

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1181 of 2016**

- Dr. Dumeshwar Singh Thakur S/o Narottam Singh Thakur Aged About 42 Years R/o Post Graduate Medical Officer (Gynecologist), District Hospital, Narayanpur, District Narayanpur Chhattisgarh

---- **Petitioner****Versus**

- State of Chhattisgarh Through The Police Station Narayanpur, District - Narayanpur Chhattisgarh

---- **Respondent**

 For Applicant : Mr. Shobhit Koshta, Advocate

For Respondent/State : Mr. Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****17-02-2017**

1. Apprehending arrest in connection with Crime No. 110 of 2016 registered at Police Station Narayanpur, District Narayanpur (CG) for offence punishable under Sections 312 of IPC, Sections 4 & 5 of the Medical Termination of Pregnancy Act, 1971 (for short, "MTP Act, 1971") and Section 12(A)(2) of CG State Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Adhiniyam, 2010 (for short, "the Adhiniyam, 2010"), the applicant has preferred the bail petition under Section 438 of the Cr.P.C., for grant of anticipatory bail.
2. As per case of the prosecution, a report was made by the Chief Medical and Health Officer, Narayanpur on 24-10-2016 that the present applicant who is the Doctor in the Government Hospital, Narayanpur has caused medical termination of pregnancy of 55 numbers at the Nursing Home which was being run by his wife namely Prabha Hospital and Prasuti Grih and there has been different flouting of the norms which are to be followed under the

Adhiniyam, 2010 and the termination of pregnancy was made against the provisions of the MTP Act 1971. After show cause notice, the applicant could not reply to the same adequately and thereby the aforesaid offence has been committed.

3. Learned counsel appearing for the applicant would submit that the Adhiniyam, 2010 only provides for procedure to be followed by the Nursing Homes and if there is violation, it only provides for certain penalty to be imposed. It is further submitted that though show cause notice was served and without any evidence on record, it was alleged that the applicant has terminated the pregnancy which is against the facts. It is further submitted that Section 3 of MTP Act, 1971 provides that the pregnancy can be terminated within 12 weeks and if it crosses 20 weeks then the permission of two Medical Experts have to be obtained. However, in the instant case, no statements have been considered to the effect that pregnancy if terminated without prejudice, has been made, was within the definition of Section 3 of the MTP Act, 1971. It is further submitted that the applicant is only Gynecologist working in the District of Narayanpur and if there is any need arising out of pregnancy, he provides his services as Medical Officer, therefore, no offence has been committed by the applicant and he has been inculpated only on presumptions. Therefore, considering all the facts and circumstances of the case, the applicant may be extended the benefit of Section 438 of the Cr.P.C..
4. Learned State counsel opposes the prayer for grant of anticipatory bail.
5. I have heard learned counsel for the parties, perused the case diary, documents and show cause notice .

6. Perusal of the documents would show that the applicant has been inculpated on the fact that he was working in the Nursing Home which was being run by his wife and the show cause notice and reply given by the applicant were also seen which would show that the applicant is only assisting in the Nursing Home which was being run by his wife. It further shows that the Chief Medical & Health Officer has given the certificate in which it has been mentioned that the applicant is only Gynecologist in the area of Narayanpur and others are diploma holders.
7. Considering the facts and circumstances of the case, nature of allegations leveled against the applicant and further considering the show cause notice and reply given by the applicant and further considering the fact that no custodial interrogation is necessary, I am of the considered opinion, *prima facie* that it is a fit case where benefit of Section 438 of Cr.P.C., can be extended to the applicant.
8. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him on his executing a personal bond in the sum of Rs.25,000/- with one local surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions:
 - (i) that the applicant shall make himself available for interrogation before the Investigating Officer as and when required.
 - (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer;

- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Raju