

KAMD010040892022



**IN THE COURT OF II ADDL. DISTRICT & SESSIONS
JUDGE, MANDYA**

Dated this the 25th day of October 2022

PRESENT

**Sri Krishna Prasad Rao K. B.A., L.L.B.,
II Addl. District & Sessions Judge, Mandya.**

Crl.Misc.No.991/2022

Petitioner : Susheela R. W/o Nagendra K.S., **A8**
Aged about 44 years.
R/at Rajanna Layout, Honaganahalli,
Tavarekere, Magadi Main Road, Bengaluru.

(By Sri Muralidhara R, Advocate)

-Vs-

Respondent: The District Appropriate Authority (DAA)-P.
C & P.N.D.T. District Health & Family Welfare
Office, Mandya, represented by District Nodal
Officer & District Family Welfare Officer
Dr. Shashidhar K.R.

(By Smt. B.M.Veena, Public Prosecutor, Mandya)

ORDER

This petition is filed by the petitioner/accused No.8 under Section 438 of Cr.P.C. seeking a direction to respondent-police to release her on bail in the event of her arrest in P.C.R.No.243/2022 registered before

the Addl. Civil Judge & JMFC., Malavalli, for the offences punishable under Sections 23, 23(1), 23(2), 20(1), 20(2), 20(3) of Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Selection) Act 1994 (**"PC & PNDT Act"**).

2. The brief facts of the case of Complainant is that on 24.08.2022, the State Appropriate Authority (SAA)- Team comprising Dr. Vivek Doria Deputy Director of PC & PNDT, Health and Family Welfare Services, Government of Karnataka and Dr. Vivek Doria Deputy Director of PC & PNDT, Health and Family Welfare Services, Government of Karnataka and Dr. Vijayasaradhi a Radiologist and representative IRIA Karnataka State Chapter, visited the Malavalli Diagnostic Center, Malavalli Town, Mandya District at about 11-00 a.m. along with Dr. Veerabhadrappe, Taluk Health Officer, Malavalli with delegation of power authorized to Doctor. Dr. Vivek Doria Deputy Director of PC & PNDT.

3. State Appropriate Authorities (SAA) Team, Deputy Director had conducted the Decoy Operation on Malavalli Scanning Center, as there was an illegal sex determination was conducted on a pregnant women (relevant documents will be produced at the time of evidence since it is decoy operation) Dr. Raghuveer working as Radiologist at Malavalli General Hospital, was conducting scan in Malavalli Diagnostic Center in order to conduct sex determination. On 24.08.2022, a decoy pregnant woman was asked to get scan at Malavalli Scan center in Malavalli Town. After money was given to the Accused No.8 herein, the pregnant woman was told about the sex of her fetus. The SAA team went into the scan centre along with the mediator/Accused No.8 and Vijaya times digital channel team (Bangalore) led by Ms. Vijayalakshmi, Shivaruru

and inspected the premises. No scanning report was given to the patient. No Form F or report or images of the foetus were maintained or given to the pregnant woman (decoy). Mediator/Accused No.8 told she got to know about the centre name for sex determination from Mr.Puttaraju-(Mobile-9980263802) working in KIMS, Bengaluru, She further confessed that she is regularly working as mediator for the illegal business of accused No.1.

4. The Complainant further states that, the SAA team found that the Scan centre was open with the staff in attendance. The Radiologist was not in the scan center. The Ultrasound machine was switched off and the Radiologist had left the premises. On enquiry with the owner, it was found that Dr. Raghuveer, a Radiologist had conducted scan in the centre. It is found that Dr. Raghuveer works in Government Hospital, Malavalli. The owner of Malavalli Diagnostic center Mr. Dhanush accepted that sex determination was done for 2 pregnant women on 24.08.2022. A total of 9 scans were conducted on 24.08.2022 (5 female patients and 4 male patients), out of which 2 were pregnant. For one pregnancy scan, only two images were stored and both were of thigh region and no images were stored for other pregnancy scan done at 10-55 a.m., (decoy). No report of Form F filled for the Decoy and other USG Scan. Upon enquiry with the owner, Mr. Dhanush, (Accused No.1) it was found that 3 Radiologists Dr. Raghuveer, Dr. Venkatesh and Dr. Pruthvi i.e., Accused No's 2, 3 and 4 working at the center for the purpose of detecting foetal sex and no specific timings are there for the Radiologists. Timings of Radiologists are based on availability. KMC registration certificates of the Radiologists were not available at the center. Accused No.1 further accepted that he gets pregnant ladies for sex determination mainly from 3 individuals namely, Mr. Varun

(Accused No.6) from Bidadi (Mob: 9620083840), Mr. Mohan (Accused No.7) ward boy from KIMS College, Bengaluru (Mob: 7795254741) and did not specifically disclosed one individual name. Hence, the Complainant has sought the Court to take action against the accused persons.

