

2023:PHHC:134798

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-46632 of 2023
Date of Decision: 16.10.2023

Narender Duhan

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Partap Singh, Advocate with
Mr. Vikas, Advocate,
Ms. Sikha Kataria, Advocate and
Mr. Gourav Jangra, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 438 of the Cr.P.C. with a prayer to grant a anticipatory bail to him in case FIR No.574 dated 21.08.2023 registered under Sections 3, 4, 5, 6, 18, 23 and 29 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse), Act, 1994 (hereinafter to be referred as the PC and PNDT Act), Section 34 of National Medical Commission Act, 2019 and Sections 420 and 120-B IPC registered at Police Station Assandh, District Karnal.

2. The FIR in the present case was registered on the basis of complaint moved by the Deputy Civil Surgeon (PC and PNDT)

Karnal. As per the complainant, for the past few days, the Civil Surgeon, Karnal, was receiving some secret information that the illegal sex determination was being conducted in his area. In view of this, the Chairperson, District Appropriate Authority-cum-Civil Surgeon, Karnal arranged one pregnant decoy customer Ms. Mafi wife of Manjit Singh and Dr. Sandeep, RMP was contacted through a social worker, who demanded a sum of Rs. 20,000/- for determination sex through ultra sound and the date for ultra sound was fixed after one week. On 21.08.2023, Dr. Sandeep contacted social worker and told her that ultra sound would be performed at the residence of the patient itself. Consequently, a raiding team of doctor Sheenu Chaudhary, Dr. Sube Singh and Dr. Paramjit Singh was constituted by the Civil Surgeon. At about 1.10 p.m., three persons came with a portable machine for sex determination in a white colour Rits car and raided the house of the decoy pregnant women. In the meantime, the team, which was standing outside, caught the persons, who had conducted ultra sound and their names were Ashok and Dr. Sandeep RMP and out of them one person fled away from the spot alongwith the portable ultra sound machine. The decoy pregnant women disclosed that ultra sound was performed after using a jelly on her stomach and vide which foetus was told “as a girl”. Thereafter, spot memo was prepared and the FIR was registered. As per the complainant, Ashok Kumar was already facing four FIRs, i.e., FIR

No. 212 dated 15.04.2016, FIR No. 671 dated 27.09.2019, FIR No. 560 dated 10.09.2020 and FIR No. 274 dated 08.05.2018, which were registered in Police Station Assandh under the provisions of the PC and PNDT. As per the complainant, third person was also involved with them and he fled from the spot alongwith portable ultra sound machine. With these broad allegations, the FIR in the present case was got registered by the complainant. During the course of investigation, Ashok Kumar and Dr. Sandeep, RMP were formally arrested and they disclosed the name of the third person as Narnder Duhan resident of village Phaphrana, Tehsil Assandh, District Karnal, the present petitioner. Consequently, apprehending the arrest, the petitioner has filed the present petition before this Court.

3. Learned counsel for the petitioner contends that the petitioner was not named in the FIR and the FIR has been registered only against Ashok Kumar, Dr. Sandeep and one unknown person. Learned counsel further contends that the petitioner has been implicated in the present case, only on the basis of the disclosure statement suffered by the co-accused, which is otherwise inadmissible in evidence. Learned counsel further contends that the police had no time to register the case under the PC and PNDT Act, because as per the Section 28 of the PC and PNDT Act, no Court shall take cognizance of the offence except on the complaint filed by the

Appropriate Authority. Learned counsel further contends that the petitioner was not at all present at the spot, where the raid was conducted and the entire investigation was vitiated. Even, the complainant was having good relations with the police officials being the Deputy Civil Surgeon and taking advantage of the same, the FIR has been registered against the petitioner and others. Learned counsel further contends that since the petitioner was not present at the spot, there was no question of recovery of any machine from him and his custodial interrogation is not required.

4. During the course of hearing, the learned State counsel has filed a status report by way of affidavit of DSP, Assandh, on behalf of the State of Haryana and the same is taken on record.

