

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 384 OF 2023

**RAMESH S/O GULABRAO GAIKWAD
VERSUS
THE SUPERINTENDENT OF POLICE AND ANOTHER**

Mr. P. P. More, Advocate for the applicant
Mrs. R. P. Gaur, APP for the respondent/State

CORAM : R. M. JOSHI, J.
RESERVED ON : 21/06/2023
PRONOUNCED ON : 30/06/2023

ORDER :-

1. Ramesh Gaikwad, applicant in ABA No. 384 of 2023 is husband of Vandana. He apprehends arrest in connection with CR No. 53/2023 registered with Badnapur Police Station, Dist. Jalna for the offences punishable under Sections 312, 315, 316, 34 of Indian Penal Code. Police Head Constable Joharsing Kalani gave information to the police about receiving MLC on 13/01/2023 from Kakad Hospital stating that there was illegal termination of pregnancy of Vandana and because of that the uterus sac got teared. She was admitted in Kakad hospital and further process was done. It is further stated that statement of Vandana was recorded wherein she stated that she has two daughters and her husband Ramesh is working as a Security guard. She claimed that though she was pregnant she could not know about it and only after two months when she conducted pregnancy test she came to know

about her pregnancy. It is stated that since they were not having sufficient means, it was decided by couple to abort the foetus. It is also stated that since she has undergone to caesarean section delivery previously doctor opined that there was danger to her life and hence as advised by Dr. Manohar she went to a Medical Practitioner at Aurangabad. On 11/01/2023 husband took her to CIDCO Aurangabad where a friend of Manohar came to fetch them. She further stated that the said person took her in auto to some place which she does not know as she was sleeping in the auto rickshaw. At that place she was administered some pills and on the next day she came back home. Thereafter in the night she started getting stomach pain and hence was admitted in Kakad Hospital, Jalna. It was informed to her that there was tear to gestational sack and hence curatine was done. She did not want to lodge complaint against any one and according to her the whatever has happened is with their consent. However since it was found that the termination of pregnancy was done illegally, the offence came to be registered.

2. Learned counsel for the husband Ramesh submitted that as per the statement of his wife it is clear that he did not accompany her to the place where the alleged termination of pregnancy has been done. It is stated that after grant of interim relief he has cooperated in the investigation. According to him there was medical advise for not

continuing the pregnancy owing to the previous two caesarean section deliveries of his wife and hence it is not an offence as contemplated by Section 3 of Medical Termination of Pregnancy Act. It is also submitted that it is not the case wherein the accused are charged for any offence under PCPNDT Act. It is his submission that the custodial interrogation of the applicant is not necessary. It is submitted that two and half months pregnancy was terminated and therefore question of determination of sex of the foetus does not arise.

3. Learned APP however strenuously urged that it is a serious offence and matter of concern for society. According to her, the manner in which the termination of pregnancy is caused raises doubt about the bonafides of concerned parties. It is submitted that though it is claimed by husband Ramesh that he did not accompany his wife to the said place, that stand is not acceptable as it is against normal human conduct. She further submitted that the Vandana is a resident of Jalna gets into touch with a doctor at Georai which is distance of more than 150 km and as per the advise of the said doctor the pregnancy is terminated at Aurangabad. These circumstances according to her create doubt about the claim of the doctor as he is not concerned with the said incident. Attention of the Court is drawn to CDR of Dr. Manohar who was present at the relevant time at CIDCO Aurangabad wherein the process of termination of pregnancy was carried out. It is submitted that it could

be a case of the illegal abortion of female foetus. By referring to the report on record it is submitted that the foetus was four and half month old and hence the sex of the foetus could have been determined at that stage and therefore this could be a case of illegal termination of female foetus and hence offence under PCPNDT cannot be ruled out. According to learned APP, since the lady as well as her husband are not cooperating in finding out place where termination of pregnancy has been done, custodial interrogation of applicant is must.

4. There is no denial of the fact that Vandana was pregnant and that her pregnancy was terminated at place not registered under Medical Termination of Pregnancy Act, 1971 (for short '**MTP Act**'). Though it is claimed by Ramesh that there was medical advise for not to continue with the pregnancy because of previous two caesarean section deliveries, however there is no evidence placed on record to show that any such advise was ever given by any Medical Practitioner who was authorized to do so. It is sought to be contended that to save life of Vandana termination of pregnancy is done and hence, no offence is committed. Section 3 of Act provides for exception that termination of pregnancy to save life of lady is no offence but in order to apply said exception to present case, there is absolutely no material on record. It is also claimed that the foetus was aborted at the age of two and half months and therefore there was no chance of determination of the sex

of the foetus but the record indicates that at the relevant time the foetus was four and half months old and hence the sex of the foetus could be certainly determined at that stage. Though at this stage there is no evidence on record to show that the sonography was done for determination of sex of the foetus, but it is not impossible for the investigating agency to ascertain the said fact as it is mandatory for every registered sonography centre to upload record of each sonography done on the website of the Government of Maharashtra. This will lead to show whether it is a case of termination of female foetus.

5. The applicant was protected from arrest however during his presence the Investigating Officer, seems to have not cooperated for effective investigation. Vandana, who is wife of Ramesh, also claims that she was sleeping and did not know as to where she was taken for the said procedure. In the instant case it is absolutely necessary that the Investigating Agency finds out the place where the pregnancy was terminated illegally. It cannot be ignored that the provisions of MTP Act as well as PCPNDT Act aim at preventing illegal abortions and termination of female foetus. It is a bitter but truth that in spite of laws made for avoiding such instances of elimination of female foetus termination of pregnancies are done secretly for that purpose. Thus, not only for proper investigation of this case but also to ensure that there

would be no other victim of such evil, the said place needs to be found out. In such circumstances custodial interrogation of the applicant would be necessary.

6. Hence, application stands dismissed.

(R. M. JOSHI, J.)

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