



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1207 OF 2024

MANISHA W/O. SHIVAJI SANAP
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Rajendra G. Hange
APP for Respondents : Mr. A. S. Shinde
...

CORAM : S. G. MEHARE, J.

DATE : 01-10-2024

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondents.
2. The applicant seeks bail in C.R.No.9 of 2024 registered with Georai Police Station, District Beed, for the offences punishable under Sections 312 and 120(b) read with Section 34 of the Indian Penal Code, Sections 3 and 5 of the Medical Termination of Pregnancy Act, 1971 (for short, "MTP Act") and Sections 3(1), 3(3), 3(A), 6(b), 6(c), 18, 23(1), 23(2) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [for short, "PCPNDT Act"].
3. The Medical Superintendent of Sub-District Hospital, Georai had received confidential information that the applicant is involved in illegal determination of sex of foetus. Hence, he took assistance

of the Police. A decoy was sent to the place where such activities were done. The decoy went there. She was told that such sex determination is done there. A raid was conducted. The various materials used for sex determination were recovered. The applicant was apprehended on the spot of the incident and taken into custody.

4. The learned counsel for the applicant has raised objection that no case has been made out under the MTP Act and IPC. Only the Officer authorized under the PCPNDT Act can raid and no Court can take cognizance of offence, unless the complaint is filed by such authorized Officer. Therefore, filing of the chargesheet by Police is illegal. He has also raised objection that since Georai has a Municipal Council, only the Chief Officer of the Municipal Council was an appropriate authority as per the notification of the State of Maharashtra, dated 15th May 2015. He argued that filing such chargesheet vitiates entire trial.

5. To bolster his arguments, he relied on the case of ***Ravinder Kumar versus State of Haryana, Criminal Appeal No.3747 of 2024, dated 12.09.2024.*** When the prosecution has raised objection that she was repeatedly involved in the crime, she does not deserve bail. He relied on the case of ***Dr. Saraswati w/o. Sudam Munde versus State of Maharashtra and Anr, CrIMP No.3608-3609/2014 in Criminal Appeal No(s). 258-259 of***

2014 (@ Special Leave Petition (Crl.) Nos.9658-9659 of 2013). He submits that the applicant has small children and nobody is there to look after them. She is languishing in jail for sufficient period. Trial may take its time. Hence, she may be granted bail.

6. The learned A.P.P. has strongly opposed the application. He submits that the applicant was apprehended with incriminating material with a huge quantity and the cash of Rs.55,000/- in the premises where such illegal activities were done. The raid was successful. As per the notification dated 15th May 2015, the Medical Superintendent of Sub-District Officer was also the appropriate authority for taking the action under the PCPNDT Act. There is absolutely no bar to involve the Police in such crimes. Therefore, the submission of the learned counsel for the applicant that the chargesheet is vitiated, cannot be considered at this juncture. He also argued that the appropriate authority has received confidential information of the illegal activities. He just took the assistance of the Police. The Code of Criminal Procedure apply to such cases. Therefore also at this juncture, it cannot be said that the entire chargesheet vitiates. He further argued that the applicant is repeatedly involved in the crime. She has misused the liberty granted to her in the similar crime. Therefore, the view of the Hon'ble Supreme Court, in case of **Dr. Saraswati** (supra) does not apply. He also argued that the ratio of the Hon'ble

Supreme Court in ***Ravinder Kumar*** (*supra*) also does not apply to the present case, because the facts of this case are altogether different. In that case, Civil Surgeon had delegatged his powers to the officer who ws notified as a authority. However, in this case, the appropriate authority himself was there and he exercised his power. If such a person involving again in the identical crime is granted bail, the very purpose of PCPNDT Act would be frustrated. He prayed to dismiss the application.

7. So far as the facts mentioned above, there is no serious dispute. The ratio of ***Ravinder Kumar*** (*supra*) could not be applied to this case for factual difference. The State of Maharashtra, by notification dated 15.05.2015, has notified the different appropriate authorities for taking action under the PCPNDT Act. In that list, the Medical Superintendents of the Rural Hospital / Sub-District Hospital/ General/Cottage Hospital as well as the Chief Officer of the Municipal Council were notified.

8. Under Section 17(2) of the PCPNDT Act, the State Government has power to notify one or more authority for the whole or part of the State for the purpose of this Act, having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.

9. The above section is clear that the State may appoint more authorities than one. Therefore, the objection of Mr. Hange,

learned counsel for the applicant that the Medical Superintendent of the Sub-District Hospital could not be an appropriate authority where the offence has been committed within the limits of Municipal Council, Georai.

10. So far as the case of **Dr. Saraswati** (supra) is concerned, the learned A.P.P. has correctly pointed that involving in a similar crime even after granting bail in earlier crime itself is a misuse of the liberty.

11. There is no substance in the submission of the learned counsel for the applicant that Section 28 of the Act prohibits filing of the chargesheet, because it pertains to taking the cognizance of the offence.

12. The repeated involvement of the applicant itself is a strong ground to refuse bail. Considering her past and the gravity of the offence, no peculiar view may be taken in this case only because the applicant is a woman. If such persons are released on bail who are again and again involved in the same crime, the very purpose of the PCPNDT Act may frustrate.

13. For the above reasons, the application stands dismissed.

(S. G. MEHARE)
JUDGE