5. On the basis of the said private complaint filed by the respondent authority, the learned Magistrate took cognizance of the offences and issued NBW against the accused persons. Now, the petitioner who is accused of commission of offences alleged, apprehending her arrest at the hands of police, have filed this petition seeking pre-arrest bail on the following amongst other grounds:

On 30.09.2022 the Additional Civil Judge & JMFC has taken the cognizance and directed the office to register the PCR No.243/2022, and directed the office to register the criminal case against all the accused and issued non-bailable warrant against all the accused without following the due process of law. Deliberately the petitioner is being implicated in a false a case just to coerce and intimidate the petitioner. The allegations made in the complaint are entirely false and baseless. The petitioner is entirely innocent of the allegations levelled against her in the above Complaint. The Complainant has foisted a false complaint against the petitioner. There is no valid authorization as contemplated under the law to the Complainant to lodge the said complaint. The entire operation is not conducted in accordance with the law and procedure contemplated under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act-1994. It is seen that the Complainant states "relevant documents shall be produced at the time of evidence" clearly indicates there is absolutely no evidence to furnish to the court at this stage. The Complainant has

not taken any other witness or the help of the police is sought in the entire operation. All the men included in the said operation are people of the same department. Media personnel were part of the entire operation and video graphed clearly shows the intention and the illegal motive of the Complainant. The petitioner is not a technical specialist or trained in radiology. The entire allegations against the petitioner herein are based on hearsay evidence. The petitioner is a lady and has a family. She is respectable and law-abiding citizen. The petitioner is ready and willing to abide by any such conditions that this Hon'ble Court may impose. The petitioner has never being involved in any crime or offence previously. The offences alleged against the petitioner are non-bailable and cognizable in nature. However, the same are neither punishable with death or imprisonment for life nor triable by the Court of Sessions. She has undertaken to abide by any conditions that may be imposed by this Court while granting bail.

6. The bail petition is opposed by the learned Public Prosecutor by filing objections. Accused Nos.5 to 8 are the agents (doctors and non-doctors) who referred/send/bring the pregnant women for the selective sex determination. The authorities have found expired licence copy. It is urged that there is a prima-facie case against the petitioners. The learned P.P has relied upon the citations reported in 2021(1) Crimes 136 (SC) in between Rekha Sengar Vs. State of Madhya Pradesh, Delhi High Court in 1993 CrI.L.J. 2025 & (2009) 1 GLR 64 in between Suo Motu Vs. State of Gujarat. If the petitioner is released on bail, there are chances of him giving threat to the witnesses, destroying evidence, abscond permanently and cause delay in disposal of the matter. Hence, prayed to reject the petition.

7. Heard both the sides. Perused the materials placed on record.

8. The following points arise for my determination:

1. Whether the petitioner/accused No.8 has made out sufficient grounds for grant of anticipatory bail?

2. What order?

9. My findings to above points are:

Point No. 1: In the Affirmative.

Point No. 2: As per final order for the following;

REASONS

10. **POINT No.1:** The petitioner along with petition has produced certified copy of order sheet in C.C.No.2095/2022, certified copy of private complaint in PCR No.243/2022, copy of Aadhaar card and employment card of petitioner.

11. The petitioner is arraigned as accused No.8 in the private complaint and she is accused of commission of offences punishable under Sections 23, 23(1), 23(2), 20(1), 20(2), 20(3) of Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Selection) Act 1994 ("**PC & PNDT Act**"). As the offences are cognizable, apprehension of petitioner/accused No.8 of her arrest is well founded. As such, she can maintain this petition.

12. The learned counsel for petitioner argued that the alleged raid was conducted on 24.08.2022, but PCR was filed after lapse of 18 days on 12.09.2022 the delay is not properly explained, cognizance taken itself is wrong, Karnataka Government has issued Notification appointing Assistant Commissioner as authorized person, how can

somebody else step into his shoes, person who has no authority cannot set law into motion, as per Section 28(d) SAA has to give 30 days notice and no such notice was given and procedure is not followed, accused No.8 is only middleman, 23(2) of the Act applies to doctors and not to middleman and cognizance cannot be taken against her under Section 23(2) of the Act, the person who conducted raid has not filed PCR and it is filed by altogether a different person, Section 202 of Cr.P.C., Section 17 of the PC & PNDT Act are not followed, the only allegation made against accused No.8 is that she obtained money and gave information, false case is registered against the petitioner and false investigation is made against petitioner and prayed to allow the petition.

13. The learned counsel for petitioner has relied upon the following citations in support of his contentions.

1. Crl. Petition No.3233/2022 in between Dr. Vikram H.P. Vs. State of Karnataka.
2. Crl. Petition No.101392/2019 in between Dhondiba Anna Jadhav Memorial Hospital and another Vs. State of Karnataka.
3. Orders passed in Crl. Misc. No.963/2022 in between Varun P.V. Vs. District Health & Family Welfare Office, Mandya RPTD by Dr. Shashidhar K.R. District Nodal Officer.

14. On the other hand, the learned P. P. argued that, sworn statement is dispensed with as Complainant is Government Officer and cognizance was taken, in order of Addl. Civil Judge & JMFC detail discussion is made Complainant is proper person to file PCR as per special enactment, the powers are delegated to him, it is only a technical ground, High Court has inherent power to quash proceedings,

Malavalli Diagnostic Centre was raided by SAA team and caught red handed, it is used for ascertaining sex, which has resulted in unequal ratio of male and female in the society, there are so many allegations made against the accused in the PCR, it is side business for doctors, accused Nos.5 to 8 are supplying patients to Malavalli Diagnostic Centre and there is prima-facie case against the petitioner and prayed to reject the bail application.

15. The allegations made against the accused No.8 are that, she acts as mediator to send bring pregnant women for sex determination and on 24.08.2022 when the team conducted raid, she received Rs.50,000/- told the decoy pregnant woman about the sex of her foetus. On going through the records, except vague hearsay allegations there is no specific allegation has been made against the petitioner, no specific overt-act and active participation of petitioner/accused No.8 is made out. There is inordinate delay of 18 days in lodging the private complaint. As observed by Hon'ble High Court of Karnataka in CrI. Petition No.101392/2019, registration of complaint is required to be done only from the hands of an Appropriate Authority. Thus it appears that the complaint registered by the respondent is without jurisdiction. Therefore, the order of learned Magistrate taking cognizance of a complaint registered under Section 28 of the Act appears to be prima-facie erroneous. The respondent is not the Appropriate Authority or the authorized officer under the Act. Hence, the very complaint registered is prima-facie without authority of law. The allegations made against the petitioners have to be proved at full-fledged trial. Considering the allegations made against the petitioner & she is resident of Bengaluru, her presence can be secured during the investigation. The offences alleged against the petitioner are not made punishable either with death

or imprisonment for life. They are made punishable upto 3 years imprisonment and fine and triable by Magistrate. The petitioner is a women. In the facts made out, the custodial interrogation of petitioner is not required. She has undertaken to abide by any terms and conditions. There are no allegations of petitioner/accused No.8 having criminal antecedents. Accused No.6 has already obtained anticipatory bail in Cri. Misc.No.963/2022 on the file of I Addl. District & Sessions Judge, Mandya. In the facts and circumstances made out, considering the gravity of the offences, I am of the opinion that the petitioner/accused No.8 is entitled for an order of pre-arrest bail. Apprehension of prosecution can be met by imposing stringent conditions and by obtaining sufficient sureties to the satisfaction of the Court. Hence, I hold that the petitioner/accused No.8 is entitled for an order of anticipatory bail. Accordingly, point under consideration is answered in the **Affirmative**.

16. **POINT No.2:** In view of my discussions and finding to above point, I proceed to pass the following:

ORDER

Petition filed by petitioner/accused No.8 under Section 438 of Cr.P.C. is hereby allowed.

Consequently, the petitioner/accused No.8 shall surrender herself before the Investigating Officer within 15 days from the date of receipt of a certified copy of this order and shall execute a personal bond for a sum of Rs.2,00,000/- with one surety for the like-sum to the satisfaction of the concerned Investigating Officer on the following conditions.

1. The petitioner shall not indulge in hampering the investigation or tampering the prosecution witnesses.
2. The petitioner shall co-operate with the Investigating Officer to complete the investigation and she shall appear before the Investigating Officer, as and when called for.
3. The petitioner shall not leave the jurisdiction of the Investigating Officer without prior permission till the charge-sheet is filed or for a period of three months, whichever is earlier.
4. The petitioner shall mark her attendance once in a month ie., on 30th of every month between 10-00 a.m., and 5-00 p.m., before the Investigating Officer for a period of three months or till the charge sheet is filed, whichever is earlier.

(Typed to my dictation by Judgment Writer directly on Computer, corrected by me and then pronounced in the open Court on this the 25th day of October 2022)

(Krishna Prasad Rao K.)
II Addl. District & Sessions Judge,
Mandya.

Order pronounced in the open Court,
Vide Separate Order Passed:

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II ASJ, MANDYA.