



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-61280-2023 (O&M)

Reserved on : 13.08.2024

Pronounced on : 21.08.2024

Dr. Anant Ram

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Abhishek Sethi, Advocate and
Mr. Tejbahadur Yadav, Advocate
for the petitioner.

Ms. Trishanjali Sharma, DAG, Haryana.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking the concession of anticipatory bail under Section 438 of the Cr.P.C. in case FIR No.866 dated 14.10.2023 under Sections 3, 4(1), 4(2), 4(3), 4(4), 5(2), 6, 18(1), 23, 25, 29 of the Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 (hereinafter referred to as 'PC&PNDT Act') and Sections 120-B, 34 of the IPC registered at Police Station Barwala, District Hisar.

2. Learned State counsel, at the outset, on instructions, has submitted that despite the petitioner joining the investigation on 19.12.2023, he has been totally non-cooperative and has failed to hand over the laptop and portable ultrasound machine used by him in carrying out the sex determination test. It has also been asserted by learned State counsel that even though the petitioner was granted multiple opportunities to cooperate with the



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investigation, however, since he had failed to do so, his custodial interrogation is required in the instant case.

3. Before proceeding further, it would be relevant to reproduce the contents of the FIR which are as under:-

*“To the SHO, Barwala. Memo No. PNDD/2023/ Dated: 14-01-2023. Subject: Registration of an FIR under the provisions of PNDD Act, 1994 against 1) **Dr. Anant Ram**, Executive Officer, Anant Ram Janta Hospital Barwala 2) Sunita Lohari wife of Sh. Ali Momhad, Caste Musalman Lohar, resident of Tara Nagar Colony, Barwala 3) Sh. Krishan Kumar son of Ratan Singh Caste Jat, resident of Rajli and 4) Sh. Ali Khan son of Sh. Baljit, Caste Musalman Lohar, resident of Sulakhni, District Hisar. Sir, in the abovenoted subject, you are hereby informed that on 13-10-2023 at about 10 in the night, a raid was conducted near Dahiya service station Barwala on Barwala Hisar Road and in pursuance thereto Sh. Sunita Lohari and her accomplices Sh. Krishan Kumar resident of Rajli were nabbed at the spot who had got the sex of the fetus of the decoy female persuaded by the Health Department determined by **Dr. Anant Ram Barwala** which is illegal as per the PNDD Act 1994 and thus they are liable to be punished. One person Sh. Ali Khan son of Sh. Baljit caste Lohar resident of Sulakhni district Hisar is also an accomplice to the abovenamed persons. The jist of the matter at hand is as follows: District Sirsa team received a secret information that **Dr. Anant Ram of Barwala** district Hisar is involved in the business of illegal sex determination by having formed a gang, for which the District Appropriate Authority constituted a team for investigating the same and proceeding as per law. The said team consisted of Dr. Bharat Bhushan & Dr. Harsimran. The team conceived a secret plan as per which a pregnant female was inducted to nab the persons involved. The consent of the pregnant female Smt. Saroj wife of Sh. Rajinder Singh resident of Dhotad was obtained and an amount of ₹ 50,000/- was given to her being given in lieu of sex determination. Tout Sunita asked the pregnant female to come to Barwala on 13-10-2023 at 7 in the evening. The Sirsa team gave the advanced information about the ensuing raid by them at Hisar to Dr. Prabhu Dayal, Nodal Officer Hisar PNDD on his mobile phone on 13-10-2023 at about 6 in the evening which was further transmitted by him to Dr. Ratna Bharti, Civil Surgeon Hisar, Sh. Deepak Legha, District Attorney and Smt. Anita Dalal DPO WCD. Thereafter, a raiding team*



