

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

Reserved on 06.02.2023
Pronounced on 15.02.2023

(i) CRM-M-52503-2021

Davinder Kumari Petitioner

Versus

State of Haryana Respondent

(ii) CRM-M-4361-2022

Manpreet Singh Petitioner

Versus

State of Haryana Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Sandeep Gahlawat, Advocate
for the petitioner in CRM-M-52503-2021.

Mr. Navraj Singh Mahal, Advocate
for the petitioner in CRM-M-4361-2022.

Mr. Munish Sharma, Asstt. A.G., Haryana
for the respondent-State.

ASHOK KUMAR VERMA, J.

By this common order two aforementioned petitions are
being disposed of, as both have arisen out of the same FIR.

The petitioners have filed the present petitions under
Section 438 of the Code of Criminal Procedure, 1973 for grant of
anticipatory bail in case FIR No.39 dated 19.02.2021 registered under
Sections 3(1), 4, 5(1)(a), 6(a) and 23 of the Pre-Natal Diagnostic
Techniques (Regulation & Prevention of Misuse) Act, 1994 (for short

'the PNDT Act') and Sections 420 and 120-B of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station Sadar Ambala, District Ambala.

The above-said FIR was registered on the complaint made by complainant-Dr. Balwinder Kaur, Deputy Civil Surgeon, Ambala alleging therein that the petitioners along with other co-accused used to conduct sex determination of pregnant ladies. On a secret information in respect of gang of persons, who used to conduct sex determination of pregnant ladies, a raiding party was constituted and co-accused Jasbir Singh (tout) was contacted and thereafter, Smt. Neetu Bala (decoy) wife of Kuldeep Kumar, who was pregnant was sent for sex determination test with co-accused Jasbir Singh. Raiding party followed the vehicle of co-accused Jasbir Singh. When they reached Bahadurgarh, District Patiala, the decoy lady was shifted to another car make Skoda and thereafter, she was taken for sex determination at the clinic of Manpreet Singh (petitioner in CRM-M-4361-2022). The raiding team could not follow Skoda car due to high speed but when the car returned after leaving the decoy lady, co-accused Jasbir Singh was apprehended by the raiding team and Rs.5,000/- and mobile make OPPO was recovered from him. During investigation, it was revealed that the above-said Skoda car was insured in the name of Manpreet Singh (petitioner in CRM-M-4361-2022). In compliance with the order dated 13.08.2021 passed by this Court (in CRM-M-30303-2021), Manpreet Singh has joined the investigation on 20.08.2021 and during interrogation he

named Davinder Kumari (petitioner in CRM-M-52503-2021) who tested the decoy for sex determination of the child.

Learned counsel for petitioner-Davinder Kumari (in CRM-M-52503-2021) has argued that she has been falsely implicated in the present case. The petitioner was not named in the FIR and she has been implicated in the present case on the basis of disclosure statement of co-accused. The petitioner-Davinder Kumari is not a doctor, she is a housewife. Actually, at the instance of petitioner-Davinder Kumari and her husband, FIR No.546 dated 26.09.2017 under Sections 12, 13, 7, 8 and 9 of the Prevention of Corruption Act and under Section 120-B and 218 of the IPC was registered against the police officials at Police Station City Fatehabad, District Fatehabad and just to take revenge from petitioner-Davinder Kumari, the police has falsely implicated her in the present case. In compliance with order dated 13.01.2022 passed by this Court, the petitioner has joined the investigation. Except the disclosure statement of co-accused and the statement of lady customer, who was introduced by the police officials, the prosecution has no evidence against the petitioner. The petitioner has not committed any offence as alleged in the FIR.

Learned counsel for petitioner-Manpreet Singh (in CRM-M-4361-2022) has argued that the petitioner was not named in the FIR and he has also been falsely implicated in the present case on the basis of disclosure statement of co-accused. The petitioner was not apprehended at the spot and nothing has been recovered from him. The only role attributed to petitioner-Manpreet Singh, is that the car which

was used in commission of crime was insured in his name. In compliance with order dated 04.02.2022 passed by the Coordinate Bench of this Court, the petitioner-Manpreet Singh has joined the investigation.

Learned counsels for both the petitioners have further submitted that nothing is to be recovered from the petitioners and their custodial interrogations are not required in the case. Therefore, the petitioners may be granted anticipatory bail.

On the other hand, learned State counsel has vehemently opposed the present petition in terms of reply dated 25.06.2022 filed in CRM-M-52503-2021 and submits that in his disclosure statement accused-Manpreet Singh also named accused-Davinder Kumari and admitted the commission of offence. Accused-Davinder Kumari is a habitual offender and she is also involved in 06 other cases of similar nature. The custodial interrogation of the petitioners is required in order to unearth the whole nexus and to apprehend the other accused persons involved in the whole occurrence. In support of his contentions, learned counsel for the State has relied upon a judgment of the Apex Court in '*X vs. Arun Kumar C.K. and Anr., 2022 LiveLaw (SC) 870*.'

