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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2744-2022

Date of Decision: March 2, 2022

Rajesh Chand Mittal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.R.S.Cheema, Sr.Advocate with
Ms.Tanu Bedi, Advocate, for the petitioner.

Mr.Vishal Kashyap, DAG, Haryana.

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RAJESH BHARDWAJ, J.

Instant petition has been filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioner in case FIR No.508, dated 25.12.2021, under Sections 312, 315, 511, 420, 120-B IPC, Sections 3, 4, 5 of the Medical Termination of Pregnancy Act, 1971, Section 15(2)(3) of the Indian Medical Council Act, 1956 and Section 34(1)(2) of the National Medical Commission Act, 2019, registered at Police Station City Jagadhri, District Yamuna Nagar.

Brief facts of the case are that FIR in question has been lodged by Dr.Puneet Kalra, Deputy Civil Surgeon, Yamuna Nagar. It was informed to the police that a raid was conducted by the team consisting of Dr.Puneet Kalra, Deputy Civil Surgeon, Dr.Mehak, Medical Officer, SDH Jagadhri and Mr.Praveen Baleshar, DCO Yamunanagar on Prakash Drug Store, Chowk Bazar, Jagadhari, Yamunanagar, proprietor Rajesh Mittal and found that

alleged that decoy patient Gudiya w/o Harshdeep Singh and Anju w/o Deepak, Asha Worker, as helper were sent there, i.e. to Prakash Drug Store, on 24.12.2021 at 4.30. p.m.. On 25.12.2021, call of Dr.Puneet Kalra, Nodal Officer, PNDDT, Civil Hospital, Yamunanagar was received at the police Station that Prakash Medical Hall, Chowk Bazar Jagadhari was selling MTP kits and police was requested to send its team for enquiry. Upon that information, police reached there and found the doctor present there alongwith his team. Recovery of 4 polythene on the spot sealed with 5-5 stamps of doctor and one parcel of cloth alongwith DVR sealed with 5 stamps of doctor alongwith special Sal were made. The said parcels were taken into police custody through separate memos. Doctors presented the application and documents in spot of memo, one photostat of two currency notes of 500/500, one seizure memo and 2 Pan statements. Thus, the above-mentioned FIR was registered. As a result, the investigation commenced and the petitioner was arrested on 25.12.2021. The petitioner approached the Judicial Magistrate Ist Class, Jagadhari, for grant of bail, who, after hearing the parties, declined the same vide its order dated 29.12.2021. He thereafter filed the same before the learned Additional Sessions Judge, Yamuna Nagar, who also declined the same vide its order dated 06.01.2022. Aggrieved by the same, the petitioner has approached this Court praying for grant of bail.

Learned senior counsel has submitted that the prosecution of the petitioner in the present case is nothing but an abuse of the process of the Court. He has submitted that FIR in question itself is not maintainable in the facts and circumstances of the case. He submits that petitioner is behind

420, 120-B IPC, Sections 3, 4 and 5 of the Medical Termination of Pregnancy Act, Section 15(2)(3) of the Indian Medical Council Act, 1956 and Section 34(1)(2) of the National Medical Commission Act, 2019, under which even if the charges are proved against the petitioner, maximum sentence would be upto 2 years rigorous imprisonment. He submits that the State has not invoked the provisions of Drugs and Cosmetics Act, 1940 (for brevity, 'the 1940 Act'). Learned senior counsel submits that petitioner is an authorised licensee for carrying out the business of selling drugs. Allegation against the petitioner is that he sold the MTP kit without prescription of the doctor. Even if this allegation is taken on its face value then the offence, as alleged, would not constitute rather the same could be in violation of the 1940 Act, which is not even invoked by the prosecution. He further went on to address the Court that in case the prosecution would have invoked the offence under the 1940 Act, then also maximum sentence would have been of two years rigorous imprisonment. Further the offences alleged under Sections 312 and 315 read with Section 511 IPC are not even made out. As per the case of the prosecution itself, the decoy patient was sent to the shop of the petitioner a day prior to the raid conducted. Petitioner is alleged to have sold "i-can" pregnancy kit to the decoy patient for confirmation of the pregnancy and on confirmation of the pregnancy of the patient, the MTP kit was sold on the next day, i.e. 25.12.2021. He submits that prima facie no pregnancy of the decoy patient is established merely from the allegations made in the FIR, whereas the statutory provisions of Sections 312 and 315 IPC are attracted in case of a confirmed pregnancy of the patient, which are totally missing in the present case. He contends that petitioner has been duly

there is any violation on the part of the petitioner that would fall under the 1940 Act and not under the offences, as alleged against the petitioner. Learned senior counsel has further drawn the attention of this Court to the judgment passed by this Court in CRM-M-34689 of 2016, titled as **Kamal Vasudeva and another vs State of Haryana**, decided on 02.08.2019, in which this Court had quashed the FIR under Sections 4 and 5 of the Medical Termination of Pregnancy Act, 1971 and Sections 315 and 511 IPC. He further submits that at the time of rejection of the bail by the learned Additional Sessions Judge, the case was under investigation, however, now the investigation is complete and there is no apprehension whatsoever to be alleged against the petitioner for scuttling the ongoing investigation. He submits that the petitioner deserves to be enlarged on bail.

Learned State counsel has controverted the submissions made by learned senior counsel. He submits that though the petitioner is a licenced holder for selling the drugs, however, he was found indulging in carrying out the illegal operations for abortion and hence, he has been rightly prosecuted for the offences mentioned in the FIR. He submits that the investigating agency constituted a raiding team headed by the doctors. Decoy patient was sent to the shop of the petitioner. He sold the “i-can” pregnancy kit which was meant to confirm the pregnancy of the patient. He advised the decoy patient of its use and once the pregnancy was confirmed by the decoy patient, then he called her on the next day and sold the MTP kit without any prescription from an authorised doctor. He submits that raiding team had recovered all the objectionable medicines and the currency notes handed over by the decoy patient. He submits that the petitioner is rightly

acknowledges that the investigation is complete and the challan is already presented before the Court of competent jurisdiction and now the case is fixed for framing of charge.

Heard.

Admittedly, the petitioner is an authorised drug seller, who is running a chemist shop in question. A team of Doctors was constituted. The decoy patient was sent on 24.12.2021 and thereafter on the next day, a raiding team raided the shop of the petitioner and recovered the materials, as alleged. Evidently, from bare perusal of the FIR, it is evident that the provisions of the 1940 Act are not invoked by the prosecution. The allegations and counter-allegations of the prosecution and that of the defence are totally disputed questions of facts, the veracity of which can only be evaluated only on the basis of appreciation of evidence to be led by the parties before the trial Court. Maintainability of the present FIR has also been vehemently challenged by learned senior counsel. The Court would prefer to confine itself for the prayer for grant of bail and thus, would refrain itself from commenting anything on the merits at this stage. Admittedly, investigation has already been completed and the challan has been presented before the learned trial Court. There is nothing on record showing that the petitioner on earlier occasions also has been prosecuted for the similar offence.

In view of the overall facts and circumstances, the Court is convinced that the learned senior counsel has succeeded in making out a case for grant of bail.

Without commenting anything on the merits of the case, present

petition is allowed. Petitioner is ordered to be released on bail on his

furnishing the bail/surety bonds to the satisfaction of concerned trial Court/Duty Magistrate.

March 2, 2022
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |