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

CRM-M-44386 of 2015

Date of decision: December 01, 2016

Vinod Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

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

Present: Mr. Vikas Malik, Advocate for the petitioner.

Mr. Chetan Sharma, AAG Haryana.

A.B. CHAUDHARI, J (Oral)

Affidavit of Sh. Rajan Gupta, IAS, Additional Chief Secretary Haryana, Government of Haryana, Health Department, Chandigarh filed by learned State counsel, today in Court, is taken on record.

Heard learned counsel for the rival parties.

This is a petition for grant of anticipatory bail in FIR No.631 dated 26.11.2015, under Sections 3, 4 and 5 of the Medical Termination of Pregnancy Act, 1971 (for short 'Act'), registered at Police Station Gharaunda, District Karnal.

In support of the petition, learned counsel for the petitioner submits that the only allegations against the petitioner is about the sale of MTP kits at his shop and to decoy at a long distance from his shop which allegations, according to him, are not correct.

Learned State counsel submits that on secret information,

the petitioner is found to have selling MTP Kits, though, it is true that he was holding a licence of licenced chemist.

Learned counsel for the petitioner has raised a question while seeking anticipatory bail to the petitioner that in the wake of his holding licence of licenced chemist, he cannot be said to have violated any law in selling MTP kits, in the absence of any prohibition from selling MTP Kits as the Act does not make the same as an offence or impose any prohibition from selling MTP Kits, even on assuming that allegations are taken at the face value.

On 19.09.2016, finding some substance in the petition raised by the petitioner, this Court had recorded the following order:-

“Heard learned counsel for the rival parties.

Learned counsel for the petitioner argued that there is no prohibition in the Medical Termination of Pregnancy Act, 1971 (for short 'MTP Act') imposing prohibition for sale of MTP kits by Chemists or medical shop licencees.

Learned State counsel seeks time to respond to this aspect of the matter.

I have perused the provisions of MTP Act. I think the larger question about prohibition for Chemists in selling the MTP kits or to regulate the sale thereof, is involved and therefore, the State of Haryana shall consider the question on urgent basis and file response/affidavit from the concerned Secretary of the Health Department as to the steps taken in this regard within a period of 15 days from today. No further time shall be granted. If the affidavit is not filed within 15 days, the Principal Secretary of the Health Department will have to remain present in this Court.

List again on 17.10.2016.

Interim order to continue.

A copy of this order be given to the learned State counsel under the signatures of the Bench Secretary.”

In response thereto, State of Haryana has filed an affidavit as stated above. The following portion (Paras 4 and 5) of the said affidavit is quoted as under:-

“4. That in compliance of order dated 17.10.2016, the matter has been discussed by the Government at the highest level in its meeting held on 03.11.2016 and it has been decided that the State Government should formulate its own law in order to prohibit the sale of drugs and MTP Kits which could be used for termination of pregnancy and making its unauthorised Sale, purchase or usage a criminal offence punishable with appropriate length of imprisonment and fine in order to check and control unethical practice of female foeticide and improving the gender ration in the State.

5. that further action is being taken in accordance with the decision of the Govt. as recorded in proceedings of the meeting held on 03.11.2016.”

This Court must appreciate the speed in which the action has been initiated by the State of Haryana, Health Department since the issue concerns the implementation of the MTP Act and for removal of a lacunae, if any, therein. In that view of the matter, step taken by the Government of Haryana as seen in Paras 4 and 5 of the aforesaid affidavit is a welcome step and this Court expect the State of Haryana to complete the process as early as possible.

Now coming back to the present matter since the petitioner

was holding the chemist licence, prima-facie, a case is made out by him for confirmation of the *ad interim* order made by this Court on 28.12.2015.

In that view of the matter, interim order dated 28.12.2015 granting *ad interim* anticipatory bail to the petitioner, is made absolute.

Petition stands disposed of, accordingly.

(A.B. CHAUDHARI)
JUDGE

December 01, 2016

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Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**