

-1-

CRM-M-25259-2025
Date of decision: 19.05.2025

...PETITIONER

VERSUS

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gaurav Vir Singh Behl, Advocate for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J. (ORAL)

FIR No.	Dated	Police Station	Sections
51	26.02.2025	Ambala City, District Ambala	61/318(3) of BNS, 2023 and Sections 3, 4 & 5 of Medical Termination of Pregnancy Act, 1971 and Section 34 of National Medical Commission Act, 2019

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. Per paragraph 12 of the bail petition and para 20 of the reply, the petitioner has clean antecedents.

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“xxx xxx xxx xxx

That as a matter of fact, the present case FIR bearing no. 51 dated 26.02.2025, was registered on the complaint of Dr. Vipin Bhandari under sections 61, 318(3) of BNS. 2023 and section 3, 4 and 5 of Medical Termination of Pregnancy Act, 1971 and section 34 of National Medical Commission Act, 2019 at Police Station Ambala City. For the sake of brevity and for the kind perusal of this Hon'ble Court, the brief contents of the case FIR i.e. wherein the Complainant leveled allegations against the accused-persons named in the case FIR, are reiterated herein as follows: "To: SHO, PS City, Ambala City. Subject: - Regarding complaint to lodge FIR under section 3,4,5 of MTP Act, 318(3) BNS, 61 BNS and 34 NMC Act against 1) Manish Kumar alias Monu s/o Varinder Kumar, r/o 1672/2 Mahavir Nagar Ambala city. 2) Shiv Sharma s/o Jatinder Sharma, r/o 1727/27 Mahavir Nagar Ambala city. 3) Viresh mob. no XXX8293470 In reference to above



CRM-M-25259-2025

-2-

mentioned subject, it is informed here that a nexus was being run by various people to supply the MTP kits to the pregnant ladies of District Ambala for the abortion of the unwanted pregnancies. A team was constituted by the Civil Surgeon Ambala to do the needful. A pregnant decoy lady was arranged for the same. The following action was taken regarding this matter. Today on dated 25-02-2025, as per order of Civil Surgeon, Ambala by vide letter no Endst. No. PNDDT/2025/426 Dated: 24-02-2025 on the basis of secrete Information regarding illegal sale of MTP kit for causing illegal abortion of pregnant women in the area for monetary gains, indulging in illegal medical practice without any Degree or Qualification at M/s Sharma Medicose, Shop No. 01, Near Goyal Clinic Ghanaur Road Moti Nagar Ambala City, Distt. Ambala. A team of following officers/ officials was constituted: 1. Dr. Vipin Bhandari, ASMO, Nodal Officer PNDDT/MTP. 2. Sh. Hemant Grover, DCO, Ambala. Mrs. Roop Devi W/o Sh. Dalbir Singh r/o Ramdass Nagar Ambala City has given her consent to join the team and given her statement. On dated 13-02- 2025 informer Mr. Bhupinder Singh S/o Sh. Pappu R/o H. NO. 10 New Vivek Vihar Ambala city informed the office of Civil Surgeon Ambala regarding illegal sale of MTP Kits by some people around his home area and being a responsible citizen, he wanted to help the health department to curb such illegal activities/person. Team has asked him to place an order and on 15-02-2025 he paid through Google pay paid Rs. 850/- in the a/c of Mr. Manish @ Monu prop of M/s Sharma Medicose, Shop No. 01, Near Goyal Clinic Ghanaur Road Moti Nagar Ambala City, Distt. Ambala on his Mobile No. XXX7172227. Today on dated 25-02-2025 at around 4.30 pm onwards informer Mr. Bhupinder Singh S/o Sh. Pappu was sent to Sharma Medicose, Shop No. 01, Near Goyal Clinic Ghanaur Road Moti Nagar Ambala City, Distt. Ambala along with decoy patient. He contacted Mr. Manish for which he told Mr Bhupinder to come alone and there is no requirement of pregnant lady to come to the shop. Team started following them and as per the request of the Sharma Medicose person he left the pregnant lady at a distance from that shop and went to take the MTP Kit. Team was waiting at a distance from that spot. After reaching at shop, he asked Mr. Manish to provide the MTP kit as decided then Mr. Manish called person named Mr. Shiv Sharma S/o Sh. Jatinder Sharma R/o Nadi Mohalla Ambala City to bring the MTP Kit for him, and he brought the MTP Kit of which the details are as follows: Product: Prega End (Combi pack of Mifepristone Misoprostol Tablets) Batch No.: Master Batch No. PE0422011, Product Batch No. A-FG01548 B- FG02548 Mfg. Date: 10/2024, Exp Date: 09/2026, Mrp Rs. 389.00/- PER KITS Inclusive of all taxes Mfg. By: Akums Drugs Pharmaceuticals Ltd., 47-48Sector-6A I.I.E, SIDCUL Ranipur Haridwar 249403, Uttarakhand INDIA.



After that Mr. Shiv Sharma gave the above- mentioned medicine to Manish alias Monu and he wrapped it in a paper envelope and handed it over to Mr Bhupinder and also explained him the procedure to give to pregnant lady for the termination of pregnancy. After that Mr. Bhupinder left the shop and reached to the pregnant lady waiting at a distance and gave a signal to the health department team waiting at a distance. The team reached the spot and confronted the chemist shop proprietor Mr Manish alias Monu and Mr. Shiv Sharma present at the shop regarding trying to conduct an abortion on the decoy pregnant lady and practicing medicine without the proper degree/license. Sd/- Vipan Bhandari Dr Vipan Bhandari, ASMO Nodal Officer PNDT/MTP, Ambala." Hence this case. However, the detailed facts of the present case have already been mentioned in para no.1 of the petition as well as in Annexure P-1 attached by the Petitioner-Accused with the present petition, hence, the contents of the same are not repeated for the sake of brevity."

4. The petitioner's counsel prays for bail by imposing stringent conditions including surrender fire arms, if any. In case, petitioner repeats the offence or commits any offence where the sentence is more than 07 years, he would have no objection, if State files an application for cancellation of his bail. He further contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

5. The State's counsel opposes bail and refers to the reply.

6. It would be appropriate to refer to the following portions of the reply, which read as follows:.

"That so far as the role of present petitioner-accused in the offences mentioned in the case FIR/Challan is concerned, the present petitioner-accused was found in possession of the MTP Kit (although present Petitioner-Accused was very well knew that keeping MTP Kit in possession is an illegal act and he showed negligence by keeping it in box and asked co-accused to look after that box. Further the present petitioner-accused did not inform co-accused Shiv Kumar about what the box contains and just instructed to look after the box and when he would return from Panipat he will take the box from him) and which was taken away by co-accused Shiv Kumar @ Shiv Sharma, who sold it further to another co-accused Manish Kumar. Thus, in this way, the present petitioner-accused was found to have been in illegal possession of MTP Kit (facts regarding the same can be verified from the disclosure statements made by the present petitioner-accused and co-accused Shiv Kumar), hence committed grave offence which affects the general public and society at large hence, not entitled for regular bail."



REASONING:

7. There is sufficient primafacie evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing. Per the custody certificate dated 18.05.2025, the petitioner’s total custody in this FIR is 02 months and 21 days. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

8. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

9. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fail to appear, such surety can produce the accused.

10. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

11. This order is subject to the petitioner's complying with the following terms.

12. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

13. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.**

14. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.



CRM-M-25259-2025

-5-

15. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

16. **Petition is allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

19.05.2025
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(ANOOP CHITKARA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No