

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

- (1)

Sant Ram

Versus

State of Haryana

...Respondent
- CRM-M-31059-2021 (O&M)

...Petitioner

(2)

Sunil Kumar

Versus

State of Haryana

...Respondent

CRM-M-44702-2021 (O&M)

...Petitioner

(3)

Sunita

Versus

State of Haryana

...Respondent

CRM-M-35204-2021 (O&M)

...Petitioner

(4)

Jaswinder Kaur

Versus

State of Haryana

...Respondent

CRM-M-45323-2021 (O&M)

...Petitioner

(5)

Surender

Versus

State of Haryana

...Respondent

CRM-M-45939-2021 (O&M)

...Petitioner

(6)

Dr. Anant Ram

Versus

State of Haryana

...Respondent

CRM-M-47793-2021 (O&M)

...Petitioner

(7)

CRM-M-50099-2021 (O&M)

Jagraj

...Petitioner

Versus

State of Haryana

...Respondent

Date of Decision:- 02.04.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Abhishek Sethi, Advocate for the petitioners
in CRM-M Nos. 31059, 35204 and 47793 of 2021.

Mr. Rajesh Kumar Sheoran, Advocate for the petitioners
in CRM-M Nos. 45939 and 44702 of 2021.

Mr. Kulwinder Kaur, Advocate for the petitioner
in CRM-M-45323-2021.

Mr. Gurinder Singh, Advocate for the petitioner
in CRM-M-50099-2021.

Mr. Rajiv Sidhu, DAG, Haryana
assisted by SI Surinder.

(proceedings conducted through video conferencing)

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GURVINDER SINGH GILL, J.

1. This order shall dispose off the a bunch of above mentioned petitions seeking grant of anticipatory/regular bail in a case registered vide FIR No.474 dated 14.7.2021 under Sections 23, 3(1), 3A, 4, 5(2), 6(b) of the Pre Natal-Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and Sections 120-B/34 IPC at Police Station Barwala, District Hisar. The petitions can be identified separately as follows:

Petitions for Anticipatory Bail :

CRM-M-31059-2021	Sant Ram
CRM-M-44702-2021	Sunil Kumar
CRM-M-35204-2021	Sunita

Petitions for Regular Bail :

CRM-M-45323-2021	Jaswinder Kaur
CRM-M-45939-2021	Surender
CRM-M-47793-2021	Dr. Anant Ram
CRM-M-50099-2021	Jagraj

2. The FIR was lodged at the instance of Dr. Prabhu Dayal, Nodal Officer, PNDDT, Civil Hospital, Hisar. The story unfolded in the FIR is that Civil Surgeon-cum-Chairman, District Appropriate Authority, Fatehabad received a secret information to the effect that illegal sex determination was being carried on. Upon receipt of said information Civil Surgeon, Fatehabad constituted a three member team on 12.7.2021 comprising of the following members :-

- (i) Dr. Hanuman Singh, Deputy Civil Surgeon, Fatehabad;
- (ii) Dr. Girish Kumar, Additional Senior Medical Officer, General Hospital, Fatehabad; and
- (iii) Dr. Kamal Beniwal, Medical Officer, General Hospital, Fatehabad.

3. The said persons were authorized to do the needful and also to get the requisite FIR lodged. The team so appointed collected information to the effect that Jagraj Singh, resident of Sangrur with the help of Jaswinder Kaur, resident of Tohana, District Fatehabad used to get sex determination tests conducted in an illegal manner. A pregnant lady namely Nisha was

