



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 2115 OF 2024

Dr. Dilipsingh s/o Chattarsingh Rajput,
Age : 48 years, Occ: Doctor,
R/o. Bhokardhan, District Jalna. ... Petitioner

Versus

The State of Maharashtra ... Respondent

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Mr. Somnath G. Ladda, Advocate for the Applicant.
Mr. V. S. Badakh, APP for the Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 14.01.2025

Pronounced on : 17.01.2025

ORDER :

1. By way of instant application, applicant seeks enlargement on bail in consequence of his arrest in crime no.0296 of 2024 registered at Bhokardan Police Station, District Jalna for offence punishable under Sections 91, 88, 61(2), 3(5) of the Bhartiya Nyaya Sanhita (BNS), Section 33(2) of the Maharashtra Medical Practitioners Act, 1961, Sections 3(a), 3(b), 23, 25(9) of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [PCPNDT Act] , Section 3 & 6 of Bombay Nursing Home Act and Sections 3 and 4 of the Medical Termination of Pregnancy Act, 1971.

2. Pointing out that applicant is behind bars since 22.08.2024, learned counsel for the applicant submitted that applicant is a

medical practitioner, i.e. a Homeopath. That, above crime is registered on allegations that raid was conducted to his premises on 06.07.2024 and informant, a Medical Superintendent, claims that present applicant was conducting sex determination of foetus and even performing illegal abortions. Learned counsel pointed out that in fact, from the FIR itself it is clear that present applicant was not available in the hospital when alleged raid was conducted. Inquiry was made with staff and some patients and on the strength of the same, above crime has been registered. Learned counsel pointed out that in fact, though applicant has obtained degree in Homeopathy, he has further obtained certificate from Maharashtra Board of Health Sciences, Pune, declaring him to be competent and qualified to be a gynecologist. Such certificate is placed on record. That, this being the position, he is authorized to give treatment. That, even AYUSH Scheme of Government has given clear directions for permitting persons like applicants with such qualifications to give treatment. According to him, application of Sections 91 and 88 of BNS (old Sections 315 and 312) is misplaced as, according to him, actual required ingredients for attracting these charges are not available and as such, said provisions cannot be invoked. He submitted that there is subtle difference between above provisions and the provisions under the PCPNDT Act. According to him, maximum punishment under the

provisions of the PCPNDT Act is imprisonment for three years. Applicant is behind bars since 22.08.2024. Whatever was to be recovered has already been seized. Now nothing is remained to be discovered or recovered at his instance. Investigation is almost over. Applicant has roots as well as immovable properties and as there are no chances of he misusing liberty, learned counsel urges to use discretion in favour of the applicant and grant relief.

3. Strongly opposing the above application, learned APP pointed out that serious crime has been committed, moreover when applicant was not qualified and had no recognition or authority to conduct sonography tests and diagnostic tests and moreover, he was not authorized to undertake procedure for termination of pregnancy. That, several patients were present in the hospital and they have clearly reported that they were called for sex determination of foetus as well as for undertaking the procedure for termination of pregnancy. Learned APP pointed out that this is a serious crime and though investigation is over, he prays that applicant does not deserve relief as prayed.

4. Heard. Perused the papers including the FIR. It is emerging that Medical Superintendent of Rural Hospital Bhokardan, on instructions

of Civil Surgeon, Jalna, paid visit to Amar Hospital and its Annex building at 16.03 hours i.e. on receipt of information about illegal pre-natal sex determination being conducted in the hospital owned by present applicant. Informant claims that she was a part of the team comprising of another female doctor, a junior clerk, a pharmacist, Civil Surgeon himself, a legal advisor as well as police who conducted raid to the premises and came across three persons, i.e. Yogesh Kaduba Padol, Nitin Rushikesh Jadhav and Sandhya Sunil Apar available in the hospital and on inquiry, they informed that hospital was owned and run by present applicant, but he had gone out. Therefore, the raiding team carried out inspection of the premises and various rooms and came across allopathy medicines, medical equipments, injections, saline tubes, used syringes, sonography machine, apple tab, pen drives, memory card, medical receipts of hospital and medical center etc. Informant claims that present applicant had obtained merely certificate of registration from Council of Homeopathy, Mumbai and has also obtained certificate in Gynecology and Obstetrics from Maharashtra Board of Health Sciences, Pune and degree certificate of BHMS from Dr. Babasaheb University, Mumbai. He was neither qualified nor authorized to conduct test or any operative procedure.

5. Thus, informant lodged report that, in illegal manner, without authorization and qualification, not only sex determination of foetus was got done but even procedure of curating and abortion are also illegally carried out in spite of applicant being a Homeopathy practitioner, i.e. for monetary gains.

On above report, above crime has been registered under the provisions of BNS, PCPNDT Act etc.

6. Apparently, above raid is conducted on 06.07.2024. Applicant is shown to be arrested on 22.08.2024. In support of relief, learned counsel for applicant has emphasized that firstly, applicant does have certificate of Gynecology and Obstetrics from Maharashtra Board of Health Sciences, Pune; secondly, Ministry of Ayush recognizes even Homeopaths to provide treatment; and thirdly, wrong application of provisions of BNS. According to him, maximum sentence for offence could be up to three years. Now, applicant is behind bars since more than four months. His hospital as well as equipments are seized. Nothing is to be recovered at his instance, and so learned counsel urges to exercise discretion of bail as applicant has both, roots as well as movable and immovable properties.

7. Learned APP has taken this court through the FIR and has pointed out that patient namely Sheetal Ganesh Gade, whose sonography was done on 05.07.2024, was present in the hospital for abortion. Statement of Sheetal is recorded and it finds place in the charge sheet wherein she has given statement that on 06.07.2024, she had come for abortion/termination on advice of present applicant and the procedure for termination of pregnancy was begun through compounder. Statement of her husband Ganesh is also recorded and he stated that, with the help of compounder Padole, sonography of his wife was done on 05.07.2024 and it was informed that foetus is of female. He stated that they were not keen in having girl child and therefore, as per the advice of present applicant, they had come to the hospital on 06.07.2024, i.e. on the day when raid was conducted.

8. Investigation papers show that agents were deployed to solicit couples who were keen in going for sex determination and termination of female foetus. Chargesheet shows that arrested accused Yogesh and Nitin, while in police custody, gave statements about the *modus operandi* of calling couples and women through agents namely, Ramesh @ Anna Lokhande, Ramsing Badhiye, Nana Sahane, Gajanan Mohite and Pachge. Investigation revealed that for sex determination, Rs.15,000/- were charged and for termination of

pregnancy separate Rs.15,000/- were charged. Even statements of staff engaged in the hospital have been recorded by investigating machinery coupled with statements of members of the raiding party.

9. Consequently, there is material in the form of chargesheet revealing that present applicant was basically a Homeopathy doctor, but on the strength of certain certificates, he was running diagnostic center and without authorization and qualification, performing sonography tests with specific purpose of sex determination, and further went to the extent of undertaking procedures of termination of pregnancy and curating. Consequently, with such serious allegations and material, when crime of such nature assumes this distinct and complex dimension, impacting the very societal aspects, this Court is not inclined to grant relief as prayed. Hence, I proceed to pass the following order:

ORDER

The application is dismissed.

[ABHAY S. WAGHWASE, J.]