

CRM-M-58066-2022

224

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

CRM-M-58066-2022 (O&M)

Date of decision: 27.03.2023

RAJESH KUMAR

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Chetan Kapoor, Advocate
for the petitioner.

Mr. Ram Kumar Singla, D.A.G., Haryana.

HARSH BUNGER, J.

Petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure (*in short "Cr.P.C."*) for grant of regular bail in case FIR No.323 dated 28.05.2022 (Annexure P-1) registered under Sections 3-A, 4, 6(a), 23 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (here-in-after referred as 'PNDT Act') (Sections 3, 5 and 6 of the 'PNDT Act' added later on) and Sections 420 and 120-B of the Indian Penal Code, 1860, (hereinafter referred as 'IPC') at Police Station Karnal Civil Lines, District Karnal.

Status report by way of an affidavit of Sh. Mukesh Kumar, HPS, Deputy Superintendent of Police (Headquarter), Karnal, on behalf of State of Haryana, has been filed, which is already on record.

Custody certificate dated 25.03.2023 of the petitioner has been filed by learned State Counsel in the Court today, which is taken on record, subject to all just exceptions.

The prosecution case is that on 28.05.2022, Deputy Civil Surgeon, PC-PNDT, Karnal came at the police station and presented an application alleging on the basis of secret information that a mediator Nasib Singh is indulging in the practice of illegal sex determination of foetus after getting ultrasound conducted in Karnal for a fee of Rs.40,000/-. The Civil Surgon, Karnal vide order dated 28.05.2022, constituted a raiding party headed by Dr. Seenu Chaudhary, Deputy Civil Surgeon, PC-PNDT Act to apprehend the culprits, while a four month pregnant woman had already been identified as decoy customer and through her, an amount of Rs.25,000/- had already been transferred online into the account of Nasib Singh. On 28.05.2022, the raiding team handed over currency notes amounting to Rs.15,000/- to the decoy customer for making remaining payment and at about 10:30 a.m., Nasib Singh and Rajesh Kumar (present petitioner) contacted the decoy customer and called her at Old Bus Stand, Karnal at 11:00 a.m. Thereafter, the decoy customer handed over Rs.15,000/- cash to Nasib Singh and both the said persons took the decoy customer to Good Hopes Diagnostic Centre near Old Bus Stand for sex determination of the foetus. Before conducting the ultrasound examination, Form-F was filled up and receipt of Rs.1000/- was obtained. After ultrasound, both the said persons took the decoy customer towards Old Bus Stand and Nasib Singh told the decoy customer that the foetus was of a girl. Thereafter, both the said persons left the decoy customer there and boarded a bus going towards Kaithal. In the meantime,

CRM-M-58066-2022

the decoy customer disclosed to the raiding team that the said persons had disclosed sex of the foetus to her as girl and upon hearing this, the raiding team intercepted the bus and apprehended both the said persons. From their personal search, currency notes amounting to Rs.14,000/-, which had been handed over by the raiding team to the decoy customer, were recovered from the possession of Nasib Singh. Further, from the search of black bag being carried by said persons, a huge cache of medicines were also recovered. Drug Control Officer, Karnal was called on the spot. The recovered currency notes and mobile phones of the culprits were taken into possession by the raiding team. In the said occurrence, the role of hospital also appears to be suspicious. A prayer was made to take necessary action against the culprits. On the basis of said application and the documents/material appended therewith, the present FIR was registered and the petitioner was arrested.

Thereafter, petitioner applied for regular bail, however the same was dismissed by the learned Additional Sessions Judge, Karnal, vide its order dated 15.11.2022 (Annexure P-3). Accordingly, the present petition has been filed before this Court.

Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. It is submitted that the instant case has been foisted upon the petitioner, whereas, he has no concern with the alleged crime. Learned counsel for the petitioner further submits that no case under the provisions of 'PNDT Act' and the IPC is made out against the petitioner. It is further submitted that the petitioner is neither a technical nor a professional employee of the place where the alleged sex determination test is alleged to have been

CRM-M-58066-2022

conducted. It is further submitted that the alleged amount of Rs.25,000/- was transferred in the account of co-accused Nasib Singh and another amount of Rs.14,000/- has been handed over by the raiding party to the decoy customer, which was also recovered from the possession of co-accused Nasib Singh and no distinctly identifiable currency notes were recovered from the petitioner. It is next submitted that as per prosecution own version, it is the co-accused Nasib Singh, who had paid the fee of Rs.1,000/- for conducting the ultra-sound and it is said Nasib Singh, who had allegedly informed the decoy customer that the foetus in her womb is female. Learned counsel for the petitioner has further referred to para 9 of the status report, which reads as under :-

“9. That after completing the investigation, the report under Section 173 Cr.P.C was submitted on 22.08.2022 in the Court of Shri Alok Anand, learned Judicial Magistrate Ist Class, Karnal. The complaint as required under the provisions of PC-PNDT Act is still awaited from the competent authority appointed under the said Act.”

It is contended that the petitioner is in custody since 06.06.2022 i.e. nine months and eight days (as on 25.03.2023). Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by trial Court; accordingly, prayer for grant of regular bail is made.

Per contra, learned State counsel has opposed the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence and submitted that the petitioner is a habitual offender as he is involved in two more cases i.e. **FIR No.39/2015** registered under Sections **25/54/59 of the Arms Act** at **Police Station Bahadurgarh**,

Jhajjar and ***FIR No.324/2022 dated 28.05.2022*** registered ***under Sections 21(C), 22(C), 29 of the NDPS Act*** at ***Police Station Civil Lines, Karnal, Karnal***, wherein, he has been granted bail. However, it is not disputed that the petitioner has been in custody for the last more than nine months and the investigation in this case is complete and challan has been submitted on 22.08.2022.

I have heard learned counsel for the parties and perused the paper book as well as status report and custody certificate of petitioner filed by learned State counsel.

In this case, the petitioner was arrested on 06.06.2022 and as per the custody certificate, he has been in custody for 09 months – 08 days (as on 25.03.2023). As per the status report, the challan already stands submitted; however, it is also mentioned therein that the complaint as required under the provisions of PC-PNDT Act is still awaited from the competent authority appointed under the said Act. Thus, the trial is likely to take some time and no useful purpose would be served by keeping the petitioner behind the bars for indefinite period.

So far as the involvement of petitioner in two other cases is concerned, suffice it to say that the registration of other cases against the petitioner cannot be taken to be as the sole material consideration for the purpose of declining him the relief of bail. In this regard, reference can be made to the judgment rendered by Hon'ble Supreme Court in case of ***Maulana Mohammed Amir Rashadi vs State of Uttar Pradesh and Another, reported as (2012) 2 Supreme Court Cases 382***, wherein it was

observed as under :-

“ It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc. ”

In view of the above, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the Illaqa Magistrate / Duty Magistrate / trial Court concerned.

However, before release, the concerned Station House Officer be informed and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of the case and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would furnish his telephone number to the concerned Station House Officer and would keep his mobile location on. Petitioner would also furnish an undertaking to the effect that he will not indulge in any illegal activity in relation to drugs and intoxicants. Petitioner shall appear before the police station concerned on first Monday of every month till the conclusion of trial in this case and every time inform in writing that he is not involved in any other crime other than the case(s) mentioned in the present order.

In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the trial Court. The same would be liable to be forfeited as per law, in case of absence of the petitioner from trial without sufficient cause.

Further, the State/prosecuting agency/State police shall be at liberty to observe the behaviour of the petitioner during bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial or violates any condition of bail, it shall be open for the State/prosecuting agency/State police to move the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

The petition is accordingly disposed of.

March 27, 2023
shruti/gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No