5. Learned State counsel contends that on getting a secret information, raid was conducted by the raiding team and two persons, namely, Ashok and Dr. Sandeep RMP were caught by the raiding team at the spot. Learned State counsel further contends that the co-accused Ashok is a habitual offender and was running racket in collusion with present petitioner and other persons. Even, four FIRs, i.e., FIR No. 212 dated 15.04.2016, FIR No. 671 dated 27.09.2019, FIR No. 560 dated 10.09.2020 and FIR No. 274 dated 08.05.2018 were registered under the provisions of the PC and PNDT Act at Police Station Assandh against Ashok Kumar, co-accused. Learned

State counsel further contends that Ashok Kumar and Dr. Sandeep RMP categorically stated that third person, who had fled from the spot alongwith portable ultra sound machine, was the present petitioner and the said machine is yet to be recovered from the petitioner. Learned State counsel further contends that a Division Bench of this Court in a case CRM M-4211 of 2014 titled as “Hardeep Singh and another Vs. State of Haryana and others” had answered the legal questions, on the point pertaining to the cognizance of the offence under the PC and PNDT Act, in the following manner:-

“a) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police, however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.

b) A report under Section 173 Cr.P.C. along with the complaint of an Appropriate Authority can be filed in the court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act.

c) *FIR can be lodged and offences can be NOT investigated by the Police but cognizance only of the complaint is to be taken by the Court”.*

6. In view of the law laid down by the Division Bench of this Court, there is no dispute that with respect to the offences alleged to be committed under the provisions of the PC and PNDT Act, FIR can also be registered on the basis of complaint made by the appropriate authorities and the matter can be investigated by the police. Learned State counsel further contends that the petitioner had fled away with the portable ultra sound machine when the raiding team reached at the place of occurrence and his custodial interrogation is required. Apart from that, the custodial interrogation is required in the peculiar facts of the case as the petitioner may be involved in other similar offences as well. Learned counsel further contends that the petitioner is active member of a racket involved in conducting the illegal sex determination in the area.

7. I have heard learned counsel for the parties and perused the record with their able assistance.

8. The Hon'ble Supreme Court has held in the matter of **Rekh Sengar Vs. State of Madhya Pradesh, 2021(2) SCC (Criminal) 529: 2021(1) R.C.R. (Criminal) 853:-**

“2. The gravamen of the allegations against the petitioner pertain to violation of the provisions of the PC&PNDT Act. Section 6 prohibits the use of pre-natal diagnostic techniques, including ultrasonography, for determining the sex of a fetus. Section 23 provides that any violation of the provisions of the Act constitutes a penal offence. Additionally, Section 27 stipulates that all offences under the said Act are to be non-bailable, non-compoundable and cognizable.

It is well settled that in non-bailable cases, the primary factors the court must consider while exercising the discretion to grant bail are the nature and gravity of the offence, its impact on society, and whether there is a prima facie case against the accused.

3. The charge sheet prima facie demonstrates the presence of a case against the petitioner. A sting operation was conducted upon the order of the Collector, by the member of the PC&PNDT Advisory Committee, Gwalior; the Nodal Officer, PC&PNDNT and lady police officers. The team used the services of an anonymous pregnant woman, who approached the petitioner seeking sex-determination of the fetus and sex-selective abortion.

The petitioner accepted Rs. 7,000 for the same whereupon the team searched her residence. From the residence, an ultrasound machine with no registration or license, adopter and gel used in sex-determination, and other medical instruments used during abortion and sex-determination were seized. This constitutes sufficient evidence to hold that there is a prima facie case against the petitioner.

4. To understand the severity of the offence, it is imperative to note the legislative history of the PC&PNDT Act. Reference may be had to the Preamble; which states as follows:

"An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto." (emphasis supplied)

*The passage of this Act was compelled by a cultural history of preference for the male child in India, rooted in a patriarchal web of religious, economic and social factors. This has birthed numerous social evils such as female infanticide, trafficking of young girls, and bride buying and now, with the advent of technology, sex-selection and female feticide. The pervasiveness of this preference is reflected through the census data on the skewed sex-ratio in India. Starting from the 1901 census which recorded 972 females per 1000 males; there was an overall decline to 941 females in 1961, and 930 females in 1971, going further down to 927 females in 1991. Records of Lok Sabha discussions on the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill, 1991 reflect various members' concern with this alarming state of affairs, which acted as a clarion call to the passage of the PC&PNDT Act. (See : **Lok Sabha Debates, Tenth Series, Vol. XXXIII No.2, July 26, 1994, Eleventh Session, at pages 506-544).***

The prevalence of pre-natal sex selection and feticide has also attracted international censure and provoked calls for strict regulation. In September 1995, the UN 4th

World Conference on Women, adopted the Beijing Declaration and Platform for Action which inter alia declared female feticide and pre-natal sex-selection as forms of violence against women. (See : Beijing Declaration and Platform for Action, adopted in 16th plenary meeting of UN 4th World Conference on Women, (15th September, 1995), Article 115).

