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

**CRM No.34137 of 2016 IN/AND
CRM-M-22010 of 2016
Date of decision: October 27, 2016**

Dr. Shashi Dhingra

.....Applicant-Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Rajesh Sethi, Advocate
for the applicant-petitioner.

Ms. Tanushree Gupta, DAG Haryana.

A.B. CHAUDHARI, J (Oral)

CRM No.34137 of 2016

Heard.

Application is allowed as prayed for. Order dated 20.10.2016 passed in main case, i.e. CRM-M-22010 of 2016 is recalled and the same is restored to its original number. At the request of learned counsel for the applicant-petitioner, the same is taken up for hearing today itself.

CRM-M-22010 of 2016

Petitioner has filed application, i.e. CRM No.34137 of 2016 for hearing of the main case. The said application has been allowed and that is why, the main case, i.e. CRM-M-22010 of 2016 is again heard on merits instead of allowing the petitioner to say that her case was not decided on merits.

Learned counsel for the petitioner submits that the petitioner being a Ayurvedic qualified doctor, is entitled to carry out deliveries like

the Gynecologists do. He, therefore, submits that finding of instruments in that connection with the Hospital of the petitioner, is no evidence for alleging any offence against her. Learned counsel for the petitioner then contended that until and unless the prosecution comes out with the evidence about termination of pregnancy of any person, the contravention of the provisions of the Medical Termination of Pregnancy Act, 1971 (for short 'Act'), cannot be presumed. In that connection, he cited the decisions in the case of **Dr. Renu Bansal versus State of Haryana** (CRM-M-32212 of 2011), decided on 21.03.2014 and **Dr. Vandana Malik versus State of Haryana**, 2014(5) Law Herald 4405. He, therefore, submits that as such, the petitioner has not committed any offence. Apart from that, according to him, the petitioner has joined investigation and would continue to do so as and when asked for but then there is no need to refuse the relief of grant of anticipatory bail to the petitioner. Finally, he submits that the interim order made by this Court vide order dated 30.06.2016 granting *ad interim* anticipatory bail to the petitioner, deserves to be confirmed.

I have heard learned counsel for the petitioner as well as learned State counsel. I have considered the present petition at length. The petitioner was granted *ad interim* anticipatory bail on 30.06.2016 by this Court, but thereafter, it was found that the petitioner's counsel was absent on 18.10.2016 and with a warning that the matter would not be adjourned, the same was posted at 2:00 P.M. on 20.10.2016. On 20.10.2016, it was mentioned that the matter should be adjourned in November, 2016 as the counsel for the petitioner had gone abroad. This Court did not agree and therefore, dismissed the petition.

I have carefully perused the reply by way of affidavit of Satish

Kumar, Deputy Superintendent of Police, Kaithal filed on behalf of the State.

It is not in dispute that the offences of termination of pregnancy in violation of the Act for some monetary gain, have been on the rise particularly, in the State of Haryana, as a result of which the ratio of male/female child fell down which is a cause of worry. The doctors like the petitioner indulge into the same which is for the sake of earning more and more money. However, the implementation of the Act has been in the recent past made with full prompt and result is positive.

Coming back to the present case, the reply by way of affidavit filed by the respondent-State in Paragraphs-2, 3, 4 and 5 read thus:-

- “2. That on the basis of secret information decoy patient Santosh wife of Gurdeep Singh and Seema wife of Mohinder Singh were called to General Hospital, Kaithal. Dr. Neelam Kakkar C.M.O. Kaithal pursued Seema to become bogus bander for getting abortion of her pregnancy from Dr. Shashi Dingra, Janta Hospital near Geeta Bhawan Kaithal and for that she agreed without any coercion and pressure by her free will. As per plan she contracted Dr. Shahi Dingra for getting aborted the pregnancy she was having. Dr. agreed to abort her pregnancy on 4.6.2016 at 9.00 a.m. and in lieu of that demanded Rs.2200/2300 from her.
3. That in the presence of team constituted for the purpose Santosh and Seema were called to the Civil Hospital Kaithal at 8.30 a.m. on 4.6.2016 and Rs.23000/- were handed over to her after making the entry in the record of the office of Civil Surgeon Kaithal. Seema and Santosh went to Janta Hospital and contacted the petitioner who was pregnant. Petitioner demanded Rs.2200/- as fee. Accordingly, four notes of Rs.500/- domain and two notes of Rs.100/- domain were handed over to her. The detail of number of four notes domain

of Rs.500/- is 2SN388208, 2LS990348, 6EC171251 and OBV917438. The number of notes of 100 rupees domain is) RK618418 and OPM713949.

