

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

Crl. Misc. No.M-6054 of 2017 (O&M)

Date of Decision: October 10, 2017

Dr. Alka Bishnoi

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Rai, Senior Advocate with
Ms. Rubina, Advocate
for the petitioner (s).

Mr. Ashish Yadav, Addl.A.G. Haryana.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.580 dated 23.11.2016 registered for the offences punishable under Sections 4, 5, 6, 23, 27, 28 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Rule 9 thereof, at Police Station City Narnaul, District Mohindergarh.

Heard.

Learned State counsel submits that the police has verified this fact that decoy patient, who was allegedly examined by the petitioner for sex determination test, has given birth to a male child on 12.05.2017. The allegation against the petitioner is that she had conducted sex determination

test on the decoy patient, who was allegedly having 12 weeks 3 days pregnancy. In this regard, learned State counsel submits that opinion of the medical board of PGIMS, Rohtak was obtained, which reads as follows:-

“Special Medical Board is of the opinion that :-

(A) As per Modi's Medical Jurisprudence and Toxicology (25th edition, chapter no.35-Abortion, Medical Termination of Pregnancy & Female Foeticide 11th Reprint 2016 (Page 876), at 3rd month (12th week), the sex is still indistinguishable.

(B) From the available literature, the observations are as follows:-

1. Sonography is a reliable method for the study of the morphological development of the external genitalia in foetuses in vivo; it is possible to assign fetal gender in 95 to 99% starting at a BPD of 20 mm and to achieve an accuracy rate of 99 to 100% from a BPD of 22 mm. as per PRENATAL DIAGNOSIS 2004; Pages 677-684 John Wiley & Sons Ltd V. Mazza et. al. Sonographic biometrical range of external genitalia differentiation in the first trimester of pregnancy: analysis of 2593 cases, published online in Wiley Inter Science (www.interscience.wiley.com) DOI: 10.1002/pd.945

2. At CRL 50-54.9 mm (gestational age 11+4 to 12+0) the feasibility was 63.5% and accuracy 75.0% (89.1% in male gender vs 66.7 in female gender) – as per Marek Lubusky et al in Ultrasound evaluation of fetal gender at 12-14 weeks published in Biomed Pap Med Fac Univ Palacky Olomouc Czech Repb. 2012, -156:XX Page no.1 to 6. DOI.Org/10.5507/bp.2012.022”

Learned State counsel further submits that ultrasound register and F-form of the decoy patient were also blank when the raid was conducted.

On perusal of the report of medical board, I find that so far as the Modi's view that the sex of foetus of 12 weeks is indistinguishable is not disputed. However, there are further studies which give different observations in this regard and it will be a matter of investigation and then for the trial Court to see as to whether the offence against the petitioner on the statement of decoy patient is made out or as to which observation is relevant. As per decoy patient, the petitioner had informed her that she was carrying a female child, while in fact she had given birth to a male child. This fact is again to be looked into by the investigating agency before presenting the challan.

The non-filling of F-form and ultrasound register, which are in possession of the police, are not the fact upon which the relief of anticipatory bail can be declined to the petitioner.

Keeping in view the above facts but without expressing any opinion on the merits of the case, this petition is allowed and the order dated 07.03.2017 is made absolute till the presentation of challan, subject to the following terms:-

- (i) that the petitioner shall make himself available for interrogation by the police as and when required;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against her so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) that the petitioner shall not leave India without the prior permission of the Court.
- (iv) that the petitioner will seek regular bail on the presentation of challan in Court, which the trial Court

will decide on the basis of evidence collected during investigation.

October 10, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***