associated as a decoy pregnant female. A deal for sex-determination test was struck for an amount of Rs.40,000/-. On the asking of secret informer, an amount of Rs.20,000/- was transferred from the account of the decoy pregnant female to the account of Jagraj through '*Google Pay*' from the mobile phone of the decoy pregnant female to the mobile phone of Jagraj. The decoy pregnant female was asked to pay the balance amount of Rs.20,000/- in cash on the day of examination. One Deepak Kumar, Pharmacist at Government Hospital, Sirsa was nominated to accompany the decoy pregnant female in a car which was to take the decoy pregnant female to the place nominated by Jagraj Singh i.e. Chandigarh Road near Chaudhry Petrol Pump, Tohana on 13.7.2021 at 9:30 a.m. On the said day, the team constituted by Civil Surgeon tailed the car in which the decoy pregnant female was being taken for the test. When the car driven by Deepak Kumar reached near Chaudhry Petrol Pump at about 9:30 a.m., Deepak Kumar, on the asking of the secret informant, took the car towards Railway Road, Tohana where two persons came on a motorcycle. One of them whose name was Jagraj sat in the car. Deepak as well as the decoy pregnant female were made to sit on the rear seat. Another lady namely Jaswinder Kaur also came and sat in the car. On the asking of Jaswinder Kaur, the decoy pregnant female handed over an amount of Rs.20,000/- in cash which had been given to her by the team. Jagraj drove the car to Barwala (Hisar). One of the team members namely Dr. Girish Kumar intimated Dr. Ratna Bharti, Civil Surgeon, Hisar through Dr. Viresh Bhushan, Civil Surgeon, Fatehabad that their team as well as the decoy pregnant female were proceeding towards Barwala (Hisar) and asked them to keep their PNDT team ready so that they

may also reach the place of occurrence immediately. Consequently, a team comprising of the following doctors/ officials of Hisar was constituted:-

- (i) Dr. Prabhu Dayal, Nodal Officer, PNDT, Hisar;
- (ii) Dr. Kamind Monga, ASMO-CHC, Hansi; and
- (iii) Dr. Tarun Bhutani, Dental Surgeon, UHC, Sector 14, Hisar.

4. The team, so constituted, was to wait for the signal from the Fatehabad team. The Alto car in which the decoy pregnant female was travelling reached Bus Stand, Barwala where Jaswinder Kaur and Jagraj asked Deepak to alight from the car. Another lady sat in the car. Jagraj took the car to JD Jindal Hospital situated at Hisar road. Jaswinder Kaur took alongwith her the decoy pregnant female as well as the other lady to the house situated in the colony behind JD Jindal Hospital. They were taken to first floor where a person, having a machine looking like a laptop, was waiting in the room. The second lady who had accompanied them from Bus Stand, Barwala was asked by Jaswinder Kaur to lie down on a bench. She was examined by a person sitting in the room and was informed that she was carrying a male fetus. Thereafter, the decoy pregnant female was asked to lie down on a bench. The person present there conducted ultrasound examination of her abdomen and disclosed that she was carrying a fetus of five and a half months and the same was upside down and that the same was a male fetus. When they came out of the room, Jaswinder Kaur disclosed the name of the person who had conducted the test as Dr. Anant Ram. Jaswinder Kaur brought both the females back to Barwala (Hisar) on foot where Jagraj was waiting. He drove all three of them namely Jaswinder Kaur, decoy pregnant female and the other lady towards Bus Stand, Barwala. When the car

stopped at the Bus Stand, the decoy pregnant female signalled to the raiding team and the team members apprehended Jagraj and Jaswinder Kaur with the help of a police team. Dr. Girish Kumar requested the Hisar team to reach Barwala immediately. The team took Jagraj and Jaswinder Kaur to the place where sex determination test had been conducted and a raid was conducted. Dr. Anant Ram as well as the owner of the house namely Smt. Sunita had already fled from the place. Upon search of Jaswinder Kaur, 80 currency notes of the denomination of Rs.500/- were recovered out of which 40 currency notes were the ones passed on by decoy pregnant female whose serial numbers had been noted down previously by the raiding team of Fatehabad. The remaining 40 currency notes were stated to have been given to Jaswinder Kaur by the second pregnant lady namely Smt. Manisha. At that time, the Hisar team also reached the place of occurrence. Jaswinder Kaur, upon being quizzed, stated that she had taken both the ladies alongwith Jagraj to Dr. Anant Ram in the house of Sunita for the purpose of getting the sex determination test conducted. Jagraj, in his statement, also admitted that the deal had been struck for Rs.40,000/- out of which he had received Rs.20,000/- in his account through '*Google Pay*'. A DVR in respect of CCTV cameras installed in the premises, was taken into possession. An ultrasound machine - make 'SURBI' alongwith a probe, a Dell laptop charger, a SURBI ultrasound machine charger, attachment cable etc. were also recovered from the spot. Statement of one Hawa Singh of locality was recorded, who stated that the house in question belongs to Sunita.