4. That after receiving the currency notes petitioner had given two injections to decoy patient Seema and made her resent in the labour room of the hospital and told her that her pregnancy would be aborted by her after 15-20 minutes. Thereafter, shadow witness Santosh removed Chunni from her head and given fixed signal to the raiding party. Team headed by Dr. Neelam Kakkar entered in the Hospital and Dr. Neelam Kakkar introduced the team to the petitioner. She was asked to allow the team to search the hospital, on which she produced above said currency notes and comparison those notes were found the notes handed over to decoy patient as referred above. Recovery memo of the notes was prepared and all members of team including the petitioner signed the memo. The notes were converted into parcels and was sealed with the seal of N.K. The parcel was also signed by the member of team. During search of labour room half used vail of provgeran (Dioclohanic Sodiuma nd from the dustbin lying below empty of injections. Iridosmine and Sycone alongwith needle was recovered. A recovery memo of all these articles was prepared which was also signed by the petitioner and members of team. The recovered articles was converted into parcels and sealed with the seal of N.K. Sample seal was prepared on the cloth.
5. That Dr. Neelam Kakkar demanded certificate regarding the registration of Hospital under MTP Act for carrying out the abortion. But she could not produced any document in this regard. She also could not produce any record regarding the admission of Seema decoy patient in the hospital. On verification her name was not found recorded even in OPD register. She could not produce concerned documents which are necessary to obtain under the provisions of the Medical Termination of Pregnancy Rules 2003. She produced her

degree of BAMS and her registration with Board of Ayurvedic and Unani System of Medicines, Haryana. Report has been obtained from the C.M.O. Office Kaithal. The hospital is not registered under section 4 of Medical Termination of Pregnancy Act 1971, nor the petitioner is qualified for conducting the MTP as reported by C.M.O. Office. Hence she has violated the provisions of Sections 3 and 4 of MTP which is punishable under section 5 of the Act *ibid*. She has also cheated the general public by pretending herself competent and by getting admitted the patients and also administering medicines for the purpose. SO offence u/s 420 IPC is also made out against her.”

A careful perusal of the above reply by way of affidavit, in clear term, show that the petitioner was, in fact, in the business of terminating pregnancies for her greed for money. There is no reason for me to not to accept the statement(s) made in the aforesaid paragraphs of said reply by way of affidavit. The raid conducted at the Hospital of the petitioner and the conversation with the decoy patient made by her, *prima-facie*, cannot be doubted. It is also seen that Dr. Neelam Kakkar, C.M.O., Kaithal was also the member of the decoy party and Dr. Neelam Kakkar had verified various records. I, therefore, find no reason to *prima-facie*, disbelieve the prosecution case as stated in the aforesaid paragraphs. The submissions made by learned counsel for the petitioner that no offence under the Act or under Indian Penal Code would be committed without actual termination of the pregnancy and that, therefore, the petitioner has not committed any offence is a faint attempt and cannot be accepted atleast for the purpose of considering her plea for anticipatory bail. Determination of sex and removal of female foetus by terminating pregnancy has become a menace. The offences are serious and the petitioner cannot be let off by

allowing the relief of grant of anticipatory bail. Prayer made by learned counsel for the petitioner for extension of interim order is rejected since this Court finds no substance in the main petition.

Accordingly, this petition is dismissed. The interim order dated 30.06.2016 granting *ad interim* anticipatory bail to the petitioner, is vacated.

(A.B. CHAUDHARI)
JUDGE

October 27, 2016
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No