Having heard learned counsel for the parties, I am of the considered view that the allegations against the petitioners are serious in nature. As per detailed reply filed by the State (in CRM-M-52503-2021), co-accused Avtar Singh has joined investigation on 19.05.2021 and during interrogation, he had disclosed that accused-Dr. Manpreet Singh used to conduct sex determination test of pregnant ladies and he

had sent the decoy lady with co-accused Jasbir Singh @ Lucky for sex determination to the clinic of accused-Dr. Manpreet Singh and on the same day, after sex determination test of decoy lady, the team of doctors apprehended co-accused Jasbir Singh. Thereafter, in compliance with order dated 13.08.2021 passed by this Court, accused-Manpreet Singh has joined investigation on 20.08.2021. During interrogation, he disclosed that his wife-Karamjit Kaur is owner of Badhi Clinic at Bahadurgarh, District Patiala and due to this reason he is known as doctor in the area. His friends co-accused Avtar Singh and Jasbir Singh had informed him that the relative of co-accused Jasbir Singh, namely Neetu (decoy lady) has 3 daughters already and now that she is pregnant again, she wants to get the sex determination test. On which he consulted co-accused Avtar Singh and told him that he knows one doctor and can get her sex determination test. Co-accused Avtar Singh had already given Rs.35,000/- to him 10 days prior to the date of occurrence. On 18.02.2021, co-accused Avtar Singh sent the decoy lady through Jasbir Singh to him and he in his own car bearing registration No. HR-26-BC-7093 make Skoda took her to accused-Dr. Davinder Kumari, for getting sex determination test. He had given an amount of Rs.20,000/- to accused-Dr. Davinder Kumari and Rs.15,000/- had been kept by him. He further disclosed that he had got transferred the above-said car in his name and also got the number of car transferred as PB-11-CX-6909. Thereafter, he produced the said car and had stated that the said car was used by him for taking the decoy lady from Bahadurgarh to Patran, District Patiala for sex determination at the

clinic of accused-Dr. Davinder Kumari. As per CDR of mobile numbers of co-accused Jasbir Singh, Avtar Singh and accused Manpreet Singh, it was found that co-accused Avtar Singh and Jasbir Singh had 16 calls exchanged between them and co-accused Avtar Singh and accused-Manpreet Singh, had conversations on 16.02.2021 for 02 times, on 17.02.2021 for 03 times and on 18.02.2021 for 08 times.

So far as the role of accused-Dr. Davinder Kumari is concerned, though in compliance of order dated 13.01.2022, accused-Davinder Kumari has joined investigation, but she did not co-operate and did not even disclose her mobile number. The decoy lady had also identified accused-Davinder Kumari as the same doctor who had conducted the sex determination test and had stated that the baby growing in her womb was a boy. As per disclosure statement of accused-Manpreet Singh, accused-Davinder Kumari had provided him 02 mobile numbers i.e. 9876440477 and 9517052675 with the directions that in case of sex determination of any woman, he can contact her on those numbers and no conversation is to be done on her personal mobile number i.e. 9780604940. From the CDR and CAF of mobile Nos.9876440477 and 9517052675 it has been revealed that on 17.02.2021 accused-Manpreet Singh had called twice on mobile No.9876440477 at 06:40 p.m. and 07:02 p.m. and once at mobile No.9517052675 at 07:03 p.m.

Moreover, the antecedents of petitioner-Davinder Kumari are also not good as she is already involved in 06 other cases of similar nature. It has been observed by the Hon'ble Supreme Court in case

Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. :

(1978) 1 SCC 240 that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

Furthermore, investigation is still going on in the present case. For thorough investigation of the case, recovery of ultra sound machine and for apprehending other accused involved in the commission of crime, the custodial interrogation of the petitioners is necessary. 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.”

It will not be out of place to notice here that during the pendency of these petitions, the petitioners-Davinder Kumari and Manpreet Singh, were granted interim anticipatory bail vide orders dated 13.01.2022 and 04.02.2022 respectively, passed by this Court. The mere enjoyment of interim benefit granted by this Court does not in any manner lessen the gravity of offence and allegations which need to be considered *prima facie* on merits. It may perhaps send a wrong message in case anticipatory bail is granted to the petitioners.

Keeping in view the totality of facts and circumstances of the case aforementioned, gravity of offence and specific role attributed to the petitioners, they do not deserve the concession of anticipatory bail. Hence, both the petitions are hereby dismissed and the interim bail granted to both the petitioners stands vacated.

Nothing said herein above shall tantamount to expression of opinion on the merits of the case.

15.02.2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: **Yes/No**

Whether Reportable: **Yes/No**