

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1434 OF 2017

Somashekhar Irappa Hattarki	..	Applicant
Vs.		
State of Maharashtra	..	Respondent

Mr.Niteen Pradhan i/by Mr.Shubhada Khot for the applicant.
Mr.S.S.Hulke, Additional Public Prosecutor for the respondent.

CORAM : T.V. NALAWADE, J.
DATE : 11th August 2017

P.C. :

1. The application is filed for the relief of anticipatory bail in C.R.No.367 of 2017 registered with Pandharpur Taluka Police Station for the offences punishable under the provisions of the Medical Termination of Pregnancy Act, 1971, the Medical Council Act and the Medical Practitioners Act etc. It can be said that the investigation can be and needs to be made for the offences which are punishable under the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as "PCPNDT Act". Both the sides are heard. Papers of investigation were made available for perusal of this Court.

2. Investigation of the present matter was started when the authority under PCPNDT Act and aforesaid special enactment Acts received information that in the house of Sunita Vitthal Gaikwad, arrangement was made for causing illegal abortion of a lady. Police help was taken and the authority, medical officer went to the said place. They noticed that one lady was lying on a bed. She gave her name as

Vijaymala Mundhe resident of Nagpimpri, Ambejogai, District Beed. One Sunita Gaikwad was standing nearby this bed. On enquiry, the lady who was lying on bed disclosed that she had come there for termination of her pregnancy. They noticed that some instruments ordinarily used for termination of pregnancy were there. Sunita Gaikwad could not produce record showing that she was having qualification and permission for such act. On enquiry, it was noticed that Sunita Gaikwad had already given injection and tablets for abortion. As the lady who was lying on bed became uneasy due to medication, she was shifted to cottage hospital. Submissions made show that she suffered abortion in cottage hospital and dead female baby was born. Due to this incident, initially the crime was registered only against aforesaid Gaikwad.

3. Submissions made and record showed to this Court show that the lady who had undergone abortion had given her false name and her real name is Bhagyashree Gitte resident of Chandanwadi Post, Ambejogai, District Beed. Papers show that her husband is a teacher. She has one daughter. Her husband wanted a son from her. When she became pregnant, request was made by them to one Anil Rakh, Agent to help them to ascertain sex of child in womb. He informed that through a Doctor was from Vijapur, test can be done in his hospital. He informed that an amount of Rs.25,000/- was required for such test. Anil Rakh himself took them in a car to Vijapur. He conducted other agent at Vijapur to take them to the hospital. Then the amount of Rs.25,000/- was handed over to Anil Rakh and Anil Rakh took them to Hattarki hospital, the address of which is given in the statement given by

Bhagyashree Gitte. The material show that Doctor is described in the statement made by her as in one room where she was kept and the sonography was done by this Doctor. Doctor had advised that one more test was necessary as to ascertain the sex, growth was not to that extent. Thus the first test was conducted on 14th May 2017 and Doctor had advised to come to the hospital on 25th June 2017. On that day, they again went to the same hospital and this time also, sonography was done by the same Doctor. Then the person who was working as agent informed Bhagyashree that it was a female foetus. Then the same of a person was given as Sunita Gaikwad @ Janavi who could help for causing abortion and she was resident of Pandharpur. Mobile number of the said lady was given to this couple by this agent. Her husband was in her company and he said that he did not want another daughter. On the same day from Vijapur, they contacted on phone Gaikwad at Pandharpur and they informed that they coming to Pandharpur for abortion. They went in a four wheeler taken on hire basis to Pandharpur and they contacted Gaikwad. One person was sent by her to collect them. In one lab, blood test was taken. They stayed in Pandharpur on the night between 25th and 26th June 2017. On 26th June 2017 when Gaikwad had given medicines and when Bhagyashree was lying on bed, authority and the police came there and then incident was noticed by the authority for taking action.

4. There is statement of one Vijay Pattar resident of Karnataka showing that he had helped the aforesaid lady and he was working as agent of the present applicant. He took police to hospital with the authority to show the place where test was done. Papers of investigation show that the present applicant was present in the hospital and when the

identity was disclosed by authority and the police officer and when it was informed that they were making an enquiry into abortion suffered by Bhagyashree, the applicant said that he had to attend serious patient and he left the room where sonography machine was kept. Even he left the hospital and then he has been absconding.

5. The material collected by police which is the statements of many persons who had taken Bhagyashree to the hospital of present applicant is there. There was no reason for these persons to take name of the present applicant who is come from other State, Karnataka. Under the provisions of PCPNDT Act, if there is a sonography machine, the person who is conducting sonography is expected to maintain record as provided under the provisions of the said Act and also the provisions of the Rules 1996 framed under that Act.

6. Submissions made show that the record in respect of sonography was not made available by the present applicant and he ran away to escape. Such circumstance cannot be ignored while considering the application filed for relief of anticipatory bail.

7. Learned counsel for the applicant submitted that the applicant is totally denying the allegations and the applicant had never conducted sonography of the aforesaid lady and so the question of maintaining record does not arise. He submitted that on the basis of sonography machine taken over, it can be ascertained as to whether the said record is there and till then the relief can be granted to the present applicant. This statement is not at all acceptable. When there is sonography machine is used for sex determination, very rarely such

record is kept in sonography machine. In such cases, inference can be drawn on the basis of other relevant circumstances which are there in the papers of investigation. Though in the First Information Report, the provisions of PCPNDT Act are not mentioned, in view of the aforesaid circumstances, those provisions can be used and for breach of the provisions, imprisonment of three years is provided. It can be said that if it is noticed that the attempt was made to erase or delete the data, then further action for creation of false record to screen offence also can be taken. The provisions of the Medical Termination of Pregnancy Act, 1971 show that they are applicable against the person who terminates the pregnancy illegally. At present, there is an allegation that the present applicant helped in ascertaining sex and due to that, couple took a decision to terminate the pregnancy. Investigation is not completed and during the custodial interrogation, more information can be collected.

8. In Maharashtra, ratio of the female child has come down to 800. In Maharashtra, strict compliance is being done of PCPNDT Act and to some extent, fear is created in the mind of person involved doing such things. Many Doctors are kept behind bars. It is clear that due to this circumstance, now persons are going outside Maharashtra and present incident is one of such incidents. It can be said that the persons like present applicant who are doing business on boundary are misusing the circumstances and they are making money.

9. Considering the object behind the aforesaid two enactments, this Court holds that lenient view cannot be taken and discretion cannot be used in favour of such person. Only due to sex detection in the present case, abortion is caused. Many times, in such cases, there is

danger to the life of mother. This circumstance also cannot be ignored. Thus no anticipatory bail can be granted to the present applicant and the application is rejected.

T.V. NALAWADE, J.