5. The learned counsel representing the petitioners have submitted that the FIR has been got lodged by the Civil Surgeon, Fatehabad in respect of an offence which occurred within the territorial jurisdiction of Hisar and that it was the appropriate authority at Hisar, which was the competent authority for doing the needful for the purpose of setting up decoy customer and investigating the case and not the authorities at Fatehabad. It has further been submitted that Section 28 of the PNDT Act visualizes filing of a complaint and that there is no provision for lodging of any FIR and as such, the entire proceedings are an illegality, entitling petitioners for grant of bail.
6. The learned counsel representing - Sant Ram submits that he has been nominated as an accused on the premises that he is working as a driver with Dr. Anant Ram. It has been submitted that he cannot be said to be conscious of what Dr. Anant Ram and others were doing and cannot be said to have benefitted in any manner from the proceeds of crime and that at best he can be said to be an employee of Dr. Anant Ram without having any role to play in the alleged commission of crime, and that as such, he deserves grant of anticipatory bail.
7. The learned counsel representing - Sunil Kumar has submitted that he has falsely been involved in the present case solely on the premises that he happens to be friend of co-accused Surrender by levelling false allegations to the effect that it was through him that the decoy pregnant female contacted Jaswinder Kaur. The learned counsel has submitted that the petitioner has no role to play in the alleged sex determination test and that nothing is to be recovered from him and as such, he deserves the concession of anticipatory bail.

8. The learned counsel representing - Sunita has submitted that she has been involved solely on the premises that the place, where the alleged sex determination test was conducted by Dr. Anant Ram, was owned by her. It has been submitted that there is nothing on record to show that she had any skills of performing any kind of tests or that she had joined hands with the co-accused or that she had benefitted in any manner from the amount allegedly paid by the decoy pregnant female so as to establish her involvement in the alleged commission of crime and as such, she deserves the concession of anticipatory bail.

9. The learned counsel representing the petitioners Jaswinder Kaur, Surender, Dr. Anant Ram and Jagraj, while pressing upon their case for grant of regular bail have submitted that since the petitioners have been behind bars for a substantial period ranging from 5 to 9 months and the maximum sentence, as may be imposed, is 3 years, they may be released on regular bail. The period undergone by the said petitioners is as follows :-

(i)	Jaswinder Kaur	-	9 months
(ii)	Surender	-	5 ½ months
(iii)	Dr. Anant Ram	-	5 ½ months
(iv)	Jagraj	-	8 months

10. On the other hand, the learned State counsel, while opposing the petitions, has submitted that it is a case where the investigating agency has collected sufficient evidence to establish the involvement of all the accused. The learned State counsel has submitted that infact the petitioner Dr. Anant Ram has previously been involved in 5 identical cases, out of which he stands

acquitted in 2 but 3 are still pending. The learned State counsel has submitted that the role of petitioner – Surrender cannot be undermined since his wife Manisha has suffered a disclosure statement that she had disclosed that she had come from Gopalvas to Barwala via a bus and her husband had contacted Jaswinder Kaur through another person. The learned State counsel has submitted that the complicity of Jagraj is clearly evident inasmuch as there is convincing evidence to the effect that he was beneficiary of an amount of ₹20,000/-, which was received by him through 'Google Pay'. The learned State counsel has further submitted that Jaswinder Kaur also cannot escape from her liability inasmuch as she was caught red-handed at the spot and Jaswinder Kaur alongwith Dr. Anant Ram, Sant Ram and Sunita are also seen in the CCTV footage collected from the place of occurrence. It has been submitted that an amount of ₹40,000/- was recovered from her including 40 currency notes of denomination of ₹ 500/- whose serial number had been duly noted by the team constituted by the Civil Surgeon, Fatehabad, which clearly shows her involvement.

11. I have considered rival submissions addressed before this Court.
12. The contentions including legal submissions made on behalf of the petitioners may be stated as follows :-

- (i) that since the deal is alleged to have been struck for Rs.40,000/- out of which Jagraj Singh received an amount of Rs.20,000/- through 'Google-Pay' from decoy customer, which was recovered from him, and the balance amount of Rs.20,000 was recovered from Jaswinder Kaur on 14.7.2021 after the alleged sex-determination test had taken place, therefore it is apparent that Dr. Anant Ram has not benefitted in any manner out of the total amount of Rs.40,000/-, which would totally rule out his involvement;

