

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1838 OF 2017**

Virangaud Rasaheb Gumate	Applicant
Versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 2770 OF 2017

Yasin Hussain Tashildar	Applicant
Versus	
The State of Maharashtra	Respondent

Mr. Rahul S. Kate i/b. Mr. Rupesh Zade, for the applicant in BA/1838/2017.

Mr. Amin Solkar for the applicant in BA/2770/2017

Mr. Deepak Thakare, P.P. a/w Ms. Veera Shinde, APP, for the State in BA/1838/2017.

Ms. S.S.Kaushik, APP, for the State in BA/2770/2017.

Mr. Bharat Shinde, API, Miraj (Rural), Sangli, present.

**CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 15th February, 2018.**

P.C. :

1. Heard. These are the applications under Section 439 of Cr.P.C. The applicants herein are arrested on 12th March and 10th March, 2017 in C.R. No.53/2017 registered at Miraj Rural Police Station, Dist. Sangli. The investigation is completed and charge-sheet is filed against the applicants

for the offences punishable under Sections 304, 313, 314, 315, 316, 318, 419, 420, 120B, 176, 109, 201 read with Section 34 of the Indian Penal Code and under Sections 33, 34 of Maharashtra Medical practitioners Act and under Section 4(b), 5(2), 5(3), 5(4) of Medical Termination of Pregnancy Act, 1971. The applicants are agriculturists.

2. It is the case of the prosecution that one Sunil Babaso Jadhav, an unfortunate father of Swati Jamdade lodged a report at the police station on 3.3.2017 alleging therein that his daughter Swati was married to Pravin Jamdade. She was a mother of 2 daughters who were 4 years and 1-1/2 years old. His daughter had expired on 1.3.2017. It is the case of the complainant that his daughter had conceived pregnancy. That she was taken to the hospital. The scan report shows that the growth of child was fair enough. His son-in-law Pravin had specifically told his wife and father-in-law that he does not wish to have a daughter for the third time and he wants to have a son. On 26.2.2017, Swati had informed that she is going for a pre-natal diagnostic. The parents had refused. They had learnt that on 1.3.2017, they had gone to Mhaishal for pre-natal diagnostic. Her sister-in-law Seema had accompanied her on 2.3.2017. They learnt that Swati had expired. They had been to the hospital and there they learnt that in the

process of terminating pregnancy in the hospital of Dr. Khidrapure, Swati had succumbed and had expired. The first informant had specifically stated that at the time of undergoing the process of medical termination of pregnancy, Swati was pregnant of more than 18 weeks. On the basis of the said report, Crime No.53 of 2017 was registered at Miraj Rural Police Station against Dr. Khidrapure. Investigation was set in motion.

3. In the course of investigation, it had transpired that the applicants, who are farmers by profession, are working as agents for Dr. Ghodke and Dr. Khidrapure. They had not taken Swati (deceased) to the hospital of Dr. Khidrapure. The statement of witnesses, more particularly women, would show that when they were diagnosed with female foetus. They would contact the present applicants and through them they would go to Dr. Ghodke or Dr. Khidrapure.

4. Statements of witnesses, more particularly one Mr. Prakash Patil, would show that he was working with Dr. Mohan Ghali at Athani as a helper. He has passed Secondary School Certificate Examination. He had learnt the basics of Ayurvedic medicines when he was working with Dr. Ghali. He had opened his own dispensary at Village Hanmapur in 2010 and was prescribing Ayurvedic as well as allopathic medicines. He used to

administer injection. He has boasted that he has a good practice. He was also marketing the products of Mile Co. He had some patients who had enquired with him in respect of pre-natal diagnostic. He had referred them to Dr. Ghodke. After being diagnosed with female foetus, he used to refer them to Dr. Khidrapure through Sambhaji Patil and Yasin Tashildar who is applicant in Criminal Applicatin No.2770 of 2017. Yasin was popularly known as Dr. Tashildar since he was prescribing medicines. He used to carry medicines from village to village and many a times he used to take the female patients along with him in his Scorpio Car to the hospital of Dr. Ghodke Sonographic Centre. He used to sometimes engage Prakash Patil also as the commission agent. It is pertinent to note that Prakash Patil has been shown as a witness and not as an accused in the present case.

5. The learned counsel for the applicant submits that Dr. Ghodke has been enlarged on bail on medical grounds on 17.8.2017. Accused No.7 – Sunil Khedekar was giving medicines to the patients without any prescription and sold the medical termination of pregnancy kits to Dr. Khidrapure. He was enlarged on bail on 27.7.2017. Accused No.8 – Sadgonda @ Samba Patil was working as an agent and provided patients to Dr. Shrihari Ghodke. He was arrested on 10.3.2017 and was enlarged on

bail on 14.7.2017. Accused No.12 – Bharat Gatagat was selling M.T.P. Tablets to the doctors. Similarly, Dattatraya Bhosale was also supplying medicines. They are enlarged on bail on 13.7.2017 and 25.7.2017 respectively.

6. Material against accused No.14 – Ravindra Vishnu Sutar is that he buried foetus collected from the hospital of Khidrapure at Jija Mangal Karyalaya and had caused disappearance of evidence. He was arrested on 24.5.2017 and has been enlarged on bail on 21.8.2017. It is unfortunate that the State has not challenged the order granting bail to Ravindra Sutar. The present applicants are claiming parity with accused No.8 - Sadgonda Patil who is enlarged on bail on 14.7.2017.

7. The respective counsel submit that the applicants have been in custody for more than one year and therefore they deserve to be enlarged on bail. Dr. Khidrapure happens to be a homeopathic doctor.

8 It is pertinent to note that in fact, the pregnant women going in for pre-natal diagnostic would be equally guilty for indulging into such practices as prescribed in the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and in the present case,

the women or the guardian who had taken her for medical termination of pregnancy are not accused. They have been treated as witnesses. It would be open to the Sessions Court in the course of recording of evidence to arraign the witnesses as accused as contemplated under Section 319 of Cr.P.C. In the present case, more particularly people like Prakash Patil, Trupti Sawant, her husband etc.

9. Section 6 of PCPNDT Act contemplates as follows :-

“6(b) No person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus;

© no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.”

It is in these circumstances that the pregnant women who had voluntarily opted for pre-natal diagnostic would also be accused under the PCPNDT Act.

10. In the abovementioned facts, taking into consideration the role of the present applicants and that they have been in custody for more than one year, the applicants deserve to be enlarged on bail subject to the condition that the applicants shall give an undertaking before this Court that they will not reside in Kolhapur and Sangli till the framing of charge. The applicant – Yasin Tashildar who happens

to be a resident of Kolhapur District shall not stay at Kolhapur, Sangli and Miraj till the framing of charge except for causing attendance before the Court.

11. As far as the applicant – Virangaud Rasaheb Gumate is concerned, he happens to be the original resident of Athani, which is situated on the border of Maharashtra and Karnataka, shall not stay at Athani, Sangli, Miraj and Kolhapur till the framing of charge, except for causing his appearance before the trial Court.

ORDER

- (i) The applications are allowed.
- (ii) The applicants be enlarged on bail on furnishing P.R. Bonds in the sum of Rs.50,000/- each with one or more solvent sureties in the like amount.
- (iii) The applicants shall give an undertaking before the Sessions Court, Sangli as well as to Miraj Rural Police Station within one week from the date of release.

Both the applicants stand disposed of.

(SMT. SADHANA S.JADHAV, J.)