

CRM-M-38366-2023

-1-

101

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

CRM-M-38366-2023

Date of Decision: 09.08.2023

Purshottam

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Shantanu Bansal, Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No.361, dated 03.07.2023 under Sections 3, 3-A, 4, 5, 6, 18, 23, 25, 27, 29 of the Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994, Sections 3, 4 & 5 of the Medical Termination of Pregnancy Act, 1971, Section 34 of the National Medical Commission Act, 2019 and Sections 120-B, 419, 420 & 34 of the IPC, registered at Police Station Naraingarh, District Ambala.

2. Vide Annexure P-1 which is a translated form of FIR, it was lodged on the basis of a secret information which was received by the Chairman, District Competent Officer-cum-Civil Surgeon, Kurukshetra that sex determination tests are being conducted illegally by some agents in District Kurukshetra and also in District Ambala and due to this reason,

CRM-M-38366-2023

-2-

much shortage is being seen in sex ratio of District Kurukshetra. For ascertaining the aforesaid sex determination test, a pregnant woman was asked to get the sex determination test of fetus as a decoy customer for the purpose of co-operating in the social task of 'Beti Bachao Beti Padhao Program'. Thereafter, the aforesaid decoy witness, who was a pregnant lady gave her consent. Thereafter, through an agent, namely, Gurmel Singh, the illegal sex determination test was settled at Rs.30,000/-. For this purpose, permission of the Chairman, District Competent Officer-cum-Civil Surgeon, Kurukshetra was granted. Thereafter, the District Competent Officer, Kurukshetra constituted a team of various officers which comprised of Dr. Gaurav Bansal, Dental Doctor, P.H.C. Kirmich, Kurukshetra, Dr. Rishi, Dental Doctor, C.H.C. Babain, Sh. Rajiv Kumar, Dealing, P.N.D.T. Kurukshetra. On 30.06.2023, the constituted P.N.D.T. Team came to know through a secret information that illegal sex determination test will be conducted on 03.07.2023 at Naraingarh, District Ambala. For this purpose, the decoy witness as aforesaid was called by the team on 03.07.2023 at Manav Chowk, Ambala in the morning at 10.00 A.M. and there, the Kurukshetra Team told to the decoy about the settled amount of Rs.30,000/- for conducting raid of illegal sex determination and after giving Rs.30,000/- in cash to the decoy and it was said to her that it has to be given after conducting illegal sex determination test to the person conducting the test of illegal sex determination. Thereafter, the decoy according to her own wish, put signatures on the consent letter and put signatures on the details of currency notes given by the Team. Thereafter, an information was given to the Civil Surgeon, Ambala by the Kurukshetra Team and after this, raid

CRM-M-38366-2023

-3-

team was also constituted by the District Competent Officer, Ambala. The team Kurukshetra and the decoy started going towards Naraingarh in two separate vehicles. At about 11.00 to 11.30 a.m. on reaching Naraingarh, aforesaid agent, namely, Gurmel Singh said to the decoy that leave your vehicle at Bus Stand, Naraingarh and he got the decoy witness seated on his bike bearing No.HRDAK2665 and took her outside the Civil Hospital, Naraingarh. During this period, the team was near the decoy and the agent was vigilant on the complete incident. After reaching at Government Hospital, Naraingarh and on making phone call by the agent to some other person, two more persons, who are also the agents, namely, Nirmal Singh and Purshotam (Present Petitioner) came on bike bearing No.HR04K 4534 at about 12.00 noon. Out of them, one person, namely, Nirmal Singh came down from the bike and the present petitioner, namely, Purshotam took the decoy seated on his bike and went to one house situated in Milk Area, Naraingarh. During this period, the team went behind him, but after going in the streets, the agent was out of the sight of the team. Thereafter, the team decided to catch the accused agent outside the Government Hospital on his return. After this, the team came outside the Government Hospital and started waiting for the accused there. After about 15-20 minutes, the team came to know that the accused agent has not left the decoy at the Government Hospital, but he has left her near the vehicle at General Bus Stand, Naraingarh. After about 12.30 p.m., the P.N.D.T. Team, Ambala also joined with the Kurukshetra Team. Thereafter, on receiving hint, the Joint Teams, over-powered both the agents standing outside of the Government Hospital. Thereafter, the teams tried to catch the other accused agents, but

CRM-M-38366-2023

-4-

due to the fact that they were on the bike, they could not be caught. Both the teams took the decoy and both the accused agents at House No.77-A, Ward No.13, Krishna Colony, Naraingarh situated at Milk Colony, Naraingarh. Upon asking from the decoy, it came to light that two women were already present in the said house and after reaching there, the said male agent, namely, Purshotam alias Kuldeep alias Sagar (Petitioner) took Rs.30,000/- from the decoy, which was given to her by the P.N.D.T. Team, Kurukshetra. Thereafter, aforesaid Purshotam and one lady agent, namely, Neelam jointly conducted the illegal sex determination test of the fetus bringing up in the stomach of the decoy by getting her to lie down in one room and by applying jelly type material on the stomach of the decoy through one I-Pad and said to the decoy about good news that it is a boy. Thereafter, about 15-20 minutes, the aforesaid Purshotam got the decoy again on his bike and left the decoy opposite General Bus Stand, Naraingarh. The joint team conducted search of the place of illegal sex-determination test, in which both the teams recovered medical instruments, which can be used in M.T.P. also and the total amount of Rs.30,000/- with denomination of Rs.500/- was also recovered from the accused lady agent, namely, Neelam. Thereafter, upon inquiry, it came to light that the present petitioner, namely, Purshotam was also working in Sanjay Hospital, Naraingarh and also came to know that the aforesaid petitioner is involved in this illegal work of sex determination test from the last 10-15 years.

