



2024: DHC: 2812



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.04.2024

+ **BAIL APPLN. 633/2024**

BABU LAL

.....Applicant

versus

THE STATE NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Ms. Jyoti Batra & Mr. Ashwani Kumar,
Advts.

For the Respondent : Mr. Utkarsh, APP for the State.
SI Baleshwar, PS Najafgarh.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**) for grant of bail in FIR No. 33/2024, registered at Police Station Najafgarh for the offences under Sections 420/34 of the Indian Penal Code, 1860 (**IPC**) and Section 6(c) of the Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994.

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2. The FIR was registered on a complaint from Appropriate District Authority, Sonipat that a secret information was received by them that illegal activities of sex determination of the foetus were being carried out in Delhi.

3. One pregnant lady was contacted and she volunteered and agreed to help the Police team to catch the offender. The secret informer then contacted a person, namely, Kamlesh and asked to get the sex determination of the pregnant lady.

4. The accused Kamlesh then agreed to conduct the test and demanded ₹50,000/- for the same.

5. It is alleged that the accused Kamlesh took the decoy lady inside one Dwakhana and asked her to give ₹25,500/- in advance. The accused, Kamlesh then left and returned after 20 minutes, and gave the decoy pregnant lady, a brownish coloured powder and asked her to take the same with milk. He then put a hollow glass cylinder on the stomach of the decoy pregnant lady and stated that she will have a male child.

6. It is alleged that the accused Kamlesh bought the powder from the applicant and gave him ₹25,000/-. The said amount was recovered from the applicant and the recovered notes matched the list of notes which were handed over to the decoy pregnant lady.

7. The learned counsel for the applicant submitted that the investigation qua the applicant is complete and the recovery



effectuated from him was planted by the police officials. He averred that the applicant belongs to the poor strata of the society and is the sole bread earner of his family.

8. He submitted that the applicant is a law-abiding citizen and has been falsely implicated in the present case and he is in custody since 30.01.2024.

9. He submitted that the applicant was merely a caretaker at M/s Shivam Ayurvedic Store, Kakrola, Najafgarh and had no control over the activities which were going on in the store. He stated that there are no documents to show that the applicant is the owner of the store.

10. He submitted that the applicant had given the medicine – Bhasm to co-accused Kamlesh only on the instructions of his employer and he was unaware about the contents and purpose of the alleged medicine – Bhasm.

11. He submitted that the applicant has neither conducted any test nor he has cheated the complainant or received any monies from her.

12. He submitted that all the incriminating evidences are already in possession of the police, and no custodial interrogation of the applicant is required.

13. The learned Additional Public Prosecutor for the State submitted that the applicant was actively running a racket of testing the sex of the foetus and was caught red handed during the raid.



14. The maximum punishment prescribed in relation to offence under Section 420 of the IPC is seven years. It is not the case of the prosecution that the applicant is the one who allegedly conducted the sex determination test on the decoy pregnant lady. The only allegation, at this stage, against the applicant is that he had sold certain brown powder to the accused Kamlesh for which the accused, Kamlesh had taken a sum of ₹25,000/- from the decoy pregnant lady.

15. No allegations have been made, at this stage, that the applicant was aware that the brown powder which was bought by the accused Kamlesh was being used for the alleged sex determination test.

16. It is also not denied that the applicant was merely a worker in the Ayurvedic store which is owned by a person, namely, Raj Sain.

17. The applicant is stated to be belonging to the poor strata of the society and has clean antecedents.

18. The investigation is stated to be complete and the custodial interrogation of the applicant is no longer required.

19. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time



20. Considering the aforesaid discussion, this Court is of the opinion that the applicant has made out a case for grant of bail.

21. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. He shall appear before the learned Trial Court as and when directed;
- c. He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- d. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

22. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

23. It is clarified that any observations made in the present order are for the purpose of deciding the present bail applications and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.



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24. The bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

APRIL 08, 2024
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