

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRM-M-61061-2023
Date of decision: 22.12.2023

SACHIN KUMAR

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Singh, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in a case bearing FIR No.448 dated 12.09.2023 under Sections 3, 4, 5, 6, 18, 23, 25, 29 of Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 Rules 9, 10, 18; Sections 420, 120-B and 34 of the National Medical Commission Act, 2019 at Police Station Sadar Yamunanagar (Haryana).

2. Present FIR was registered on the complaint made by complainant Dr. Puneet Kalra, Deputy Civil Surgeon, PNDD, C.M. Office, Civil Hospital, Yamuna Nagar. On 12.09.2023, Sub Inspector Rajesh Kumar alongwith EHC Vinod Kumar was present at Kalanaur in connection with patrolling when Dr.Puneet Kalra met and presented an application before Incharge, Police Post, Kalanaur regarding lodging of FIR under Sections: 3, 4, 5, 6, 18, 23, 25, 29 of Pre-Conception & Pre- Natal Diagnostic Techniques Act, 1994 Rules 9, 10, 18; 420, 120-B IPC and 34 of The National Medical Commission Act, 2019.

District Appropriate Authority, Kurukshetra received a secret information that in Kurukshetra or nearby Districts, illegal sex determination test is being conducted through touts and in response thereto, they used to bring pregnant women to other Districts and other State (UP) for conducted illegal sex determination resulting ratio of female foetus is effected in District Kurukshetra. On the basis of secret information, on 12.09.2023, District Appropriate Authority constituted a team of officers/officials consisting Dr.Rishi, Dental Surgeon CHC, Babain; Dr. Pardeep Kumar, Additional Medical Officer, PHC, Kirmich, Kurukshetra; Dr.Gaurav Bansal, Dental Surgeon, PHC, Kirmach, Kurukshetra PNDT Department, Kurukshetra.

3. On the basis of above said complaint, FIR under Sections: 3, 4, 5, 6, 18, 23, 25, 29 of Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 Rules 9, 10, 18; 420, 120-B IPC and 34 of The National Medical Commission Act, 2019 was lodged. During investigation, copy of transaction sending Rs.10,000/- on the mobile of Seema on 25.08.2023 was obtained. Recovery memo was prepared. Inventory was prepared. Currency notes were recovered and taken into police possession. During interrogation, accused Sachin suffered disclosure statement and got demarcated the place of occurrence.

4. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. As per the provisions of Section 28 of the PNDT Act, only a complaint could have been filed by the competent authority, however, in the present case, the competent authority has not filed the complaint and only final report under Section 173 Cr.P.C. has been submitted. Learned counsel further relies upon the judgment passed in

Dr. Tejinder Pal Singh Multani v. State of Punjab, 2015 (2) RCR (Criminal) 399.

5. Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that two of the co-accused are yet to be arrested and the petitioner is involved in heinous crime.

6. Having heard learned counsel for the parties and after perusing the records of the case, it transpires that the investigating agency has concluded the investigation and submitted the final report under Section 173 Cr.P.C. before the concerned Court on 08.11.2023 and out of 10 prosecution witnesses cited, none has been examined so far. The culpability, if any, would be determined at the time of trial.

7. A two Judge Bench of Hon'ble Supreme Court in '***Satender Kumar Antil v. CBI***' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other."

8. In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Sachin Kumar is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of

Illaqa Magistrate/Trial Court.

9. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

December 22, 2023
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(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No