



In The High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-33732-2024 (O&M)
Date of Decision:- 28.10.2024

Anil Kumar ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. P.S. Ahluwalia, Advocate, for the petitioner.
Mr. Manmeet Singh Teji, AAG, Punjab.

FIR NO.	DATE	POLICE STATION	OFFENCES
88	08.06.2024	City Jalalabad, District Fazilka	23 and 25 of Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and Sections 120-B, 34 IPC

GURVINDER SINGH GILL, J.

- The instant petition has been filed on behalf of the petitioner seeking grant of anticipatory bail in respect of aforementioned FIR.
- The case of the prosecution, in nutshell is that pursuant to receipt of a secret information to the effect that illegal sex determination of fetuses of pregnant women was being conducted in District Fatehabad



and adjacent areas outside Fatehabad, the District Appropriate Authority Fatehabad constituted a three members team to conduct sting operation including conducting a raid, checking records, sealing articles etc. It was further specifically recorded in authorization letter dated 13.5.2024 (Annexure R-3) that in case, the gang conducting illegal sex determination moves to another area for the purpose of gender testing, then necessary action be taken in coordination with the competent authority of the said area. It is further recorded in the said authorization letter that in case required, the team was authorized to get the FIR registered.

3. The sting operation team comprising of three members namely Dr. Nirpal Chand, Nodal officer (PNDT), District Fatehabd, Dr. Kishan Singh, Medical officer, C.H.C. Ratia, District Fatehabad and Dr. Deep Singh, Medical Officer, P.H.C. Mahmada, District Fatehabad associated a decoy patient namely Kaushalya wife of Deepak Kumar who established contact with a lady namely Parveen Rani who initially demanded an amount of Rs.40,000/- to get sex determination test conducted, but later she asked for Rs.56,000/-. After a deal was settled, the test was got conducted at Durga Memorial Hospital Ultrasound Centre, Jalalabad (District Fazilka) being run by Dr. Anil Kumar (petitioner). It is the case of prosecution that Parveen Rani disclosed the test report to decoy patient Kaushalya and was caught red-handed along with 100 currency notes of denomination of Rs.500/- each (Rs.50,000/-).



4. Immediately after the sting operation had concluded, Dr. Kavita, DFPO, Office of Civil Surgeon, Fazilka, informed the SHO Police Station Jalalabad (Fazilka) about the sting operation conducted by PNDDT team from Fatehabad, vide letter of even date Annexure R-1 and forwarded all the relevant documents/articles including authorization letter of appropriate authority, Fatehabad, recovered currency notes, mobile phones, video recording, statements etc. A request was made therein to register FIR against Parveen Rani and Dr. Anil Kumar. The SHO concerned forwarded the matter to Deputy Superintendent of Police who after examining the matter sent the same to Senior Superintendent of Police, Fazilka for passing appropriate orders for registration of FIR against Parveen Rani and Dr. Anil Kumar (petitioner). It was thereafter pursuant to the directions issued by Senior Superintendent of Police, Fazilka that the FIR came to be lodged.
5. Learned counsel for the petitioner in order to press upon his case for grant of anticipatory bail made the following three submissions:
 - i. that the entire proceedings conducted in the matter by the sting operation team are nonest in the eye of law inasmuch as the sting operation team was not authorized to conduct raid in a different State and that while the team had been constituted by the District Appropriate Authority of District Fatehabad, State of



Haryana, the sting operation i.e. the raid in question was conducted in Jalalabad, District Fazilka, State of Punjab;

- ii. that FIR could not have been lodged and the police could not have been associated and that it is only a complaint which could be maintainable;
- iii. that the call details record, as collected by the police which is incorporated in para No.8 of short reply dated 19.08.2024 would reveal that only 6 calls were made between Parveen Rani and the petitioner during a period of 5 months w.e.f. 26.01.2024 to 24.5.2024 which would clearly negate the case of the prosecution to the effect that both the accused were actively working together in tandem or that co-accused Parveen Devi was a tout of Dr. Anil Kumar (petitioner).

