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

CRM-M-1149-2022

Date of decision : 13.01.2022

Dinesh Garg

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vikas Saroha, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.637 dated 02.12.2021 registered under Sections 420/336/120-B of the Indian Penal Code, 1860, Sections 3, 4 and 5 of the Medical Termination of Pregnancy Act, 1971, Sections 18A, 18B and 18(C) of the Drugs and Cosmetics Act, 1940 and Section 15(2)(B) of the Indian Medical Council Act, at Police Station Sector-58, District Faridabad.

FIR, in the present case, has been registered on the application moved by Deputy Civil Surgeon, PNDDT, Palwal to the effect that he had received secret information that one quack Dr. Anand is practicing as a Doctor at M/s Komal Health Centre and is running an illegal business of

medical termination of pregnancy (for short “MTP”) and easily providing the MTP kits to abort the fetus of pregnant women and charging Rs.1000/- per MTP kit and accordingly, a raiding team was prepared and one decoy customer namely Smt. Manisha was sent to the clinic, who met the said Dr. Anand and told him that she was pregnant and she needed medicine and treatment to abort the child and Dr. Anand told her that she can terminate the same with MTP pills and asked for an amount of Rs.700/- from her. The moment, the said amount of Rs.700/- was handed over to Dr. Anand, the raid was conducted and he was arrested on the spot. It is the case of the petitioner that said Doctor has stated that she had taken the MTP kit from the present petitioner.

Learned counsel for the petitioner has submitted that the petitioner was not the one who was apprehended at the time of raid and has also argued that the petitioner is a Drug Licence Holder and is authorized to sell, purchase, stock the medicines and there are no allegations to the effect that it is the petitioner who had sold any medicine to any lady who was pregnant and has further submitted, that all the sales which have been made by the petitioner are with the bills and in accordance with his licence. It is contended that the petitioner was granted interim protection by the Additional Sessions Judge, Faridabad vide order dated 21.12.2021 but however, his anticipatory bail application had been rejected on the ground that there were call details between the petitioner and the applicant. It is further contended that since the petitioner is a Licenced Pharmacist, thus, he keeps MTP kits and sells the same to persons after being shown a prescription from the Doctor. It is argued that the custodial interrogation of

the petitioner is not required inasmuch as, nothing is to be recovered from him and the petitioner is not involved in any other case.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of anticipatory bail to the petitioner and has submitted that the petitioner has been made as an accused on the basis of disclosure statement of the main accused-Dr. Anand.

This Court has heard the learned counsel for the parties and has perused the record.

It is not in dispute that the person against whom the allegations have been levelled in the FIR is one Dr. Anand and it is him, who was apprehended at the time of raid while selling the MTP pill kits to one planted witness i.e. Smt. Manisha for Rs.700/-. The petitioner is only sought to be involved on the basis of disclosure statement of the said co-accused and no recovery has been effected from the petitioner. The petitioner was granted interim bail and thereafter, his anticipatory bail application was rejected. As per version of the petitioner, the petitioner is a Drug Licence Holder and is authorized to sell, purchase, stock the medicine. There is no allegation to the effect that the petitioner had sold any medicine to any lady who was pregnant. The entire case is based upon the documentary evidence with respect to the raid and no recovery is to be effected from the present petitioner and thus, custodial interrogation of the petitioner is not required. The petitioner is stated to be not involved in any other case.

In view of what has been observed above, the present petition is allowed and in the event of arrest, the petitioner is granted the concession of anticipatory bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer and the conditions envisaged under Section 438(2) of Cr.P.C. However, the petitioner shall join the investigation as and when called upon to do so.

It is made clear, in case, the petitioner fails to join the investigation, then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

13.01.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**