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*was constituted by them which was authorized to conduct a joint raid with Sirsa team and take further action/ FIR (copy of the orders attached herewith). Said team included Dr. Prabhu Dayal, SMO-cum-Nodal Officer PNDDT and Dr. Kamid Monga, ASMO. After constitution of the Hisar team, it met with the Sirsa team at about 10 in the night at Barwala and the further proceedings were jointly conducted by both the teams. The pregnant female Smt. Saroj was sent as a decoy customer by the Sirsa team, her husband Sh. Rajinder Kumar & Sh. Surender the ambulance driver also accompanied the decoy female. The decoy female had been called on 13-10-2023 at 7/8 in the evening. However, they reached the place told by tout Sunita at about 9 in the evening. The appointed place was Dahiya service station, Hisar Road, Barwala. Tout Sunita & Krishan reached the spot on a motorcycle and they received ₹50,000/- from Saroj through Sh. Surender the ambulance driver and thereafter, they took decoy female Smt. Saroj on their motorcycle by blindfolding her. Saroj could not see where she was being taken on account of the darkness and they took her to a house in Krishna colony, away from the road, where **DR. Anant Ram Barwala** conducted the ultrasound. **Dr. Anant Ram** had brought a portable usg machine and a laptop with him which he fled with, afterwards. During the raid the team found out the place where the ultrasound of the female decoy was conducted which was also identified by the decoy female. Tout Sunita & Krishan had come to drop Saroj when tout Sunita, in the presence of Saroj informed Surender that Saroj was having a male fetus in her womb. At this moment both the teams nabbed Sunita & Krishan. Tout Krishan admitted to the teams that he only had taken Saroj alongwith him to drop her at the house of Sunita and had afterwards come to drop her off. He took the team to Sunita's house where he had taken the decoy and where **Dr. Anant Ram** had conducted the ultrasound examination upon Saroj. Saroj then identified the said house and had pointed out the room where her ultrasound was conducted to the team. Saroj also identified Krishan, Sunita & Ali Mohmad. While proceeding jointly. both the teams recorded the statements of decoy Saroj, her husband Rajender, tout Krishan, tout Ali Khan and Surender. The team prepared seal/ seizure memo and a spot memo, a copy of which were given to all the accused persons after obtaining their signatures. The team also recovered a DVR from spot which was sealed after being taken into possession. Thereafter, the team reached Police Station Barwala where further proceedings were carried out. The team went to Anant Ram Janta Hospital Barwala and searched the place but **Dr. Anant Ram** was not found*



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*there. Thereafter the team presented an application for registration of an FIR to the police and received an acknowledgement of the receipt thereof. The team also took into their possession a phone belonging to tout Krishan Kumar, a phone make VIVO Y21 sky blue color; a cell phone belonging to Ali Khan (OPPO A57 black color) and two other mobile phones belonging to tout Sunita (SAMSUNG DUOS & VIVO Y16 color yellowish white). Thereafter the team also took into its possession a motorcycle used in the crime. Sir, **Dr. Anant Ram** had conducted the sex determination of the fetus of decoy female Saroj which is illegal using an unregistered ultrasound machine at a place which is not registered under the PNDDT Act, without the necessary documents including Form-F, which illegal and punishable under Sections 23 & 25 of PC-PNDDT Act. Four other cases are also pending in court against **Dr. Anant Ram** under the PC-PNDDT Act (FIR 474/2021 PS Barwala, FIR 700/2018 PS Barwala, FIR 699/2015 PS City Hisar & FIR 99/2016 PS Barwala). Smt. Sunita permits the use of her house for sex determination and she herself is also involved in this act by playing an important role in sex determination and thus she is also liable to be punished. Another case of PC-PNDDT Act is also pending against Sunita in court (FIR 474/2021) Sh. Krishan tout with the help of Sunita, **Dr. Anant Ram** & others has determined the sex of the fetus of female Saroj, he too is liable to be punished. Sh. Lai Khan conducted the recce of female Saroj and the team so that no accused can be nabbed and conducted an illegal act in accomplice with others for earning money. It is therefore prayed that an FIR be registered against the abovesaid under Section 3,4(1),4(2), 4(3), 4(4),5(2), 6, 18(1), 23, 25, 29 of PC-PNDDT Act and Sections 120-B/34 of IPC, all of which fall under the category of cognizable offences, and they be proceeded against as per law. A copy of the FIR may kindly be made available to the undersigned. Sd/ Dr. Prabhu Dayal (PNDDT Nodal Officer) 8950184481.”*

4. Vide order dated 06.12.2023, a Coordinate Bench of this Court had granted the concession of interim bail to the petitioner in the following terms:-

“Learned counsel for the petitioner inter alia submits that the cognizance under the Pre-conception & Pre-Natal Diagnostic Techniques Act, 1994, can only be taken on a complaint filed by the appropriate authority



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and not on the basis of FIR.

Notice of motion for 10.01.2024.

In the meanwhile, petitioner will join investigation before the Investigating Officer as and when called. In the event of his arrest, the Arresting Officer would admit him to interim bail, till the next date of hearing, on his furnishing adequate bail bonds/surety bonds to his satisfaction. The petitioner is directed to abide by all the conditions as envisaged under Section 438(2) of Code of Criminal Procedure, 1973.”

5. Learned counsel for the petitioner submits that the petitioner has been wrongly accused of illegal sex determination under the PC&PNDT Act. Learned counsel submits that despite the FIR being a detailed one, lacks credible evidence directly linking the petitioner to the alleged offence. The prosecution has not brought forth any substantial or cogent material that the petitioner participated in or facilitated the illegal sex determination of the sex of the foetus. Learned counsel for the petitioner while further drawing the attention of this Court to the FIR, submits that a perusal of the allegations levelled in the FIR does not even accuse the petitioner of revealing the gender of the foetus. Instead, it only suggests that he performed an ultrasound test on the alleged decoy customer; the actual disclosure of the gender of the foetus was allegedly made by co-accused, Sunita, purportedly acting as a tout of the petitioner. Furthermore, there is no evidence on record that the petitioner received any payment from the alleged illegal activity or that he was even physically present at the spot when the alleged test was carried out on the decoy customer, casting further doubt on the narrative of the prosecution.



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6. Qua the criminal antecedents of the petitioner, learned counsel submits that no doubt there are four other cases registered against him under the PC&PNDT Act, however, in two of these cases, the material witnesses did not support the case of the prosecution as a result of which they were all declared hostile, and in the remaining two cases, the petitioner has not yet been summoned.

7. It has still further been vehemently argued that the case of the prosecution is riddled with contradictions. A significant inconsistency is the alleged failure of the raiding party, led by Civil Surgeon cum Chairman of the District Appropriate Authority, Fatehabad (hereinafter referred to as 'DAA') to follow the decoy customer to the scene of crime despite trailing her from Dahiya Service Station on Hisar Road, Barwala. It has been argued that as per the FIR, the decoy customer was blindfolded while being taken to, and from from the scene, making it implausible that she, who was unfamiliar with the petitioner, could have identified him as the person conducting the ultrasound test.

8. It has also been argued by the learned counsel for the petitioner that denying bail would serve no useful purpose, as the police cannot file a charge sheet under the PC&PNDT Act. It has been argued that under Section 41 of the IPC and 4(2) of the Cr.P.C., offences under the special laws like PC&PNDT Act should be investigated and tried according to the provisions of that specific law, not the Cr.P.C. Learned counsel has placed reliance upon *Union of India Vs. Ashok Kumar : (2021) 12 SCC 674*, wherein Hon'ble the Supreme Court held that the



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police did not have the power to register an FIR , investigate, or arrest any person under the Drugs and Cosmetics Act; learned counsel has contended that the PC&PNDT Act is paramateria to Drugs and Cosmetics Act, 1940 , and therefore in the same terms, the police has no power to proceed with the instant FIR as the entire jurisdiction to investigate and proceed rests with the Appropriate authority as envisaged under Section 28 of the PC&PNDT Act.

9. Furthermore, learned counsel has submitted that the PC&PNDT Act provides for the appointment of an appropriate authority by the state government and vide notification dated 07.11.2023, the state of Haryana has constituted a district level multimember body consisting of Civil Surgeon as Chairperson, District Program Officer Women and Child Development Department along with the District Attorney concerned as its members. He has argued that this Authority acts collectively, and any action taken by a single member as has been in the instant case, would be against the legislative mandate.

10. Regarding recovery of ultrasound machines, learned counsel for the petitioner has asserted that none of the machines, registered in the name of the petitioner or his wife are involved in the alleged crime. The petitioner owns two hospitals : AMC Hospital in Hisar and Dr. Anant Ram Janta Hospital Private Limited in Barwala. Both hospitals have ultrasound machines that are either sealed or accounted for, with no evidence connecting any of them to the alleged offence. It has been, thus, prayed that non-recovery of portable



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ultrasound machine and laptop should not be a ground to deny the concession of anticipatory bail to the petitioner when it is the consistent case of the petitioner that he has no other ultrasound machine in his possession. Learned counsel has thus, reiterated that the petitioner has fully cooperated in the investigation, as and when called for, in compliance of the various orders of this Court. A prayer has been made that the interim order dated 06.12.2023 be made absolute.

11. Per contra, learned State counsel has vehemently opposed the prayer and submissions made by the learned counsel for the petitioner by arguing that the petitioner has been rightly arraigned as an accused in the present FIR; he is involved in a grave offence of illegal sex determination since the year 2010. Learned State counsel has contended that the petitioner has played a central role in the instant case by performing the ultrasound examination and also disclosing the gender of the foetus to the decoy customer. It has been submitted that contrary to the claims made by learned counsel for the petitioner, the petitioner has been using a portable ultrasound machine to conduct these illegal test clandestinely, outside the premises of his hospital, and has been transporting the portable ultrasound machine to various undisclosed locations to evade detection.

