

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

CRM-M-7878-2022

Date of Decision:-02.03.2022

Jitender Kumar.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Manish Soni, Advocate for the Petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.313 dated 16.11.2021 under Sections 3, 4, 5 of Medical Termination of Pregnancy Act, 1971 and Section 15(2) of The Indian Medical Council Act, 1956 and Sections 18A, 18B and 18(c) of Drugs and Cosmetics Act, 1940 and Sections 336, 420 and 120-B IPC registered with Police Station New Colony, Gurugram.

The allegations against the petitioner are that he sold MTP Kits to abort fetuses and without being a qualified doctor thus endangering the life of pregnant women.

Counsel for the petitioner contends that mere selling of MTP Kits was not an offence. He relies upon Annexure P-4 to submit that in a similar matter arising out of another FIR proceedings were quashed. He

further contends that selling medicines without a licence would not entail the commission of an offence under Section 420 IPC but at best it would be an offence under the Drugs and Cosmetics Act for which a complaint was maintainable and not an FIR. It is also contended that the Medical Termination of Pregnancy Act, 1971 prohibits termination of pregnancy beyond 12 weeks. Medicines allegedly recovered at the time of the raid were for the purposes of termination of pregnancy upto 9 to 10 weeks and thus no offence was made out. It is also contended that it was a magisterial trial and petitioner is in custody since 16.11.2021 and the report under Section 173(2) Cr.PC had already been filed. In support of his contention he has placed reliance upon **Union of India Vs. Ashok Kumar Sharma, & Ors. 2020(3) RCR (Criminal) 726** and **Ashok Kumar Vs. State of Punjab & Ors. 2011(2) RCR (Criminal) 449**.

Learned Counsel for the State on the other hand contends that this is a serious offence and such kind of quacks play with the life of innocent villagers. He further contends that illegal abortions are on the rise and the sex ratio is being effected.

I have heard learned counsel for both the parties.

Admittedly, this is the only FIR against the petitioner. He has been in custody since 16.11.2021 and as many as 14 witnesses are cited in the list of witnesses. The trial of the present case is not likely to be concluded in the near future. Thus his further incarceration would not serve any fruitful purpose more so when the investigation stands concluded.

Therefore, without commenting upon the merits of the case, keeping in view the custody period and the fact that the trial is not likely to be concluded in near future, the present petition is allowed and the

petitioner **Jitender Kumar** son of Sh. Gyan Chand is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, Gurugram.

It is further made clear that if petitioner indulges in similar offences for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

(JASJIT SINGH BEDI)
JUDGE

March 02, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>