

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-34797 of 2020

Date of Decision: 30.10.2020

Hassan Mohd.

Petitioner

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sarfraj Hussain, Advocate for the petitioner.
Mr. Pankaj Mulwani, DAG, Haryana.

AVNEESH JHINGAN, J (Oral):

The matter is taken up for hearing through video conference due to COVID-19 situation.

The petition is filed seeking anticipatory bail in FIR No. 226 dated 29.9.2020, under Sections 353, 186, 420 IPC and Sections 4, 5, 6, 23 and 29 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, 'the Act').

The facts in brief are that the police received a secret information about the illegal activities being carried out under the Act. A team of doctors was associated for raiding the location. A decoy customer was deployed to get an ultra sound done, for determining sex of foetus. Payment was made through marked currency notes. The petitioner dramatised conducting of ultra sound of decoy customer and played a pre-recorded video on the LCD to show that ultra sound was being conducted. In the raid, LCD and the equipment for playing videos along with marked currency notes were seized.

Learned counsel for the petitioner submits that there was not

even a single complaint by any one. Moreover as no ultra sound machine was recovered from the premises, the provisions of the Act will not apply.

Learned counsel for the State opposes the grant of anticipatory bail and submits that custodial interrogation is necessary as number of people have been defrauded. He further submits that the allegations are serious, there is recovery of marked currency and the equipment being projected to the customers as ultra sound machine.

Determination of sex of the foetus is a malaice which is affecting the society day in and day out. The desire to have a male child is an open secret. It has affected the gender ratio of the society. Considering disdainful attitude of the society to female child and use of diagnostic equipment for female foeticide Act was enacted to curb the pre-natal sex determination. Despite the specific legislation the menace of sex based destruction of foetus continues to plague the society. It is classic case of misuse of gift of development of technology. The Constitution guarantees equality to genders but pre natal sex determination deprives a female foetus to come to this world. In a civilized society, the sex of foetus cannot be a determining factor for having lease of life to see this world, if permitted the consequences would be devastating, the civilization itself would be endangered. To put in other words termination of female foeticide is destruction of woman of future. There cannot be a dispute on the fact that female has multi-facet role in society.

The Supreme Court in **Voluntary Health Association of Punjab v. Union of India and others, 2016 (10) JT 570** held:

“Before parting with the case, let it be stated with certitude and without allowing any room for any kind of equivocation or ambiguity, the perception of any individual or group or organization or system treating a woman with inequity, indignity, inequality or any kind of discrimination is

constitutionally impermissible. The historical perception has to be given a prompt burial. Female foeticide is conceived by the society that definitely includes the parents because of unethical perception of life and nonchalant attitude towards law. The society that treats man and woman with equal dignity shows the reflections of a progressive and civilized society. To think that a woman should think what a man or a society wants her to think is tantamounts to slaughtering her choice, and definitely a humiliating act. When freedom of free choice is allowed within constitutional and statutory parameters, others cannot determine the norms as that would amount to acting in derogation of law. Decrease in the sex ratio is a sign of colossal calamity and it cannot be allowed to happen. Concrete steps have to be taken to increase the same so that invited social disasters do not befall on the society. The present generation is expected to be responsible to the posterity and not to take such steps to sterilize the birth rate in violation of law. The societal perception has to be metamorphosed having respect to legal postulates.”

The contention of the petitioner that there was no complaint against him holds no water. The person who is in active participation against an enactment, in other words is a party to the illegal act, is not expected to come forward to make a police complaint. The persons who were being fleeced probably would not be aware that in the name of determination of sex they were shown pre-recorded video.

The next contention of learned counsel for the petitioner that the provisions of the Act will not apply as no ultra sound was conducted does not enhance the case of the petitioner. The fact remains that the assurance given and the picture projected was that her ultra sound is being carried out. Even of decoy customer, the ultra sound gel was applied, the probe was put on her abdomen and thereafter video recording was played on the LCD.

In the present case, albeit the petitioner was not conducting an

ultra sound yet he had to give result of sex determination as he was charging for the same, his conduct would determine the fate of the foetus.

At this stage, it would be relevant to quote Section 5 and 6 of the Act:

5. Written consent of pregnant woman and prohibition of communicating the sex of foetus.

(1) No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless-

(a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;

(b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and

(c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

(2) No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs, or in any other manner.

6. Determination of sex prohibited. -On and from the commencement of this Act,--

(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;

(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;

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

As per Section 5 (1), no pre-natal diagnostic procedure shall be carried without explaining the side effects to pregnant lady and without obtaining her consent.

Section 5 (2) states that the sex of the foetus shall not be communicated to the pregnant woman or her relatives or any other person by words, signs or in any other manner.

Section 6 prohibits various centres to use the diagnostic techniques for determining the sex of the foetus.

At the stage of grant of anticipatory bail, a prima facie case is to be seen and the matter is not to be decided finally. Considering the nature of allegations and the evidence collected, no case is made out for grant of anticipatory bail.

The petition is dismissed.

It is clarified that observations made hereinabove are only for deciding the anticipatory bail.

[AVNEESH JHINGAN]
JUDGE

30th October, 2020

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |