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DR. MEHAK VS. STATE OF HARYANA

Present : Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Advocate and
Mr. Rishab Singla, Advocate
for the petitioner.

Apprehending her arrest in FIR No. 221 dated 13.6.2023 for offences punishable under Sections 3, 4, 5 MTP Act and Section 120-B, IPC, 1860 registered at Police Station Pundri, District Kaithal, the petitioner has preferred this petition under Section 438 Cr.P.C seeking pre-arrest bail.

Learned counsel for the petitioner inter alia contends that condition of the fetus as well as the mother is evident from the ultra sound report dated 10.06.2023. The mother was brought to the nursing home wherein the petitioner was working as Gynaecologist being a qualified Ayurveda Dhanwantri (M.S-Ayurveda) Prasooti Tantra and Streeroga degree holder. The condition of the mother as well as the fetus was fully documented and thus, it will not be a case wherein the pregnancy was terminated illegally. Reliance has been placed upon communication dated 30.03.2017 whereby the Government of India has issued clarification regarding conducting of deliveries by RAMS doctors in the following terms:

“(a) Under Section 2(e) of IMCC Act, 1970, "Indian Medicine means the system of Indian Medicine commonly known as Ashtang Ayurveda, Siddha, Unani Tibb or Sowa-Rigpa whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time The definition of Ashtang Ayurveda includes the Stri Roga and Prasuti Tantra.

(b) The subject Stri Roga and Prasuti Tantra is being taught to the students during their graduation in Indian Systems of Medicine.

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(e) Moreover, the CCIM with the approval of Government of India has also been conducting 3 years PG degree course in the subject of Stri Roga and Prasuti Tantra.

(d) The rights of persons possessing qualification included in 2nd, 3rd and 4th schedule have been protected under section 17 of the IMCC Act, 1970,

(e) As per the Indian Medicine Central Council Post Graduate Ayurveda Education regulations, 2012. The aims of the post graduate degree courses shall be to provide orientation of specialties and super specialties of Ayurveda and to produce experts and specialists who can be competent and efficient teachers physicians, surgeons, obstetricians and gynecologist (Stri Roga and Prasuti Tantrogy) pharmaceutical experts, researchers and profound scholars in various field of specialization in Ayurveda.

(f) The Ministry of Health and Family Welfare, Government of India vide OM No. M 12015/42/2005- MCH dated 19.02.2014 has permitted the Ayurveda and Homoeopathy posted at Government facilities to conduct deliveries and provide basic treatment for complications before referral.

(g) The Ministry also permitted these Doctors for prescribing allopathic drugs for conducting normal deliveries including initial and basic management of complications before referral and can prescribe all those drugs permitted to ANMS and SNS after SBA training.

In view of the legal provisions narrated above, the syllabus and curriculum of Ayurveda at UG and PG level as well as the office orders issued by the Ministry of Health and Family Welfare MH division it is evident that the doctors possessing qualification included in 2nd 3rd and 4th schedule of the IMCC Act, 1970 are entitled to perform deliveries of pregnant women. This issued with the approval of Secretary (AYUSH).”

Learned Senior counsel appearing on behalf of the petitioner argues that keeping in view the fact that child was pre-maturely delivered it will be a debatable point as to whether it is a case of pre-mature delivery or termination of pregnancy. In case, it is found to be a case of pre-mature delivery, definitely the petitioner will be entitled to have benefit of communicated dated 30.3.2017 issued by the Government of India as reproduced hereinabove.

It has been further submitted that whole of the procedure has been documented and is in possession of the Investigating Agency. Thus, there cannot be any apprehension that the petitioner would tamper with the same.

Notice of motion.

Mr. Gaurav Bansal DAG., Haryana who is present in Court accepts notice.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to her furnishing personal and surety bonds to the satisfaction of the Arresting Officer/Investigating Officer. As and when called, the petitioner shall join the investigation. She shall abide by the conditions enumerated under Section 438(2) of the Cr.P.C.

To come up on 26.09.2023.

(PANKAJ JAIN)
JUDGE

July 06, 2023
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