

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

CRM-M-1604-2021

Date of decision:-13.1.2021

Pawan Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Manoj Tanwar, Advocate
for the petitioner.

Mr.Tanuj Sharma, AAG, Haryana.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Pawan Kumar, aged 26 years, resident of village Islamgarh, P.S. Beri, District Jhajjar, an accused in FIR No.426 dated 23.12.2020 for the offences under Sections 3-A, 4(iv), 6(c), 22, 23 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse), Act, 1994 (hereinafter referred to as PNDT Act) and Section 120-B IPC, registered with Police Station Beri, District Jhajjar, Haryana.

Briefly stated, the prosecution story is that Civil Surgeon, Jhajjar had received a secret information that present petitioner Pawan

Kumar, a resident of Chhuchakwas along with one Sumitra, resident of Rewari was involved in pre-natal sex determination tests, which were illegal. Civil Surgeon, Jhajjar accordingly passed information to Civil Surgeon, Rewari. On receipt of that information, DAA(PNDT), Rewari formed a team for carrying out investigation in the matter. The said team contacted the informer and the informer handed over a recording to the team. The recording was with regard to a female tout talking about pre-natal sex determination test for consideration. The team comprising Dr.Vishal Rao, Dr.Rajnish and Sh.Amandeep Chauhan, Drugs Controller Office, Rewari arranged a decoy customer by the name of Pooja Kumari. Pooja Kumari was handed over a sum of Rs.35,000/- and was directed to accompany Kamalkant, who was appointed as a shadow witness, in a car bearing registration No.HR-36-AF-1752. They were to go towards toll plaza of village Bikaner, where the tout was to meet them. The team followed the car. The tout came to toll plaza and boarded car. The car proceeded towards Kosli from where it turned towards Chhuchakwas. The team members accordingly contacted concerned persons at Jhajjar and provided the necessary information. DAA (PNDT), Jhajjar had also constituted a team. On reaching Chhuchakwas, the car stopped in front of Government school. The accused Pawan Kumar was waiting for the tout having Honda Activa scooter bearing registration No.HR-14Q-3859. The tout asked the decoy customer to pillion ride the Honda Activa scooter of Pawan Kumar for the purpose of undergoing sex determination test. The tout disclosed her name as Sumitra. Said Sumitra along with Pawan Kumar took decoy customer to a house, receiving Rs.33,000/- from her.

After some time when Sumitra and Pooja Kumari came out, then Sumitra was apprehended by the team with the help of female police officials. The decoy customer disclosed to the team that the tout had taken her to a house and she asked Pawan Kumar to bring the machine for sex determination. Though initially Pawan Kumar had gone inside the house for bringing the machine and came out with a bag but on suspicion, he ran away with the bag asking Sumitra also to run away. The team had recovered Rs.33,000/- from tout Sumitra. The photography of the recovered currency notes was got done. The amount was taken into possession. The tout Sumitra was handed over to the police. Formal FIR in the matter was recorded and investigation started.

Apprehending his arrest in this case, the present petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application, which was assigned to learned Additional Sessions Judge, Jhajjar. However, his such request was declined by learned Additional Sessions Judge, Jhajjar vide order dated 6.1.2021. As such, the present petitioner has approached this Court by way of filing the instant petition asking for the similar relief.

Notice of the petition was issued to respondent – State. Mr.Tanuj Sharma, AAG, Haryana has appeared on behalf of respondent – State and accepts notice on its behalf. He opposes the petition.

I have heard learned counsel for the parties besides going through the records.

Learned counsel for the petitioner has contended that the petitioner is innocent and has been wrongly involved in this case; as a

matter of fact lodging of FIR in the matter is specifically barred under Section 28 of the PNDT Act and a complaint can be filed by authorized person. Therefore, the petitioner be granted pre-arrest bail.

Whereas, the request is being vehemently opposed by the State counsel.

After hearing the rival contentions and going through the record, I find that no case for grant of pre-arrest bail to the petitioner is made out.

In most of the cases, the purpose for getting such test done is to get the female foetus aborted. As result of people going for such type of tests in a large number, a big social problem has arisen, resulting in an alarming decrease in the birth of the girl children, upsetting the social fabric. To curb that tendency, PNDT Act had been enacted by the Legislature making carrying out of sex determination tests illegal.

As far as the contention of learned counsel for the petitioner that in terms of Section 28 of PNDT Act, only a private complaint could have been filed and lodging of FIR is barred, it needs to be taken note of that the present FIR has been lodged for the offence under Section 120-B IPC besides various Sections of PNDT Act. Therefore, no fault can be found with the registration of the FIR in the present case.

With regard to other submissions made by learned counsel for the petitioner, it is observed that the petitioner is specifically named in the FIR and specific acts have been attributed to him with regard to carrying test for sex determination. Though sex determination test had actually been not undertaken on the decoy but as the prosecution story

goes, the petitioner/accused had brought the machine for doing so, carrying it in a bag but he got suspicious of being trapped, as such, he ran away along with the bag. If the petitioner had not done anything wrong and had not indulged in any illegal activity, there was no reason for him to run away from the spot along with the bag carrying the machine. His acts and conduct clearly goes to point out towards his guilty intention.

The petitioner /accused is stated to be involved in another similar case under Section 6 (C) of PNDT Act and Sections 336, 42- and 120-B IPC, which is stated to be pending. That shows that he is a habitual of indulging in such type of activities.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from arrest and custodial interrogation.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for unfolding the complete story and to effect the recovery of machine used for carrying out sex determination test. It has also been found out as to in how many other cases, the petitioner had conducted such type of tests and money received by him from the customers. In case custodial

interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

Thus the petition is doomed for failure and is dismissed accordingly.

13.1.2021

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**