- (ii) that the petitioner was neither arrested at the spot nor was the test conducted at his clinic nor the recovered machine can be said to belong to him so as to connect him with the occurrence;
- (iii) that since the alleged act of illegal sex determination had taken place in Hissar, therefore the team appointed by Civil Surgeon Fatehabad would have no territorial jurisdiction in respect of the alleged commission of offence at Hisar and as such the entire proceedings having been conducted by Fatehabad team without jurisdiction stand vitiated;
- (iv) that the complainant had no authority whatsoever to get the FIR lodged and that it is only the Appropriate Authority which has been vested with powers to take action against offenders;
- (v) that as per section 17(4)(e) of the Act, it is solely the Appropriate Authority, which is authorised to carry out investigation with respect to breach of provisions of the Act and Rules framed thereunder and that police has no role therein particularly when the Authority has been vested with ample powers in this regard by virtue of section 17A, 20 and 30 of the Act and since in the present case, a major part of investigation had been conducted by police officials only, the same is against the intent and spirit of the Act and is thus void *ab-initio* and stands vitiated;
- (vi) that as per Section 28, the Court can take cognizance only on a complaint made by Appropriate Authority and not on the basis of Report u/s 173 Cr.P.C; and
- (vii) that as per Rule 18A(3)(iv) of The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules 1996, framed in exercise of the powers conferred by section 32 of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, the Appropriate Authority is not supposed to associate police for investigating case under PNDT Act.

13. It may here be mentioned that one of the petitioners namely Dr. Anant Ram had also filed a petition under Section 482 Cr.P.C. for quashing of the FIR as well as consequential proceedings i.e. CRM-M-36146-2021 wherein also the aforesaid contentions had been raised. The said petition has also been decided today wherein all the aforesaid contentions have been discussed at

length and have been turned down and consequently, the petition for quashing of FIR has been dismissed by separate order passed today. The aforesaid contentions are not being discussed in this petition in order to maintain brevity. However, the case of each of the petitioners is being discussed individually on the basis of the factual position in the matter as follows :-

Sant Ram (Anticipatory bail petition)	The petitioner is stated to be a driver of Dr. Anant Ram and his presence is reflected in the CCTV footage wherein he is shown to have driven Dr. Anant Ram to the place on a motorcycle. The learned State counsel has submitted that although he has joined investigation but he is not fully cooperating inasmuch as he is not disclosing the names of all the 14-15 women seen at the place of occurrence. Having regard to the fact that the role attributed to the petitioner is that he had driven Dr. Anant Ram to the place of occurrence on a motorcycle, it may be said that he is an employee of Dr. Anant Ram. However, the question as regards his involvement in the commission of crime would be debatable. In these circumstances, this Court is of the opinion that the petitioner can be extended the benefit of anticipatory bail. The petition, as such, is accepted and it is ordered that the petitioner in the event of his arrest shall be released on bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However,
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	the petitioner shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.
Sunil Kumar (Anticipatory bail petition)	The petitioner Sunil Kumar has been nominated as an accused on the premises that he is a friend of Surender and it was through him that Surender had contacted Jaswinder Kaur. The petitioner is stated to have joined investigation and is not stated to be involved in any other case. Having regard to the aforesaid role of the petitioner and the fact that he is not involved in any other case earlier and has already joined investigation, the petition is accepted and the interim directions issued by this Court vide order dated 27.10.2021 are hereby made absolute subject to the condition that the petitioner shall continue to appear before the Investigating Officer as and when called upon to do so and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.
Sunita (Anticipatory bail petition)	It is not disputed that the petitioner is owner of the house where illegal sex determination test was conducted by Dr. Anant Ram. The CCTV footage of the place of occurrence as well as the recovery of the ultrasound machine and other equipments from her house would show that it is in the house of Sunita where illegal activities were being conducted. It is

	not the case of the petitioner that she had rented out the premises to Dr. Anant Ram. In these circumstances, much remains to be explained on part of the petitioner. The ultrasound machine cannot be said to have been planted by the raiding team which comprised of responsible senior doctors. As such, her cutodial interrogation is necessary to unearth all the finer details of crime including the number of such tests conducted earlier. The petition for grant of anticipatory bail on her behalf is found to be sans merit and is hereby dismissed.
Jaswinder Kaur (Regular bail petition)	As per the case of prosecution, she alongwith Jagtar had brought the decoy pregnant female to the place where illegal sex determination test was conducted. As per prosecution, she is seen in the CCTV footage as well and thus, cannot dispute her presence. The recovery of an amount of ₹40,000/- including the currency notes of ₹20,000/-, whose serial number had been noted, would show her involvement. She is also stated to be involved in one more case under the PNDDT Act registered in the year 2016. However, this Court finds that Jaswinder Kaur is a lady aged 60 years and has been behind bars since the last about 8 months. In these circumstances, her further detention will not be justified. The maximum sentence as provided in the PNDDT Act for the offences concerned is 3 years. Consequently, the petition on her behalf seeking grant of

