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**(2014) 10 SHI CK 0025**  
**In the High Court Of Himachal Pradesh**  
**Case No : Cr.MP(M) No. 1151 of 2014**

R.D. Sharma

APPELLANT

Vs

State of H.P.

RESPONDENT

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**Date of Decision :** 18-10-2014

**Acts Referred:**

Constitution of India, 1950 — Article 21  
Criminal Procedure Code, 1973 (CrPC) — Section 164, 438  
Penal Code, 1860 (IPC) — Section 316, 325, 34, 498A  
Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act,  
1994 — Section 23

**Citation :** (2014) 10 SHI CK 0025

**Hon'ble Judges :** Piar Singh Rana, J

**Bench :** Single Bench

**Advocate :** Rajesh Mandhotra, Advocate for the Appellant; M.L. Chauhan, Addl. Advocate General and J.S. Rana, Assistant Advocate General, Advocate for the Respondent

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## Judgement

Piar Singh Rana, J.—Present petition filed under Section 438 of the Code of Criminal Procedure 1973 for grant of anticipatory bail in connection with case FIR No. 70 of 2014 dated 16.5.2014 registered under Sections 316, 498A, 325 read with Section 34 IPC at Police Station Barmana District Bilaspur HP.

2. It is pleaded that applicant has no connection with alleged offence. It is further pleaded that complainant did not come to hospital of the applicant for her medical treatment. It is further pleaded that applicant has no criminal back ground. It is further pleaded that applicant will join investigation of the case. Prayer for acceptance of bail application sought.

3. Per contra police report filed. There is recital in police report that FIR No. 70 of 2014 dated 16.5.2014 registered under Sections 316, 498A and 325 read with Section 34 IPC at Police Station Barmana District Bilaspur HP. There is further recital in police report that on dated 9.5.2014 husband and mother-in-law of the complainant have beaten Smt. Priyanka Kapoor wife of Sh Shushil Kumar

resident of village Ghagus Police Station Barmana District Bilaspur HP with legs and fist blows and caused death of her non-born child aged about three months. There is further recital in police report that as per USG report fetus of the complainant was already dead. There is further recital in police report that complainant Smt. Priyanka Kapoor remained admitted in Regional Hospital Bilaspur w.e.f. 12.5.2014 to 14.5.2014. There is further recital in police report that site plan was prepared and statement of the witness recorded. There is further recital in police report that sex determination test of fetus was also conducted from Leelawati Hospital Ghumarwin in which applicant Dr R.D. Sharma was working. There is further recital in police report that letter was also written to Chief Medical Officer Bilaspur vide letter No. 5411/5A and 6045/5 for taking necessary action against the concerned Medical Officer. There is further recital in police report that complainant has stated in her statement recorded under Section 164 Cr PC that her husband and her mother-in-law have conducted ultra sound of complainant Smt. Priyanka Kapoor. There is further recital in police report that as per complaint of Chief Medical Officer Bilaspur separate FIR No. 206 of 2014 dated 4.10.2014 was registered against applicant Dr R.D. Sharma under Section 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994. There is further recital in police report that applicant was kept in column No. 12 of the challan but after filing of the challan learned Chief Judicial Magistrate Bilaspur took cognizance of the offence.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the non-applicant and also perused entire records carefully.

5. Submission of learned Advocate appearing on behalf of the applicant that applicant is innocent and he has been falsely implicated in the present case and on this ground present bail application be allowed is rejected being devoid of any force for the reason hereinafter mentioned. Fact whether applicant is innocent or not cannot be decided at this stage. The same fact will be decided when case shall be decided on its merits by learned trial Court after giving due opportunity of hearing to both the parties to lead evidence in support of their case.

6. Another submission of learned Advocate appearing on behalf of the applicant that any condition imposed by the Court will be binding upon the applicant and on this ground applicant be released on bail is accepted for the reason hereinafter mentioned. It is well settled law that at the time of granting bail following factors should be considered such as (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. See Gurcharan Singh and Others Vs. State (Delhi Administration), . Also see The State Vs. Captain Jagjit Singh, . It was held in case reported in Sanjay Chandra Vs. CBI, of Investigation that the object of bail is to secure the appearance of the accused person at his trial and it

was held that object of bail is not punitive in nature. It was held that bail is rule and committal to jail is exception. It was also held that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India. It was held that it is not in the interest of justice that accused should be kept in jail for indefinite period. In view of the fact that applicant was kept in column No. 12 of the challan by the investigating agency, Court is of the opinion that it is expedient in the ends of justice to release the applicant on anticipatory bail. Court is of the opinion that if the applicant is released on anticipatory bail at this stage then interest of the State and general public will not be adversely effected.

7. Submission of learned Addl. Advocate General appearing on behalf of the non-applicant that if the applicant is released on bail at this stage then applicant will induce and threat the prosecution witness is rejected for the reason hereinafter mentioned. It is held that condition will be imposed in the bail order that applicant will not induce and threat the prosecution witness. It is held that if the applicant flouts the conditions of the bail order then prosecution is at liberty to file application for cancellation of bail against the applicant in accordance with law. It was held in case reported in *HDFC Bank Ltd. Vs. J.J. Mannan @ J.M. John Paul and Another*, that the object of Section 438 Cr PC is that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. It was held in case reported in *Parvinderjit Singh and Another Vs. State (U.T. Chandigarh) and Another*, that an order under Section 438 Cr PC is a device to secure the individual liberty and it is neither a passport for the commission of crime nor a shield against any kinds of accusations. It was held in case reported in *Sennasi and Another Vs. State and Another*, that grant of bail under Section 438 Cr PC by the High Court or the Court of Session is depended on the merits of the case.

8. In view of the above stated facts anticipatory bail application filed by the applicant is allowed and in the event of arrest, applicant will be released on bail on following terms and conditions on furnishing personal bond in the sum of Rs. 1,00,000/- (One lac) with two sureties in the like amount to the satisfaction of Arresting Officer. (i) That applicant will attend proceedings of learned trial Court regularly till conclusion of the trial (ii) That applicant will join investigation of case as and when called for by the Investigating Officer in accordance with law. (iii) That applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iv) That applicant will not leave India without prior permission of the Court. (v) That applicant will not commit any similar offence qua which the applicant is accused. (v) That applicant will give his residential address to the Investigating Officer in written manner. Observation made hereinabove is strictly for the purpose of deciding the present bail application and it shall not effect merits of case in any manner. Anticipatory bail application filed under Section 438 of the Code of Criminal Procedure 1973 is disposed of. All pending application(s) if any are also

disposed of.