While the sex ratio has improved since after the passage of the PC&PNDT Act, rising to 933 as per the 2001 census, and then to 943 in the 2011 census, these pernicious practices still remain rampant. As per the reply filed by the then Minister of State, Health and Family Welfare in the Rajya Sabha on 27.3.2018, as of December 2017, around 3,986 court cases had been filed under the Act, resulting in only 449 convictions and 136 cases of suspension of medical licenses.

The unrelenting continuation of this immoral practice, the globally shared understanding that it constitutes a form of violence against women, and its potential to damage the very fabric of gender equality and dignity that forms the bedrock of our Constitution are all factors that categorically establish pre-natal sex-determination

as a grave offence with serious consequences for the society as a whole.

5. We may also refer with benefit to the observations of this Court in Voluntary Health Association of India v. State of Punjab, (2013) 4 SCC 1, as follows:

"6...Above statistics is an indication that the provisions of the Act are not properly and effectively being implemented. There has been no effective supervision or follow-up action so as to achieve the object and purpose of the Act. Mushrooming of various sonography centres, genetic clinics, genetic counselling centres, genetic laboratories, ultrasonic clinics, imaging centres in almost all parts of the country calls for more vigil and attention by the authorities under the Act. But, unfortunately, their functioning is not being properly monitored or supervised by the authorities under the Act or to find out whether they are misusing the pre-natal diagnostic techniques for determination of sex of foetus leading to foeticide.

7...Seldom, the ultrasound machines used for such sex determination in violation of the provisions of the Act are seized and, even if seized, they are being released to the

violators of the law only to repeat the crime. Hardly few cases end in conviction. The cases booked under the Act are pending disposal for several years in many courts in the country and nobody takes any interest in their disposal and hence, seldom, those cases end in conviction and sentences, a fact well known to the violators of law."

In the present case, contrary to the prevailing practice, the investigative team has seized the sonography machine and made out a strong prima-facie case against the petitioner. Therefore, we find it imperative that no leniency should be granted at this stage as the same may reinforce the notion that the PC&PNDT Act is only a paper tiger and that clinics and laboratories can carry out sex-determination and feticide with impunity. A strict approach has to be adopted if we are to eliminate the scourge of female feticide and iniquity towards girl children from our society. Though it certainly remains open to the petitioner to disprove the merits of these allegations at the stage of trial.

6. The fact that on 13.10.2020, the co-accused in the present case was released on bail by the High Court in

MCRC No.39380/2020 does not alter our conclusions. The allegations in the FIR and the charge sheet, as well the disclosure statements made by the petitioner and the co-accused under section 27 of the Indian Evidence Act, 1872, reveal that prima facie, the petitioner had a more active role in conducting the alleged illegal medical practices of sex determination and sex-selective abortion. Whereas the alleged role of the co-accused was limited to merely picking up and dropping off the petitioner's clients. Hence, we find no grounds for granting parity with the co-accused to the petitioner.

9. From the above referred submissions, it is clear that during the course of investigation, the police has already collected sufficient evidence against the present petitioner, which *prima-facie* gives strength to the version of the prosecution and proves the involvement of the petitioner in the crime. Apart from that, as per the prosecution, detailed investigation is yet to be conducted and the custodial interrogation of the petitioner would be necessary not only for the recovery of the portable ultra sound machine, but also to question him with regard to the involvement in other cases as well, because co-accused Ashok is already involved in four more criminal cases and is running a racket illegally of sex determination in the area.

The Court is of the considered view that the grant of anticipatory bail in such like cases affects the case of the prosecution as well as rights of the complainant and would have an overall impact on the society. Even otherwise, no such special case has been indicated by the petitioner/accused for grant of anticipatory bail and this Court is convinced that the *modus operandi* cannot be unearthed, if the petitioner/accused is granted the concession of pre-arrest bail. Even, this Court is further convinced that the submissions made by the learned State counsel that the *prima facie* allegations against the petitioner are serious and grave in nature and it would be in the larger interest of justice to decline the concession of anticipatory bail to the present petitioner.

10. In view of the above discussion, finding no merit, the present petition is ordered to be dismissed.

16.10.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No