6. On the other hand, learned State counsel while opposing the petition submitted that the raiding team was duly competent and authorized by the District Appropriate Authority to take necessary action and that no infirmity can be found in the same. It has further been submitted that there is no absolute bar for associating police or for lodging FIR in the first instance and that it is only at the time of initiating prosecution in the Courts that a complaint by Appropriate Authority or by a duly authorized officer, is required and that the Courts can take cognizance only on the basis of a complaint and not on the basis of FIR and since, no cognizance of the matter has been taken so far by the Court, the



factum of lodging of FIR by the police on the basis of report of PNDT raiding team would not render the proceedings nonest or void or *ab-initio*. It has further been submitted that evidence collected by the raiding team fully establishes the involvement of the petitioner as well as of the co-accused in conducting illegal test and thus having regard to the facts and circumstances of the case and the nature of offence, the custodial interrogation of the petitioner would be required.

7. This Court has considered rival submissions addressed before this Court.
8. As far as the contention of the petitioner regarding the team not having been properly authorized to conduct sting operation is concerned, it is no doubt correct that it is the District Appropriate Authority of District Fatehabad which had constituted the raiding team, but a perusal of the authorization order Annexure R-2 would show that a rider was imposed that in the eventuality of commission of offence spreading to the adjacent area, the local appropriate authority of that area should be associated.
9. In the present case, the ultrasound centre from where the sex determination test was got conducted by co-accused Parveen Rani happened to be situated in the neighbouring District i.e. District Fazilka falling in the State of Punjab. Immediately after the sting operation had been conducted and the accused had been caught red-



handed, Dr. Kavita, DFPO, Office of Civil Surgeon, Fazilka, was contacted and to whom a report of sting operation alongwith other documents prepared or collected by raiding team were furnished. Dr. Kavita informed the SHO, Jalalabad who further informed Deputy Superintendent of Police and later Senior Superintendent of Police was also informed. No doubt, the appropriate authority of Fazilka was not immediately informed, but in case the sting operation team had chosen to wait for the team of appropriate authority Fazilka to join, the very purpose of sting operation may have been lost as time is the essence of such sting operations and a chance would have been lost to catch the accused red-handed. The raiding team having immediately informed the Office of Civil Surgeon, Fazilka and having passed on the entire information, documents, articles etc. seized at the spot, the action taken by the raiding team which had been duly constituted by the Appropriate Authority Fatehabad, cannot be found fault with.

10. The contention regarding there being no complaint in the matter would not be of much use to the petitioner inasmuch as Rule 18-A (3) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 does not absolutely bar involvement of the police though it does provide that as far as possible, the police be not involved for investigating the cases under the Act and the cases are to be tried as a complaint. The aforesaid provision is apparently in tune with Section 28 of the Pre-Conception



& Pre-Natal Diagnostic Techniques Act, 1994 as per which no Court shall take cognizance of an offence except on a complaint made by the appropriate authority. As already mentioned above, the stage of taking cognizance by the Court has not arrived so far and as such, the proceedings in question at this stage cannot be said to be absolutely void or without any jurisdiction. The police of District Fazilka has lodged the FIR upon receipt of information regarding commission of an offence and the police of District Fazilka was under a bounden duty to have lodged the FIR once commission of offence within its territorial jurisdiction was brought to its notice.

11. As far as the third contention of the petitioner to the effect that the call detail record collected by the police pertaining to 5 months would show that only 6 calls had been exchanged between both the co-accused cannot be treated as a definite circumstance at this stage to rule out the involvement of the petitioner inasmuch as it could be a case where more than one phones might have been used by the accused or the accused might have been conversing with the help of WhatsApp calls so as to avoid detection and to avoid creation of any record. The said aspects can only be gone into after thorough investigation by the police and for which custodial interrogation would be required.
12. In view of the discussion made above and having regard to the seriousness of the offence which involves grave social issues, this



Court is of the opinion that it is a case where custodial interrogation would be required. The petition is sans merit and is hereby dismissed.

28.10.2024
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No