

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.4975 OF 2018

ORDER:

The petitioner is one of the accused and Doctor by profession aged about 67 years. He moved anticipatory bail under section 438 CrPC in crime No.303 of 2018 dated 12.04.2018 registered by the Banjara Hills Police Station, for the offences punishable under Sections 23 & 25 of Pre-conception & Pre-Natal Diagnostic Techniques Act, 1994 (for short 'the Act').

The contentions are that what is the permission accorded to him is ultrasound scan, but the ultrasound machine will not be useful for the determination of the sex and it is highly improbable and unbelievable of such a report of a decoy operation and finding of two Asha workers Swathi and Swapna bringing customers for sex determination through scanning process in the hospital premises of the petitioner from the very report of the Incharge, District Medical & Health Office, dated 10.04.2018.

The other contention is as per the guidelines of the Act issued by the Ministry of Health and Family Welfare, Union of India, in April 2016 by Ministry of Health and Family Welfare particularly Chapter VIII, last but 3rd and 2nd conditions procedure should be completed as per the law and case should be filed in the Court of JFCM/Metropolitan Magistrate (Section 28(2)) and FIR should be avoided under the Act as

there is direct role of police in the Act [Rule 18A3(iv)] and thereby it is a fit case for grant of anticipatory bail apart from the fact that the petitioner is aged about 67 years and a respectable Doctor.

The learned Public Prosecutor opposed the bail application.

Heard learned counsel for petitioner/accused and the learned Public Prosecutor appearing for the State.

Even from that guidelines it is not even shown the offence is non-cognizable and once it is a cognizable offence and once there is a report and it is the duty of the police to register crime, there is nothing to say that the crime registered is prima facie unsustainable, leave about it is not a quash petition much less on that ground. The fact that he was accorded permission for ultrasound is different from that the fact made out from the decoy operation of he is conducting scanning operation by securing the machine for that in pre-determination of the sex is contrary to the provisions of the Act i.e., Sections 23 & 25. Once such is the case, it is not a fit case even he is a Doctor by profession to grant concession of anticipatory bail, but for rather dismissal giving concession if at all chosen to surrender and move for regular bail with notice to Assistant Public Prosecutor and in such event to consider by the learned Magistrate concerned after hearing the learned Assistant Public Prosecutor to grant

bail with necessary conditions if not on same day at least by next day.

Accordingly, this Criminal Petition is disposed of.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 06.06.2018
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