

CRM-M-28589 of 2016

[1]

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

Sr. No. 103

CRM No.M-28589 of 2016
Date of decision: August 19, 2016

Subhash Chand

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sat Narain Yadav, Advocate,
for the petitioner.

JASPAL SINGH, J. (ORAL)

Through the instant petition preferred under Section 438 Cr.P.C. petitioner-Subhash Chand s/o Khase Mal has sought the grant of pre-arrest bail in case FIR No. 197, dated May 11, 2016, under Sections 23, 4, 5, 6 of the Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'Act') and Sections 420, 201, 120-B IPC, registered at Police Station Model Town, Rewari.

In brief, the case of the prosecution is that on May 11, 2016, a secret information was received by Dr. J.K. Saini, Deputy Civil Surgeon, Rewari to the effect that some people are indulging in sex determination racket. Accordingly, a team comprised of Dr. J.K. Saini, Deputy Civil Surgeon, Rewari, Dr. Dharmender, Deputy Civil Surgeon, Rewari and Mr. Hemant Grower, Drugs Control Officer, Rewari assisted by police officials

CRM-M-28589 of 2016

[2]

followed Swift Dezire having registration No.HR-36X-2589 who had picked up the decoy patient and shadow witness. A lady was already there in the car at the rear seat, whereas a person was sitting on the front seat as witnessed by Mahesh. The team followed the said vehicle but after taking round across Dharuhera it moved towards Delhi-Jaipur National Highway towards Delhi. The shadow witness called from her mobile and it was heard by the team that they will take the patient near Wazirabad flyover at Delhi and further, Subhash and Bansal will take both the patients on bike to Carepolly Clinic-B-13, Aastha Apartment Shalimar Garden, Flat No.201, Sahibabad, Gaziabad, where Dev receptionist will meet and ultrasound will be conducted by Dr. Yashpal Singh for the determination of sex of foetus.

As per the allegations levelled in the FIR, petitioner had received a sum of Rs.5,000/- for the work assigned to him. The contenton of learned counsel for the petitioner is that all the allegations levelled against the petitioner are absolutely wrong and false. Even as per the allegations, no offence is made out against the petitioner under Sections 23, 4, 5, 6 of the Act. Even otherwise co-accused of the petitioner namely Subhash Kumar s/o Gyan Singh has already been granted the concession of regular bail by the trial Court. As far as other accused namely Rahul Malik is concered, he has already been released on pre-arrest bail by this Court vide order dated August 05, 2016 (CRM No.M-19479 of 2016). Moreover, pre-arrest bail has been declined to the petitioner by the learned Additional Sessions Judge, Rewari simply on the ground that a sum of Rs.5,000/- is yet to be recovered from him and that the allegations against him are of serious nature. In fact, neither any such amount has been received by the petitioner

CRM-M-28589 of 2016

[3]

nor he is in any way connected with any sex determination racket. He is ready to join investigation and to cooperate with the enquiry/trial.

This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner and perused the record.

Undoubtedly, there are serious and specific allegations that the petitioner actively participated in the course of incident and on receipt of a sum of Rs.5,000/-, he connived with his co-accused to take the pregnant lady to the clinic of Dr. Yashpal Singh for sex determination test. No doubt, co-accused of petitioner namely Subhash Kumar s/o Gyan Singh has been granted the concession of regular bail but the case of the petitioner cannot be equated with Subhash Kumar s/o Gyan Singh who has already been subjected to custodial interrogation after his arrest and subsequent thereto he was granted concession of bail, whereas, through the instant petition, petitioner has sought pre-arrest bail. The regular bail as well as pre-arrest bail are on different footings. It is well settled propositions of law that the discretion envisaged under Section 438 Cr.P.C. is to be exercised in very rare and exceptional cases where it appears to the Court that allegations levelled against the petitioner are ill-founded or appear to be false on the face of it. But, in view of the facts and circumstances of the case in hand, no such opinion can be expressed at this stage. This Court is of the considered view that in the given circumstances, custodial interrogation of the petitioner is essential.

Thus, taking into consideration the aforesaid aspects of the case as well as keeping in view the seriousness and gravity of the offence

CRM-M-28589 of 2016

[4]

complained of, this Court does not find it a fit case to extend the grant of bail to the petitioner.

Accordingly, instant petition stands dismissed.

August 19, 2016

Avin/Ankur

**(JASPAL SINGH)
JUDGE**

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No