

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.2332 OF 2024

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Vikas Bapurao Kale	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Arun D. Mishra, for the Applicant.
Mr. S. H. Yadav, APP for the Respondent/State.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th AUGUST, 2024

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1. The Applicant is seeking anticipatory bail in connection with C. R. No.813 of 2023 registered with Wai Police Station, District Satara dated 21st December, 2023 under Sections 312 r/w 34 of IPC and under Sections 4 and 5(3) of the Medical Termination of Pregnancy Act, 1971.

2. Heard learned counsel for the Applicant and learned APP for the Respondent/State.

3. The FIR is lodged by Dr. Yuvraj Karpe, who was the Civil Surgeon, Satara. He has stated that there was a news article in the newspaper regarding sex termination test being conducted in a sugarcane field. Therefore, the authorities were conducting inquiry under the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 ("the PCPNDT Act"). The concerned woman, who is also one

of the accused had given one statement before the FIR, wherein she had mentioned that on 7th December, 2023, she had suffered abortion because she had lifted a bucket. Her mother-in-law also supported that stand. Further inquiry was conducted. A statement of the driver of the vehicle, in which the said woman had travelled to that particular sugarcane field was recorded. That statement indicated that the said woman had undergone the test for sex determination. According to the first informant, the story narrated by that woman that she suffered abortion because of lifting a bucket did not appear to be true. Therefore, the entire episode was suspicious. The relatives of that woman were not co-operating in the inquiry and were giving evasive replies. Therefore, the first informant was satisfied that there was a strong possibility that the said woman had undergone some procedure for termination of pregnancy after sex determination test. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the said woman is granted anticipatory bail by this Court *vide* the order dated 27th March, 2024 passed in Anticipatory Bail Application No.811 of 2024. He further submitted that there is no mention of the Applicant's name in the FIR. The Applicant was called by Police for inquiry by giving notice. The Applicant had attended the Police Station and has co-operated with the investigation. The Police have also conducted search of his premises. He submitted that from the allegation, it appears that according to the prosecution case, some

tablets were given to the said woman which had caused abortion. Learned counsel submitted that for a pregnancy which had advanced to the stage of 17 weeks, termination of pregnancy was not possible by mere tablets. There was possibility that it was indeed a natural process through which she had suffered abortion. The said woman, in the past, had given an affidavit mentioning that it was a natural process through which the abortion had happened. The FIR is lodged only on the basis of some vague newspaper report. The Applicant does not have any hospital, where this procedure could be conducted. Learned counsel further submitted that it is not possible that the Sonography machine could be taken to a field and that the test could be conducted without electricity. He further submitted that the Applicant be protected under Section 438 of the CrPC, as he is willing to co-operate with the investigation.

5. Learned APP produced the investigation papers before this Court. He submitted that the investigation papers contain statements of important witnesses including the said woman herself. He submitted that though the said woman was granted anticipatory bail and though she was an accused, her statement is important for the investigation purpose. Her case was entirely different from that of the present Applicant, as mentioned in that order dated 27th March, 2024. The offences under the MTP Act were not made out against that woman. However, all these sections are squarely applicable to the acts attributed to the present Applicant. There is serious material against him; therefore, his custodial interrogation is

necessary. Learned APP submitted that it is necessary to find out as to in how many such cases the Applicant has played an active role. This is a serious offence against the entire society and therefore it has to be dealt with strictly.

6. I have considered these submission and I have perused investigation papers. They contain the statement of that woman. Though she is an accused in this case, she would be the best person to narrate as to what had actually transpired and at this stage, this statement can be taken into consideration. She has stated that she had two daughters and she wanted the third child to be a son. Her brother told her that he had a discussion with one doctor and he was willing to find out the sex of her fetus. He named the present Applicant as the doctor, who would do that work. He further told her that he had agreed to conduct this job for Rs.15,000/-. On 30th November, 2023, the said woman along with her brother went to a sugarcane field near Barad. There was a Tin Shed in that field. There were three rooms and she was taken to one of the rooms. Some procedure was performed with the use of one machine. There were three other women who had also undergone that test. The Applicant was present during this procedure conducted by another person. Then the woman was taken towards the car and was informed that the test showed that it was a girl child. After a few days her brother called her and told her that the Applicant was asking whether she wanted to undergo the procedure for termination of pregnancy. She went to meet her brother at

Kadegaon and decided to undergo that procedure. Her brother called the Applicant. She was called to his hospital by the name 'Shiv Parvati Hospital' at Malshiras. The woman and her brother went there. The Applicant took her in a room and gave her some tablets, but they were ineffective. On 7th December, 2023, in the early hours at about 04:00 a.m., he gave her some more tablets to consume and two more tablets were kept in her private parts. By afternoon, her pregnancy was terminated. She had suffered extreme pain and there was heavy bleeding. The Applicant took away the remains of the fetus and had asked the woman herself to clean the blood on the floor. He had prescribed some more medicines. After that she came home. For that procedure, the Applicant had taken Rs.15,000/- from her.

7. As can be seen, the offence is extremely serious and cruel. The Applicant's role is clearly spelt out by the said woman in her statement. The name of the Applicant's hospital is clearly mentioned. In that context, statement of another doctor i.e. Dr. Prashant Patil is important. He has stated that the Applicant had suggested to this witness that they could start a hospital in partnership. Dr. Prashant Patil and Dr. Waghmode had permission to prescribe allopathic medicines, but the Applicant did not have any permission to prescribe allopathic medicines. Dr. Prashant Patil had registered the said Shiv Parvati Hospital at Malshiras in his own name. Dr. Waghmode and the Applicant were directors in that hospital. Thus, this statement shows that the Applicant was directly

connected with Shiv Parvati Hospital, where this procedure for termination of pregnancy was carried out.

8. There is another statement of one Honrao, who has narrated about the woman going to that Shed in a car and discussing the possible sex determination test. This statement is again supported by Satish Pawar, who was brother-in-law of that woman.

9. Apart from that, the Investigating Agency had sent a questionnaire to the Civil Surgeon. In response, it was stated by the Civil Surgeon that the Applicant had BEMS Degree and thereafter he had obtained EMS certificate. He did not have any authority to start a hospital and to treat the patients there. He had no authority to carry out the procedure for termination of pregnancy in Shiv Parvati Hospital and that he had no authority to conduct any procedure of termination of medical pregnancy.

10. All this material at this stage is strongly incriminating against the Applicant. What exact procedure he followed for carrying out the termination of pregnancy can only be found out after his custodial interrogation. His case is different from that of the woman who had suffered that termination of pregnancy and had undergone tremendous trauma. From the allegations it does appear that it may not be an isolated case and it could be a part of more such offences. Considering the seriousness of the offence and the strong incriminating material against the Applicant, his custodial

interrogation is necessary. No case for protection under Section 438 of CrPC is made out.

11. The Application is rejected.

(SARANG V. KOTWAL, J.)