

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

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CRM-M-58153-2022
Date of decision : 13.12.2022

Kshitij Dhuria

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Dr. Amol Rattan Singh Sidhu, Senior Advocate
with Mr. Shiv Kumar Sharma, Advocate
for the petitioner.

Mr. Joginder Singh Ratra, Senior D.A.G., Punjab
for the respondent-State.

Mr. A.S. Chadha, Advocate
for the complainant.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.162 dated 22.11.2022 registered under Sections 22 and 25 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (for short 'the PNDT Act') and Section 116 of the Indian Penal Code, 1860 at Police Station City Fazilka, District Fazilka.

Brief facts of the case are that complainant-Arun Kukkar filed a complainant alleging that the petitioner project himself to be a Fetal Imaging Specialist and is running a Diagnostic Centre in the name of Doctor Dhuria's Diagnostic Centre at Salemsah Road, Fazilka. He and his wife-Neha visited the above-said Centre during her pregnancy and on the assurance of the petitioner, USG-II SECOND TRIMESTER

SCREENING (LEVEL II SCAN) was conducted by the petitioner on 19.07.2022. In the report it was clearly reflected that all four limbs visualized are grossly normal. After receipt of the said report, the complainant and his wife decided to continue with the pregnancy. On 12.11.2022 his wife gave birth to a female child and they were shocked to know that the left limb of the new born female child was undeveloped below joint to the length of approximately 4 cm. below the elbow joint. Such defect could have been noticed by the petitioner at the time of conducting level II scan. The petitioner also offered him for determination of sex of fetus against charges of Rs.1,00,000/- but he refused the same. On the basis of said complaint, a preliminary inquiry was carried out by the police and on the inquiry report submitted by the Superintendent of Police, Fazilka and after seeking legal advise, the present FIR was registered against the petitioner.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The petitioner is a renowned doctor who has done his MBBS from DMCH, Ludhiana. He also got certificate of competence course for 'Fetal Abnormalities' from the Fetal Medicine Foundation, U.K. and since then he is practicing radiology and doing ultrasound by following the due procedure in a competent and bona fide manner. There was no negligence on the part of the petitioner in conducting the USG level II Scan and even report dated 19.07.2022 is correct as per the position of the fetal at that time. The incomplete development of the left limb of the child is a subsequent event due to complicacies developed during the later period of pregnancy. In fact, there was some dispute between

Mr. Sandeep Gilhotra and the father of the petitioner and at the instance of Mr. Sandeep Gilhotra, the complainant has filed the complaint against the petitioner. As far as allegation regarding demand of Rs.1,00,000/- for determination of sex of fetus is concerned, there is no such complaint made by the complainant against the petitioner during the last four months and the said allegation has been concocted only to book the petitioner under provisions of the PNDT Act. The petitioner already recorded his statement in the office of Senior Superintendent of Police, Fazilka on 15.11.2022. The petitioner is ready to explain factual position to the Medical Board already constituted but because of the present FIR, he is not able to appear before the Board. The petitioner is not involved in any other case. Nothing has to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is also ready and willing to join the investigation.

Per contra, learned State counsel and learned counsel for the complainant have opposed the present petition on the ground that the defect in the fetus could have been noticed by the petitioner at the time of conducting USG level II Scan and if the petitioner was vigilant and competent at the time of performing said scan, the family of the complainant could have been saved from the harassment faced by them. Learned State counsel further submits that there is specific allegation against the petitioner that he demanded amount of Rs.1,00,000/- from the complainant for disclosing the sex of the fetus but when the complainant refused to do so, the petitioner got angry and gave false report by not disclosing the deformity of the fetus. Therefore, the petitioner does not deserve the concession of anticipatory bail.

I have heard learned counsel for the parties and gone through the paper-book.

During inquiry complainant-Arun Kukkar made a statement that his marriage was solemnized with Neha Makkad on 13.04.2019. Out of this wedlock one daughter was born on 06.04.2022. Upon his wife Neha attaining pregnancy again, she was undergoing treatment from Dr. Mahima Sharma, Gautam Gynaecologist Hospital, Fazilka and during treatment upon the advise of Dr. Mahima Sharma on 19.07.2022 he had got level-2 scan of his wife Neha from Dr. Kshitij Dhuria of Navjiwan Hospital Fazilka. Dr. Kshitij Dhuria had given his report that all the limbs etc. of the kid are absolutely alright and the kid being healthy, but on 12.11.2022 at the time of delivery of his wife at Gautam Gynaecologist Hospital, Fazilka, baby girl was born and she doesn't have further portion of palm of her left arm from elbow. In this regard, the complainant and others discussed with Dr. Kshitij Dhuria then he said that he is also unable to understand, as to how it happens and mistakes are often committed by humans. Dr. Kshitij Dhuria also admitted his mistake. Recording of the conversation held with Dr. Kshitij Dhuria has been also produced by the complainant. Similarly, wife of complainant Neha Kukkad and her mother-in-law Rekha have recorded their statements and they have also mentioned in their statements that when Dr. Kshitij Dhuria conducted Level-II(2) scan, then they were asked for pre-natal diagnoses of the kid against sum of Rs.1,00,000/- but they refused to get such test conducted.

During investigation by making correspondence with the office of Civil Surgeon opinion has also been obtained from the Board of Doctors regarding at the time of birth of baby about not have her further portion of palm of her left arm from elbow, that the contents of the opinion of expert doctors (Expert Committee Report) is as under:-

“The level II(2) scan used to be done to detect congenital malformations and structural anomalies of foetus in second trimester in antenatal cases. Mrs. Neha w/o Arun Kukkar had undergone level II(2) Scan at Dr. Dhuria's Diagnostic Centre on 19.07.2022. According to scan report given by radiologist the all four limbs of foetus were reported grossly normal. After delivery, a female child of thirty six weeks born with left limb incompletely developed below the elbow joint to length of approximately four centimeter below the elbow joint as report by Dr. Raghav Kakkar, M.D. Pediatrics of Dr. Rajan Kakkar Children hospital. The similar findings were observed by members of committee on examination of concerned child on 18.11.2022. So, the attendant of concerned child was advised for X-ray of both upper limbs of concerned child at District Hospital, Fazilka. After X-ray examination the right upper limb bones of child were normal and on left upper limb humerus bone was normal and small sized radius and ulna bones of left upper limb was seen and left hand bones were not seen.

As level II(2) Scan used to be done to detect congenital malformations and structural anomalies of fetus in second trimester in antenatal cases. After all these observation it seems the structural anomalies of left upper limb of concerned child during level II(2) Scan were missed by the concerned radiologist.”

Apart from that petitioner-Dr. Kshitij Dhuria, at the time of conducting level II(2) Scan test, had enticed wife of the complainant and his mother-in-law for pre-natal diagnoses of the kid against sum of Rs.1,00,000/- but they refused to get such test conducted.

The allegations against the petitioner are serious in nature and his custodial interrogation is very much required to elicit the real facts.

It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in ***State Vs. Anil Sharma : (1997) 7 SCC 187*** held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

13.12.2022

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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No