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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1816 OF 2017

Amar Kisan Jadhav

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. Abid Mulani i/b Prasanna Patil for Applicant.

Mr.A.S. Patil, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 12th October 2017.

P.C.

1] This is an application for pre-arrest bail in CR No.394 of 2017 registered with Tembhurni Police Station, Taluka-Madha, District-Solapur dated 9.9.2017 under Section 3(A) and 23 of Preconception and Pre-natal Diagnostic Techniques (Prosecution of Sex Selection) Act, 1994 and Section 33 and 36 of Maharashtra Medical Practitioner Act, 1961.

2] It is the prosecution case that, the District Surgeon and Medical Officer Shri Pathanshetty informed the first informant namely Dr. Santosh Gaikwad that a specific information has been received by the police of Tembhurni Police Station that at the residence of Vikas Chavan,

Dr. Santosh Nimbalkaar was to perform sex determination test on a lady, which is prohibited under the law and therefore to verify the said information the first informant along with other members of raiding party went to the residence of said Vikas Chavan and conducted a raid. It was noticed that one person was performing same test by keeping machine on the stomach of a lady and observing something on the screen. Thereafter the raiding party accosted the person therein and it was revealed that the person who was keeping watch on the said procedure was Vikas Chavan and the person who was conducting the said test was Dr. Santosh Nimbalkar. During the preliminary inquiry conducted by the Government Officer, it was revealed that the said Dr. Nimbalkar had been to the said place at the instance of the applicant who is acting as agent of the said Dr. Nimbalkar. It was informed to the raiding party that the applicant had gone out for his personal work. The police have seized the relevant machinery and other articles from the scene of offence. In pursuance of first information report lodged by Shri Santosh Gaikwad, Taluka Medical Officer, the present crime is registered.

3] Learned Counsel for the applicant submitted that the applicant has nothing to do with the said crime and it is only in the statement of the co-accused Dr. Nimbalkar his name has been revealed. He submitted that

the applicant was not present at the time of raid at the scene of offence. That the Investigating Agency had applied Sections 3(A) and 23 of Preconception and Pre-natal Diagnostic Techniques (Prosecution of Sex Selection) Act, 1994 to the present crime and the maximum punishment for the first offence is 3 years and therefore in view of the decision of the Supreme Court in the case of Arnesh Kumar Vs. State of Bihar & Anr. reported in (2014) 8 SCC 273, the applicant deserves to be protected by pre-arrest bail. He submitted that his client will abide by all conditions imposed upon him and prayed that pre-arrest bail may be granted to the applicant.

4] The Preconception and Pre-natal Diagnostic Techniques (Prosecution of Sex Selection) Act, 1994 was enacted by the Parliament, with an avowed object for, prevention of misuse of diagnostics techniques for sex determination leading to female foeticide and for matters connected therewith or incidental thereto.

The Statement of Object and Reasons mentioned in the Preamble of the said Act states as under:

“It is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. A legislation

is required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.”

5] Thus under the said Act, there is prohibition for conducting illegal test of sex determination. In the present case, it is the specific case of the prosecution that the applicant being agent of Dr. Nimbalkar indulged into providing or abetting in conducting sex determination test on Smt. Sangita Shelke at the residence of Vikas Chavan and on a specific information received by the Government Agencies, a raid was conducted at the said place where the first informant along with other persons found the said test was being conducted and the machinery used in the present crime at the scene of offence. It is the categorical case of the prosecution that the applicant is acting as an agent of said Dr. Nimbalkar. Though in the present crime, maximum sentence for the first offence is 3 years, the present crime is cognizable in nature and after taking into consideration the intention of the Legislature in enacting the said Act, according to me, the allegations against the applicant and other persons in the present crime are serious in nature and requires thorough investigation at the hands of the police and it is necessary for the police to ascertain in how many other cases the applicant has acted as an agent and has facilitated in conducting the sex determination tests leading to female foeticide.

6] In view thereof, after taking into consideration serious allegation against the applicant and gravity of the offence, this Court is of the view that the applicant does not deserve to be protected by pre-arrest bail.

Application is accordingly rejected.

(A.S. GADKARI,J.)