12. Learned State counsel has further asserted that during investigation, the decoy customer has positively identified the petitioner as the doctor who conducted her ultrasound examination. Additionally, learned State counsel has submitted that there is documentary evidence in the shape of CCTV footage wherein the



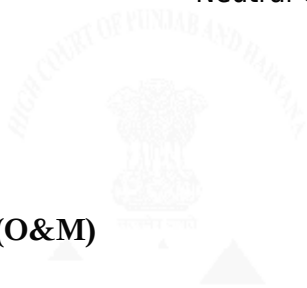
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petitioner is visible along with portable ultrasound machine at the time of the alleged offence.

13. Regarding the contention made by learned counsel for the petitioner with respect to the registration of FIR under the PC&PNDT Act, learned State counsel has argued that it was rightly registered based on a complaint made by Dr. Prabhu Dayal, SMO, from the office of Civil Surgeon and Chairman of the Appropriate Authority, Hisar. The FIR followed standard procedures, triggered by credible information qua the involvement of the petitioner in an illegal sex determination racket.

14. It has also been argued by the learned State counsel that the PC&PNDT Act does not preclude the registration of an FIR and investigation by the police. Since the offences under this Act are cognizable, the police are duty bound to register an FIR under Section 154 of the Cr.P.C., upon receiving information about the commission of cognizable offence. In support, learned State counsel has cited a decision of a Division Bench of this Court in *Hardeep Singh and another Vs. State of Haryana and others (CRM-M-4211-2014, decided on 04.12.2014)*. It has been argued that there might be some technical issues, such as absence of signatures of all the members of the DAA, however, this would not invalidate the FIR or the investigation, especially when there is ample prima facie cogent evidence pointing towards the involvement of the petitioner.

15. Furthermore, it has been submitted by the learned State counsel that the investigation which has been carried out so far reveals



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that the petitioner has been conducting illegal ultrasound tests to determine the sex of foetus, violating ethical guidelines for financial gains. Learned State counsel has highlighted the petitioner's involvement in seven other criminal cases, five of which are related to illegal sex determination. It has been submitted that in the above background, if at all, there have been certain procedural technicalities though not conceded, it should not obstruct justice, especially considering the petitioner's repeated violations of law and involvement in serious offences affecting the society at large.

16. Learned State counsel while stressing upon the seriousness of the allegations and ongoing investigation, has underscored the necessity of recovery of laptop and portable ultrasound machine used in the illegal sex determination test. It has been argued that the custodial interrogation of the petitioner is necessitated not only to recovery both these items but also to thoroughly investigate the role of the petitioner in the illegal activities and identify his accomplices. Given the gravity of the offences and the petitioner's non-cooperation with the investigating agency, learned State counsel has submitted that granting anticipatory bail would likely result in the petitioner absconding or attempting to influence the witnesses, thereby compromising the integrity of the investigation.

17. I have heard learned counsel for the parties and perused the relevant material on record.

18. Learned counsel for the petitioner has vehemently argued that the FIR could not have been lodged for offences under the



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PC&PNDT Act. However, this Court does not find any merit in the said submissions.

19. Hon'ble Division Bench of this Court in ***Hardeep Singh's case (supra)*** framed the following questions:-

“(1) Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?”

“(2) Whether the report under Section 173 CrPC along with the complaint of an Appropriate Authority can be filed to the Court?”

“(3) Whether no FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly to the Court lies?”

20. The questions formulated hereinabove, were answered as under:-

“69. In the circumstances, the questions as formulated in the reference are answered in the following manner, that:-

(1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.

(2) A report under Section 173 CrPC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act.

(3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.

20A. Therefore, in view of the above, there can be no manner of doubt, that an FIR can indeed be registered, and the police can



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investigate offences as alleged against the petitioner. It would also be most relevant to notice that the earlier attempts by the petitioner to quash other FIRs registered against him under the PC&PNDT Act vide CRM-M-25474-2015 and CRM-M-38434-2019 were dismissed by this Court vide judgments dated 17.03.2023. It is a matter of record that the said judgements were impugned before Hon'ble the Supreme Court by way of SLP (Criminal) No.19987/2023, however, the same were dismissed vide order dated 15.09.2023 (Annexure P-3).

