

THE HIGH COURT OF MADHYA PRADESH 1
MCRC 14729 of 2021
Smt. Rajni Lodhi vs. State of MP

Gwalior, Dated : 31/03/2021

Shri VK Bhardwaj, Senior Counsel with Shri Rohit Batham, Counsel for the applicant.

Shri RB Tripathi, Panel Lawyer for the respondent/ State.

Case Diary is available.

This first application under Section 439 of CrPC has been filed for grant of bail.

The applicant has been arrested on 04/02/2021 in connection with Crime No.285/2017 registered at Police Station Ishagarh, District Ashok Nagar for offence under Sections 313, 318, 376(1) of IPC and under Section 5/6(j)(ii) of the POCSO Act.

It is submitted by learned Senior Counsel for the applicant that the applicant has been arrayed as an additional accused by the Trial Court in exercise of power under Section 319 of CrPC. The applicant is a lady, having two minor children. It is further submitted that the trial is likely to take sufficiently long time.

Per contra, the application is vehemently opposed by the Counsel for the State. It is submitted that the applicant, who is the wife of the main accused Arvind, had given some pills to the prosecutrix for the purpose of abortion. It is further submitted that there is specific allegation against the applicant in the statement of the prosecutrix which was recorded under Section 164 of CrPC and under these circumstances, it is prayed that the bail may not be granted looking

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to the serious nature of allegation.

Heard the learned Counsel for the parties.

The trial Court by order dated 31/10/2021 has arrayed the applicant as an additional accused. Although the applications for grant of anticipatory bail which were registered as MCRC Nos.52079/2019 and 11962/2020, were dismissed in the month of December, 2019 and September, 2020 respectively, but it appears that the applicant could be arrested only on 04/02/2021.

The Supreme Court by order dated **21st January, 2021** passed in the case of **Rekha Sengar vs. State of Madhya Pradesh (Special Leave Petition (Criminal) No. 380 of 2021)** has held as under:-

"5. We may also refer with benefit to the observations of this Court in **Voluntary Health Association of India v. State of Punjab, (2013) 4 SCC 1**, as follows:

“6...Above statistics is an indication that the provisions of the Act are not properly and effectively being implemented. There has been no effective supervision or follow up action so as to achieve the object and purpose of the Act. Mushrooming of various sonography centres, genetic clinics, genetic counselling centres, genetic laboratories, ultrasonic clinics, imaging centres in almost all parts of the country calls for more vigil and attention by the authorities under the Act. But, unfortunately, their functioning is not being properly monitored or supervised by the authorities under the Act or to find out whether they are misusing the prenatal diagnostic techniques for determination of sex of foetus leading to foeticide.

7...Seldom, the ultrasound machines used for such sex determination in violation of the provisions of the Act are seized and, even if seized, they are being released to the violators of the law only to repeat the crime. Hardly few cases end in conviction. The cases booked under the Act are pending disposal for several years in many courts in the country and nobody takes any interest in their disposal and hence, seldom, those cases end in conviction and sentences, a fact well known

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to the violators of law..."

In the present case, contrary to the prevailing practice, the investigative team has seized the sonography machine and made out a strong prima facie case against the petitioner. Therefore, we find it imperative that no leniency should be granted at this stage as the same may reinforce the notion that the PC&PNDT Act is only a paper tiger and that clinics and laboratories can carry out sex- determination and feticide with impunity. A strict approach has to be adopted if we are to eliminate the scourge of female feticide and iniquity towards girl children from our society. Though it certainly remains open to the petitioner to disprove the merits of these allegations at the stage of trial."

Accordingly, this Court is of the considered opinion that no case is made out for grant of bail. The application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge