

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-M-3221 of 2020 (O&M)

Date of Decision: January 31, 2020

Dr. Anil @ Anil Kumar Sharma

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. K.S. Dadwal, Advocate
for the petitioner.

Ms. Trishanjali Chopra, AAG Haryana.

JAISHREE THAKUR, J. (Oral)

1. The instant petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.38 dated 25.12.2019, registered under Sections 3, 4 of Medical Termination of Pregnancy Act, 1971, Sections 15(2), 15(3) of the Indian Medical Council Act, 1956 and Sections 312, 315, 318, 420, 34 of the Indian Penal Code, at Police station City Safidon, District Jind.

2. Counsel appearing on behalf of the petitioner after reading the FIRs (Annexures P-1 and P-2) would argue that the petitioner herein has been falsely implicated in the present case due to the personal enmity of the professional doctors, who are also running hospitals in the nearby areas. It is submitted that in the eventuality of any contravention in the provisions of

IMC Act, provisions of IPC would be applicable. It is argued that after reading the allegations as contained in the FIR, apparently offences punishable under the IPC are not made out and the authorities have intentionally and deliberately invoked the provisions of MTP Act as well as IMC Act without realizing that the orders as well as the constitution of the team of doctors was concerned to the information of PNDT Act, as such, cognizance of the offence under the said MTP Act as well as IMC Act is totally contrary to the provisions and procedure provided under the Act. It is submitted that none of the ingredients of the alleged offences stand fulfilled. It is further contended that the petitioner never indulged in any illegal abortion or miscarriage of any lady and even the hospital of the petitioner never indulged in such like activities. Counsel for the petitioner also relies upon affidavits furnished by Ritu and Annu to the effect that nothing wrong had happened with them.

3. Per contra, counsel appearing on behalf of the respondent-State vehemently opposes the grant of anticipatory bail to the petitioner, while submitting that the allegations levelled against the petitioner are serious in nature. It is contended that the petitioner along with his co-accused was actively involved in the act of termination of pregnancy in the Leelawati Hospital, Safidon without any authority.

4. I have heard counsel for the parties and with their able assistance, have gone through the pleadings of the case.

5. Section 438 of Code of Criminal Procedure contains the provisions for grant of anticipatory bail, which reads as under:

"438. Direction for grant of bail to person apprehending arrest.- (1) Where any person has reason to believe that

he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

6. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:-

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Section 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

7. It is settled principle that the anticipatory bail cannot be granted as a matter of rule, it is being an extraordinary privilege, should be granted

only in exceptional cases. In the present case, the case of the prosecution is that the instant FIR was registered in compliance of order Sr. No.PNDT/Jind/2019/228-30 dated 04.12.2019 passed by Civil Surgeon, Jind wherein, it was stated that under supervision of Dr. Prabhu Dayal, Deputy Civil Surgeon, PNDT Jind, Leelawati Hospital, Safidon, Shahpur, Singhana, Anta, Basini and Bagru Khurd were inspected on 02.12.2019 and 03.12.2019 and it was found that Leelawati Hospital, Safidon was not approved for termination of pregnancy under MTP Act, 1971 and Dr. Anil and Dr. Shanti were not eligible for conducting termination of pregnancy. On 02.12.2019 complainant Ritu wife of Sanjay, resident of village Shahpur had visited Leelawati Hospital, Safidon, having pregnancy of 19 weeks and the petitioner herein demanded ₹ 10,000/- for terminating the pregnancy of Ritu. Said Ritu was admitted in the hospital of the petitioner on 02.12.2019 and on 03.12.2019 after the abortion proceeded to her home. On 02.12.2019 and 03.12.2019, the petitioner herein and Dr. Shanti were present in the hospital and the amount of ₹ 10,000/- was taken by the petitioner herein on 03.12.2019. In the FIR, there are similar allegations levelled by other ladies namely Annu w/o Rahul and Kavita w/o Satinder in their statements. During the inspection of the hospital of the petitioner, certain slips of the patient were found from the Chemist Shop of Leelawati Hospital, Safidon regarding use of medicines and injections for conducting the abortion. During inspection, machine which was being used for this purpose was also taken into possession. There are allegations against the petitioner herein that in the hospital of the petitioner patients were sent for abortion and in lieu of that the petitioner herein was paying handsome

commission. Apart from this, the State counsel, on instructions from the Investigating Officer, has read out the statements of Ritu and her husband Sanjay which are to the effect that an abortion was done.

8. There are serious allegations that have been levelled against the petitioner. The petitioner herein is allegedly involved in the act of doing illegal abortions, without any approval from the Govt. So far as the affidavits of Ritu and Annu relied upon by counsel for the petitioner are concerned, which are dated 27.01.2020 and 28.01.2020 i.e. subsequent to the filing of the instant petition and even after issuing notice of motion in this petition, as such, cannot be relied upon at this stage. Section 438 Cr.P.C. is an extraordinary remedy and after considering the material and facts of the present case, custodial interrogation of the petitioner is certainly required by the police for a result oriented investigation.

9. In view of the above, the instant petition for grant of anticipatory bail is hereby dismissed.

January 31, 2020

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No