	regular bail is accepted and the petitioner – Jaswinder Kaur is ordered to be released on regular bail on her furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
Surender (Regular bail petition)	The petitioner Surender has been nominated as an accused on the basis of a disclosure statement made by his wife to the effect that she alongwith her husband had come from Gopalvas to Barwala and it was her husband who had contacted Jaswinder Kaur through some other person. The petitioner – Surender has been behind bars since the last about 5 months. He is not stated to be involved in any other case. In any case, his role of having connived with the main accused Dr. Anant Ram would be debatable. In these circumstances, further detention of the petitioner would not be justified. The petition on his behalf seeking grant of regular bail is accepted and the petitioner – Surender is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
Dr. Anant Ram (Regular bail petition)	The petitioner Dr. Anant Ram is the main accused, who had conducted the illegal sex determination test on the decoy pregnant female with the help of a portable ultrasound machine recovered from the spot. The petitioner has been involved in 5 other identical nature of cases, out of which he stands

acquitted in 2 but 3 are still stated to be pending. The total period undergone by the said petitioner is about 5 ½ months. Keeping in view the past record of the petitioner, there is no guarantee that the petitioner, in case released on bail, will not commit similar offences again.

In these circumstances, this Court does not deem appropriate to grant regular bail to the petitioner Dr. Anant Ram at this stage. The petition for grant of regular bail on his behalf, as such, is dismissed.

However, as far as the prayer for grant of interim bail filed on his behalf on medical grounds is concerned, the same deserves to be accepted inasmuch as the State is not disputing the fact that he is having heart ailments and requires surgical intervention. Para 3(i) of the reply filed by the State reads as follows :-

“Dr. Anant Ram, applicant/petitioner is suffering from IHD Post PTCATS-LAD & was referred to PGIMS Rohtak from MAMC Agroha on 03.1.2022 and surgery is advised in PGIMS Rohtak on 15.1.2022 (CABG). Coronary artery By Pass grafting if surgery is not possible in PGIMS Rohtak, then patient might be referred to higher center by CTVS Surgeon of PGIMS Rohtak.”

The learned State counsel has vehemently argued that the requisite treatment is available at PGIMS Rohtak but having regard to the age of the petitioner, who is aged about 65 years and the nature of his ailment where coronary artery bypass grafting surgery has been advised, the petitioner is ordered to

	be released on interim bail for a period of six weeks so as to enable him to get himself operated upon from a hospital of his choice, subject to his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned. It is expected of the petitioner who himself is a doctor to get the requisite arrangements efficiently made so that he is operated upon at the earliest.
Jagraj (Regular bail petition)	As per the case of prosecution, Jagraj had played an active role in the commission of crime and that he was a tout and had received an amount of ₹20,000/- through ‘Google Pay’. He was arrested at the spot and as such, cannot dispute his presence. The aforesaid factual position does indicate the complicity of the petitioner – Jagraj. However, this Court cannot lose sight of the fact that the petitioner – Jagraj has been behind bars since the last about 8 months and is not stated to be involved in any other case. The maximum sentence as provided under the PNDT Act for the offences concerned is 3 years. In these circumstances, further detention of the petitioner will not be justified. The petition on his behalf seeking grant of regular bail, as such, is accepted and the petitioner – Jagraj is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

14. The aforesaid petitions stand disposed of accordingly and are summarized as follows:

Petitions for Anticipatory Bail :

CRM-M-31059-2021	Sant Ram	Accepted
CRM-M-44702-2021	Sunil Kumar	Accepted
CRM-M-35204-2021	Sunita	Dismissed

Petitions for Regular Bail :

CRM-M-45323-2021	Jaswinder Kaur	Accepted
CRM-M-45939-2021	Surender	Accepted
CRM-M-47793-2021	Dr. Anant Ram	Dismissed. Granted interim bail for six weeks.
CRM-M-50099-2021	Jagraj	Accepted

15. A photocopy of this order be placed on the file of connected cases.

02.04.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No