3. Learned counsel for the petitioner argued that as per the FIR itself, the Pre-Natal Test was conducted through an I-Pad and therefore, the entire story was a concocted story because no such test can be conducted

CRM-M-38366-2023

-5-

through an I-Pad and for that purpose, an Ultrasound Machine is required. He submitted that the petitioner is innocent and has been falsely implicated in the present case and therefore, he may be considered for the grant of anticipatory bail. He further submitted that the hand held instrument which is used for conducting the test has not been recovered from the petitioner and therefore, the petitioner is innocent.

4. This Court vide order dated 07.08.2023 had directed the learned State counsel to seek specific instructions from the Civil Surgeon with regard to the fact that as to whether any Pre-Natal Sex-determination Test can be conducted by an I-Pad or not. He was also directed to seek instructions as to whether the Pre-Natal Test was conducted or not and if yes, then by which machine. Some Senior Medical Officer, Ambala was also directed to be present along with the record of the case.

5. Today, Mr. Naveen Kumar Sheoran, DAG, Haryana has submitted that Dr. Balwinder Kaur, Deputy Civil Medical Officer, Ambala is present in the Court and has come along with the record. He submitted on instructions from the aforesaid Officer that although the expression 'I-Pad' has been used in the FIR but it would not technically be an I-Pad because the instrument by which the test was conducted, has still not been recovered from the petitioner till date. This Court, therefore, for the sake of understanding specifically asked the Deputy Medical Officer, Ambala that as to whether, the Pre-Natal sex determination test can be conducted without the ultrasound machine to which she submitted that now the technology has advanced to such an extent that various electronic gadgets etc. are available on the internet and also are smuggled from the foreign countries illegally by

CRM-M-38366-2023

-6-

which the Pre-Natal Sex Determination Test can be conducted. He further submitted that even ultrasound etc. facility is also available in various other electronic gadgets like I-Pad, laptop, mobile phone etc. and the technology has advanced to such an extent that now the ultrasound machine is not the only requirement for conducting the Pre-Natal Sex Determination Test.

6. Learned State counsel further submitted that the petitioner is running the business of illegal Sex Determination Test for the last 20 years and he is also involved in one more FIR bearing No.255/2018 under Sections 420 & 120-B IPC and Sections 18-A, 18-C of the PNDT Act, Sections 3, 4, 5 of the MTP Act, in which challan has already been presented before the competent Court. He also submitted that a conscious decision was taken by the team constituted by the Civil Surgeon in view of the fact that the sex ratio in Districts Kurukshetra and Ambala was falling down and there was a concrete information that Sex Determination Tests are being conducted and therefore, a decoy witness was requested to assist the police in this regard. He further submitted that although instruments etc. were recovered from the spot but the main equipment by which the petitioner and the other co-accused had conducted the test is still to be recovered from the petitioner. He also submitted that the gravity and magnitude of the offence which affects the public at large would disentitle the petitioner for grant of anticipatory bail and it is a fit case where the custodial interrogation of the petitioner is required.

7. I have heard the learned counsels for the parties.

8. It is a case where the allegations against the petitioner were that a team was constituted by the Civil Surgeon and on the basis of the secret

CRM-M-38366-2023

-7-

information, a decoy witness was requested to assist the police and ultimately it was found that illegal Sex Determination Tests were conducted and the allegation against the petitioner was that he was agent and he rather carried the decoy witness to the concerned hospital. So far as the argument raised by the learned counsel for the petitioner that as per the FIR, the test was conducted by an I-Pad which is not possible, the same also does not hold good in view of what has been stated by the Deputy Civil Medical Officer, who is present in the Court by stating that the technology has advanced to such an extent that even without the ultrasound machine by way of various electronic gadgets the Sex Determination Test can be conducted. So far as the argument raised by the learned counsel for the petitioner that the hand held instrument has not been recovered from the petitioner, therefore, he is innocent is concerned, the same deserves to be rejected in view of the fact that it is yet to be ascertained as to what was the electronic gadget which was used in the present offence and even otherwise also the petitioner is absconding and therefore, such an argument is rejected. The equipment is yet to be recovered from the petitioner. The petitioner is also stated to be involved in one more case of similar nature which has been so described in Para No.13 of the petition.

9. After hearing the learned counsels for the parties, this Court is of the considered view that considering not only the gravity and magnitude of the offence but also considering the fact that the offence involves public at large and public morality, the petitioner does not deserve the concession of anticipatory bail and the argument raised by the learned State counsel that his custodial interrogation is required does carry weight and cannot be

CRM-M-38366-2023

-8-

ignored.

10. Consequently, finding no merit in the present petition, the same is hereby dismissed.

11. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

09.08.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |