

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrlA(D) No. 17/2024

Nigeena Begum

...Appellant(s)

Through: Mr. Jehangir Rehbar, Advocate,
Mr. Ahsan Kozgar, Advocate, Mr. Tawheed Ahmad, Advocate.

Vs.

Union Territory of J&K through SHO P/S Baramulla

...Respondent(s)

Through: Ms. Maha Majeed, Assisting counsel vice
Mr. Mohsin Qadri, Sr.AAG

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

ORDER

05.06.2024

Per Chowdhary, J.

1. Appellant-accused, aggrieved of the rejection of bail vide order dated 14.02.2024 (for short 'impugned order') passed by Special Judge [ULA(P) Act] Baramulla, in a case titled *Nigeena Begum Vs. J&K UT*, has filed the instant appeal for setting aside the same, with further prayer that the appellant-accused may be admitted to bail in case FIR No. 194 of 2023 under Sections 16, 18, 20, 23, 38, 39 of ULA(P) Act P/S Baramulla. The appellant-accused is presently lodged in District Jail Baramulla.
2. Case of the appellant is that the police personnel on 23-09-2023 arrested the accused person-appellant herein and took her to Police Station Baramulla; that thereafter she was implicated in case FIR No. 194 of 2023 U/s 16, 18, 20, 23, 38, 39 of ULA (P) Act; that the appellant through her counsel approached the court of Special Judge

NIA Court Baramulla, wherein the respondent was directed to submit report; that the police in compliance to the court directions submitted the report which reveals that the accused has been shown involved in the above mentioned offences; that the accused-appellant herein is suffering from chronic heart ailments, kidneys and gallbladder ailments, and stones are developing rapidly in her kidneys due to medical negligence which needs immediate surgery; that the said fact reflects from the medical prescriptions; that the appellant-accused is also suffering from other ailments of stomach, dizziness, fever, blood pressure and cannot digest food properly, besides she is suffering from mental issues.

3. Learned counsel appearing for the appellant-accused vehemently argued that the learned Special Judge has rejected the bail application without any justifiable reason. He further argued that the law referred to in the impugned order of rejection is not applicable in the facts and circumstances of the case, as such, the order impugned is bad in law and deserves to be set aside.
4. The main and foremost argument of learned counsel for the appellant is that the health condition of the accused-appellant herein, who is in custody, is deteriorating day in and day out and in view of her deteriorating health conditions she is required to be admitted in the hospital. He further argued that the guilt of the appellant is yet to be proved and contends that she cannot be denied bail when her life is under threat and risk due to bad health conditions. Learned counsel contends that the learned Special Judge had rejected the bail of the appellant on the presumption of guilt against her, which is against the Law of land and rejecting bail application on these principles is

beyond the purview of law and against the due process of law established under Article 21 of the Constitution of India.

5. Next argument of learned counsel is that there is no bar to grant interim bail to the appellant on medical grounds, as the law is also in favour of the appellant in this regard. Learned counsel has referred to and relied upon certain judgments on the issue. One of the judgment relied upon by learned counsel for the appellant is of High Court of Bombay in case '**Dr. P.V.Varavara Rao Vs. NIA & Anr.**', decided on **13.04.2022**, wherein the accused was granted bail for six months on medical grounds who was booked under Sections 13, 16, 18, 18-A, 20, 38, 39 and 40 of UAPA.
6. Heard, perused the material on file and considered.
7. This Court, vide order dated 26.04.2024, while considering the instant appeal, directed the respondents to get the appellant-prisoner examined and file latest medical report, which report was filed by the respondents on 09.05.2024, wherein it is stated that the appellant-prisoner is on medication as prescribed by the doctors (including Psychiatrist) and, as per the advice of concerned Urologist/Psychiatrist, the appellant-prisoner will be taken up for Pre Anesthetic Checkup (PAC) and subsequently for surgery after complete recovery from Psychiatric ailment.
8. Vide order dated 22.05.2024, while on perusal of the medical report dated 09.05.2024, this Court observed that there was no report from the Psychiatrist to substantiate as to whether the appellant is actually being given treatment of mental ailment or not and in response to this query, learned counsel appearing for the respondents, sought

time to file fresh medical report including the report of the Psychiatrist before the next date of hearing.

9. During the course of arguments in the instant appeal, learned counsel appearing for the respondents produced compliance report dated 05.06.2024, in terms of order dated 22.05.2024, which is directed to be taken on record.

10. On perusal of the said compliance report, it transpires that the appellant was referred to the Department of Psychiatry GMC Baramulla for follow up for Psychiatric ailment on 31.05.2024 and during the course of treatment, appellant-prisoner has been advised medication which, according to the respondents, is being provided to the prisoner-appellant on regular basis. Health status report of the appellant is annexed with the latest compliance report issued by Medical Officer District Jail Baramula vide No. MOJ/DJB/63 dated 03.06.2024, which reads as under:-

“In continuation to this office earlier health status report issued vide no. MOJ/DJB/40 dated 09.05.2024, it is to inform that afore mentioned female under-trial prisoner was referred to Department of Psychiatry GMC Baramulla on 31.05.2024 for follow up of her Psychiatric ailment. During the course of medical checkup, the female under-trial prisoner at present has been diagnosed to be suffering from mild anxiety symptoms and accordingly has been prescribed medicines.

Further as per the prescription, the female under-trial prisoner has been cleared to undergo the surgery as advised at Super Specialty SMHS Hospital Srinagar.”

11. The compliance report is also supported with the consultation card of the appellant in the Psychiatry Out-Patient Department of

Government Medical College Baramulla, which is clear in terms that there are no 'Psychiatry contradictions for the proposed surgery'.

12. In an earlier report dated 09.05.2024 filed by the Medical Officer District Jail Baramulla, it has been reported that the appellant is a case of 'GI and GII Hydronephrosis' with two calculus measuring 19 mm, 07 mm with Psychiatric ailment and hypertension and that on being referred to GMC Baramulla on various dates and ultimately to the Super Specialty SMHS Hospital Srinagar on 11.03.2024 and 03.04.2024, the appellant had been advised to undergo surgery after completion of all investigations.
13. Learned counsel for the respondents submitted that the appellant-prisoner can be operated upon while being in custody for her ailment and there is no need to admit her to bail for this purpose, as she is involved in a case for commission of offences which attract life imprisonments.
14. Ordinarily, the consideration that the sickness is such that it cannot be adequately or effectively treated in the prison hospital / medical facility attached to the prison, weighs with the Court. The degree of sickness bears upon the exercise of discretion. If it is a life threatening disease, the Court would be well advised to exercise its discretion. Conversely, it cannot be said that the provision cannot be resorted to in the case of sickness which is not life threatening. Essentially, the question of sickness, or for that matter infirmity, is rooted in the thickets of facts of the given case.
15. Apex Court in a case **Union of India Vs. K.A.Najeeb** MANU/SC/0046/2021: (2021) 3 SCC 713, has held that :

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonized. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

16. By appreciating the entire material on record, we are of the opinion that the sickness, infirmity and health conditions, as also the admitted sufferings faced by the appellant-prisoner as a women during incarceration, would be incompatible with her health conditions and it would endanger her life, which would run the risk of deterioration of her health to the point of no return. Therefore, in the opinion of this Court, the appellant requires treatment of her ailment to her satisfaction and having regard to the law laid down by the Apex Court (supra), it is deemed appropriate that the instant Appeal is allowed and the appellant is **admitted to short bail of three months on medical grounds** enabling her to undergo surgery

of her own satisfaction subject to the following conditions that she shall:-

- a) furnish bail bond in a sum of Rs. 50,000/- with two sureties in the like amount to the satisfaction of Jail Authorities;
- b) appear in person before the trial court as and when required for the purpose of trial;
- c) not leave the territory of the Valley without prior permission of the trial court;
- d) not tamper with the prosecution evidence in any manner;
- e) not change her place of residence until permitted by the trial court;
- f) not indulge in any criminal activities;
- g) surrender immediately after the conclusion of period of interim bail of three months from the date of her release, which is being granted on medical grounds.

17. Disposed of in terms of the above.

(M. A. CHOWDHARY)
JUDGE

(TASHI RABSTAN)
JUDGE

Srinagar
05.06.2024
Muzammil. Q

Whether the order is reportable: Yes / No