Sarika is not also medically qualified as prescribed under the Medical Termination of Pregnancy Act, 1971.

5. Perused the charge-sheet. According to the prosecution case, as reflected from the charge-sheet, victim Vrushali is already having a female child from applicant / accused Prakash Kumbhar. As per her version, on 26th July, 2015, she was taken to Kolhapur for Sonography. She came to know from talks of her husband and witness Laxman Wakrekar

that she is carrying a female foetus. She heard conversation between her husband and witness Wakrekar that she needs to be aborted. Statement of victim Vrushali further shows that for aborting her foetus, co-accused Tanaji Shivaji Patil was called at the house of the victim located at village Mohore, Taluka Panhala, District Kolhapur. On 27th November, 2015 and 28th November, 2015, he attempted to abort the foetus by adopting crude methods, including injecting medicines and opening the mouth of uterus by scapula, etc. However, instead of aborting, the victim started bleeding profusely.

6. According to the prosecution case, thereafter accused Tanaji Shivji Patil asked for conducting Sonography of the victim. Accordingly, Sonography was conducted on 29th November, 2015 at Disha Diagnostic Centre, Kolhapur. As the victim was bleeding profusely, according to the prosecution, applicant / accused Prakash Kumbhar had asked co-accused Tanaji Patil to stop treatment of Vrushali. On recommendation of co-accused Tanaji Patil, victim Vrushali was then taken to the Hospital of applicant Dr.Sarika Sawant at Mirajkar Tikti. There as per version of Vrushali, applicant Sarika Sawant checked her for ten minutes and she had conducted per

vagina examination of Vrushali. Ultimately, victim Vrushali was taken to Aster Adhar Hospital at Kolhapur. There it was found that there is no foetus in her uterus. It was also found that there was a big hole to her womb. Foetus as well as placenta was found in abdomen of Vrushali. At the Civil hospital, medical treatment was given to Vrushali and upon information of that hospital, Dr. Pravin Naik, Medical Superintendent, Rural Hospital, Panhala, District Kolapur lodged F.I.R. against accused persons including applicants which has resulted in registration of the crime in question.

7. Perusal of charge-sheet prima facie shows that applicant Prakash Kumbhar had indulged in sex selection and had got his wife Vrushali aborted in order to relieve himself of having a female child. It is seen that services of quack were sought by him for aborting Vrushali. The abortion was attempted at his own house. It is also seen that pre-natal diagnostic technique was adopted in contravention of the provisions of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 for termination of pregnancy on finding foetus of a female child.

8. It is contended on behalf of the applicant Sarika Sawant that she has not played any role in the crime in question. Charge-sheet shows that after attempt to abort Vrushali by co-accused Tanaji Patil, she was taken to Disha Diagnostic Centre firstly and thereafter, Vrushali was taken to the hospital of applicant Sarika Sawant. During investigation, the investigator had collected the report from Disha Diagnostic Centre which is annexed to the charge-sheet. Perusal of the report goes to show that in Ultrasound finding Vrushali Kumbhar was seen carrying a single live foetus of 13 weeks five days. The report further shows that the vital parts of the foetus were normal. No obvious evidence of sub-chorionic bleeding was seen in the report of Disha Diagnostic Centre.

9. Charge-sheet shows that it was thereafter, victim Vrushali was taken to the hospital of applicant Dr.Sarika Sawant. The victim being a layman may not be acquainted with the procedure, if any, conducted on her for her abortion by applicant Dr.Sarika Sawant. However, we are having the statement of Dr.Gajanan Ramaram Daiv which proves contemporaneous previous statement of applicant Sarika Sawant.

Statement of Dr. Gajanan Daiv shows that on 29th November, 2015 applicant Sarika Sawant made a phone call to him and disclosed that she attempted to abort Vrushali Kumbhar but the attempt was unsuccessful. Statement of Dr.Gajanan Daiv further shows that in that attempt a hole is caused to the womb of the patient Vrushali by applicant Dr.Sarika Sawant.

10. What happened next is prima facie seen from the statement of Dr.Shilpa Joshi from Ashtar Adhar Hospital, Kolhapur where victim Vrushali was taken subsequently. Upon medical examination of Vrushali at that hospital, expert in Gynaecology found that womb of Vrushali is not carrying foetus and her uterus was found to be open. There was a hole in her uterus and foetus and placenta were found in cavity of abdomen of Vrushali.

11. With such prima facie record of investigation, it cannot be said that no surgical procedure was conducted on victim Vrushali at the hospital of Dr.Sarika Sawant. In the duly sworn affidavit, the Investigating Officer has stated that Sarika Sawant has got a certificate of Ayurved degree from Bihar University and she is not having licence for carrying out

abortion under the provisions of the Medical Termination of Pregnancy Act.

12. It is seen that the complicity of applicants in the crime in question is prima facie established. Offence alleged against them is very serious affecting the conscious of the society. Female foeticide is a matter of grave concern for the society. Hence no case for bail is made out and, therefore, the order :-

Both applications are rejected.

(A.M.BADAR, J.)