21. Hon'ble the Supreme Court in ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others : AIR 2011 Supreme Court 312***, has laid down the following parameters for grant of anticipatory bail:-

“112. The validity of the restrictions imposed by the Apex Court, namely, that the accused released on anticipatory bail must submit himself to custody and only thereafter can apply for regular bail. This is contrary to the basic intention and spirit of section 438 Cr.P.C. It is also contrary to Article 21 of the Constitution. The test of fairness and reasonableness is implicit under Article 21 of the Constitution of India. Directing the accused to surrender to custody after the limited period amounts to deprivation of his personal liberty.”

22. In ***Sushila Aggarwal and others Vs. State (NCT of Delhi) and another : AIR 2020 Supreme Court 831***, a Constitution Bench of Hon'ble the Supreme Court outlined the parameters for grant of anticipatory bail, emphasizing the importance of considering the nature and gravity of the offences, role of the accused, and specific facts of the case.

23. Adverting to the instant case, the petitioner faces serious



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allegations of operating wide spread illegal sex determination racket in the States of Punjab and Haryana, using a portable ultrasound machine in undisclosed locations. Customers were allegedly blindfolded before being taken to these locations to avoid detection. The petitioner is also involved in seven other criminal cases, five of which involve similar offences under the PC&PNDT Act, the details of which are as under:-

Sr.No.	FIR No.	Dated	Sections	Police Station	Status
1.	669	28.06.2010	3, 3(A), 5, 6, 23 PC&PNDT Act	City Hisar	Under trial
2.	699	28.06.2015	3, 3(A), 5, 6, 23 PC&PNDT Act, 5(4) MTP Act, 315, 417, 420, 120-B IPC	City Hisar	Under trial
3.	99	05.05.2016	23 PC&PNDT Act	Barwala, Hisar	Under trial
4.	700	18.12.2018	23, 25, 3(1), 2(3), 4, 6(A), 6(B) PC&PNDT Act, 420, 511, 120-B IPC	Barwala	Under trial
5.	474	14.07.2021	3, 3(A), 4(4), 5(5), 5(2) PC&PNDT Act, 23(B), 6A PC Act	Barwala	Under trial

24. It needs to be pointed out that female infanticide remains a deeply disturbing issue in India, particularly in this part of the country; Particularly, alarming aspect is the involvement of unethical medical practitioners who, in violation of the hippocratic oath, covertly, conduct sex determination tests, thus, enabling this grave crime. Despite the prohibitions in the PC&PNDT Act, some doctors clandestinely perform these tests, betraying their ethical commitments and the principles of medical practice. The hippocratic oath demands that doctors protect life



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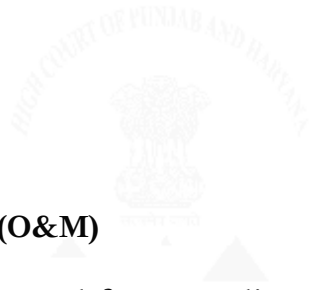
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and cause no harm; however, some of these practitioners motivated by greed, become complicit in the extermination of female foetuses. The involvement of unethical medical practitioners in facilitating this practice through clandestine sex determination test is particularly reprehensible, as it represents the betrayal of the very principles of the medical profession.

25. The submissions made by learned State counsel that despite multiple opportunities to join investigation, the petitioner has not cooperated, and hence, the instant petition be dismissed as the custodial interrogation of the petitioner would be necessary, carries weight, moreso, when the recovery of the portable ultrasound machine and laptop, both crucial for uncovering the full extent of the petitioner's illegal activities would be required.

26. The contention of the learned counsel for the petitioner that once the petitioner had joined investigation, his custodial interrogation would be unnecessary only for the purpose of recovery of the portable ultrasound machine and laptop as it would amount to the petitioner being forced to confess his involvement in the crime in question, deserves to be rejected. Hon'ble the Supreme Court in ***Sumita Pardeep Vs. Arun Kumar : 2022 LiveLaw (SC) 870***, has categorically held that the absence of requirement of custodial interrogation does not technically justify granting anticipatory bail. The investigation in the present case is still underway and the complaint is yet to be filed by the Appropriate Authority before the competent Court. Furthermore, the fact that all members of the DAA had not signed the FIR, would not



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constitute a valid ground for extending the extraordinary concession of anticipatory bail to the petitioner, moreso, when the petitioner prima facie comes across as a habitual offender.

27. Accordingly, the instant petition is hereby dismissed.

28. Pending applications, if any, stand disposed of.

29. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

21.08.2024

Vinay

**(MANJARI NEHRU KAUL)
JUDGE**

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