

Sr. No.231

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No.M-18572 of 2016 (O&M)

Date of Decision: 31.05.2016

Suraj Mal

... Petitioner

Versus

State of Haryana

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Anmol Rattan Sidhu, Advocate with
Mr. Pratham Sethi, Advocate,
for the petitioner.

Mr. A.S.Chaudhary, Additional A.G., Haryana.

TEJINDER SINGH DHINDSA, J.(ORAL)

Petitioner seeks benefit of regular bail pending trial in case FIR No.99 dated 05.05.2016, under Sections 3 A, 4(3)/5/6 and Rule 9(4) of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, (for short PC & PNDT Act), registered at Police Station Barwala, District Hisar.

Counsel for the parties have been heard.

Petitioner has been in custody since 05.05.2016.

The present case raises an important issue.

Even though under Section 27 of the PNDT Act, the police can take cognizance of the offence and arrest a person and continue with the investigation but under Section 28 of the Act, it is only the appropriate authority appointed by the Central Government or State Government who would be competent to present a complaint before the Court and who shall then take cognizance of the offence.

Concededly in the present case, no such complaint has been made by the appropriate authority as defined under Section 17 of the Act.

Contention raised by learned senior counsel is that Section 27 of the Act cannot be read in isolation and under the Scheme of the Act itself it is only upon the appropriate authority presenting a complaint that cognizance can be taken of the offence.

Court has also been apprised that the same very issue came up before a coordinate Bench of this Court and in terms of the order dated 05.08.2014 passed in CRM No.M-4211 of 2014, the matter has been referred for adjudication before a larger Bench and on the following points:-

- i) Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?*
- ii) Whether the report under Section 173 Cr.P.C. along with the complaint of an Appropriate Authority can be filed to the Court?*
- iii) Whether no FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly to the Court lies?*

Since a debatable issue with regard to the initiation of the prosecution itself has arisen in this case, this Court is of the considered view that the petitioner is entitled to the benefit of bail.

Petition is allowed. Petitioner be enlarged on bail subject to satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Hisar.

Disposed of.

31.05.2016

vandana

(TEJINDER SINGH DHINDSA)
JUDGE