

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

WRIT PETITION NO. 7281 OF 2023

Swapnil Madhavrao Mane

.. Petitioner

Versus

The State of Maharashtra
through Department of Health Service
Mantralaya, Mumbai and others

.. Respondents

Mr. Amol S. Gandhi, Advocate for the Petitioner.
Mr. K. B. Jadhavar, AGP for Respondent Nos. 1 to 4.

CORAM : KISHORE C. SANT, J.

DATED : 11th AUGUST, 2023.

P. C. :-

. Heard the parties for some time.

2. The petitioner is a medical practitioner running Genetic Centre under the name of 'Saidham Hospital' at Rahuri. The appropriate authority has seized his two sonography machines on 13.07.2022. It is the case of the petitioner that, while taking this action no notice was given, even the order of seizure suffers from non application of mind as there is no mention as to what made the authority to believe that the sonography machines were used to detect the sex of the fetus.

3. Learned advocate for the petitioner submits that, the action is

totally unjustifiable. Learned advocate relies upon the judgment in the case of Dr. Mrs. Sukhada Dilip Mulay Vs. The State of Maharashtra and others reported in 2013 (1) Mh.L.J. 638. In paragraph No. 16 of the said judgment, this Court has considered the provision of Section 30 which lays down that, if the appropriate authority has reason to believe that an offence under the Pre-Conception and Pre-Natal Diagnostic Techniques Act (for short “PCPNDT Act”) is been committed, then he may examine the record, register, documents and seal the machines. It is also further discussed that, this be done if there is reasonable belief that the machine is used for commission of offence punishable under the said Act.

4. From reading of the order this Court finds that, there is nothing mentioned as to what made the competent authority to believe that the petitioner has committed an offence punishable under the PCPNDT Act.

5. Learned A.G.P opposes the petition stating that, the appropriate authority has rightly taken the action. The authority has the power by virtue of Section 30 of the PCPNDT Act and Rule 12 of the Rules of 1966 which authorized the authority to seal and seize the record and evidence or any other material therein. However, he could not point out as to what made the authorities to give reasonable cause to believe that the offence is committed.

6. Considering the submissions and considering that, in seizure panchanama there is nothing to indicate that the authority had verified the facts giving rise to reasonable belief of the commission of offence. In view of the same, this Court finds that, the impugned action deserves to be quashed and set aside. The sonography machines sealed and seized by the respondents needs to be de-sealed by quashing the action taken by the authority to the extent of sealing and seizing the sonography machines.

7. Thus, the petition is allowed. The authority i.e. respondent Nos. 2 to 4 are directed to release these sonography machines sealed and seized by them of the petitioner within a period of two (02) weeks from today. The authorities, however, are free to proceed against the petitioner if it is already started.

8. With this, the petition stands disposed off.

(KISHORE C. SANT, J.)

PS.B.