

CRM-M-4382-2016 (O&M)

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

**CRM-M-4382-2016 (O&M).
Decided on: February 19, 2016.**

Harnek Singh

..... Petitioner(s)

Versus

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT Mr.G.P.S.Bal, Advocate, for the petitioner.

Mr.C.S.Bakshi, Addl. A.G., Haryana.

M.M.S. BEDI, J (ORAL).

This is a petition for the grant of pre-arrest bail to the petitioner. The allegation against the petitioner is that he had taken active part in taking the decoy customer Pooja to Kuldep Singh for sex determination on payment of money. The petitioner has been identified by the said decoy.

The petitioner has challenged the basis of registration of FIR in view of the provisions of Section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, (for short the PNDT Act') which provides that no Court shall take cognizance of an offence under the PNDT Act, except on complaint made by the appropriate authority authorized in this behalf. Reliance has been placed on judgment in **Tejinder Pal Singh Multani Vs. State of Punjab and another, reported in 2015 (2)**

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RCR (Crl.) 393, wherein the FIR had been quashed by a Coordinate Bench of this Court relying upon Section 28 of the PNDT Act. A perusal of the said judgment indicates that the provisions of Section 27 of the PNDT Act, were not brought to the notice of the Court which specifically provides that every offence under the PNDT Act shall be cognizable, non-bailable and non-compoundable.

A reference to the provisions of Section 23 of the PNDT Act, indicates that any person who contravenes the provisions of the PNDT Act, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

Taking into consideration the provisions of Part II of of Schedule 1st of Cr.P.C., if offence is punishable with imprisonment for three years and onwards but not more than 7 years under any other law, it would be a cognizable offence and would be non-bailable, triable by a Magistrate of First Class.

Considering the provisions of Section 27 and 28 of the PNDT Act, in context to the above said Schedule of Cr.P.C, prima facie the registration of the FIR and investigation in accordance with Chapter XII of the Cr.P.C. is permissible. This question arose before another Bench of this Court in Dr. Anant Ram Vs. State of Haryana, CRM-M-24622 of 2015, decided on 2.9.2015, wherein the ratio of judgment in case **Tejinder Pal Singh Multani** (supra), was

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distinguished holding that as per ratio of another case **Dr.Arvind Pal Singh Gambhir Vs. State of Punjab and another, CRM-33595-M of 2008**, the police has got a right to investigate the matter. It was held that offence under PNDT Act would be cognizable. So, I do not find any force in the contention of counsel for the petitioner that a material irregularity has been committed by the prosecution agency in lodging of FIR and treating the case as cognizable.

Counsel for the petitioner on merits has argued that only allegation against the petitioner is that he had committed an act of revolving a mouse on the belly of the decoy customer. It has been further argued that he is an innocent and illiterate person and has been falsely implicated.

I have heard the learned counsel for the petitioner and I am of the opinion that on account of specific allegation against the petitioner of having actively participated in the act of determining the sex of the foetus, no extra ordinary exceptional circumstances exist for the grant of concession of pre-arrest bail to the petitioner especially when the petitioner has earlier been indulging in criminal activities though he has been acquitted in two criminal cases.

The petition is dismissed.

Nothing mentioned in this order will prejudice the right of the petitioner to seek concession of regular bail in accordance with law.

February 19, 2016.
rka

(M.M.S. BEDI)
JUDGE