

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)

CrlA(D) No. 51/2024

Reserved on- 18.12.2024

Pronounced on- 24.12.2024

SAIKA

.....Appellant

Through: Mr. Wani Javaid, Advocate.

Vs

Union Territory of J&K
through Police Station Pulwama &
Anr.

..... Respondents

Through: Mr. Mohsin Qadiri, Sr. AAG with
Ms. Maha Majeed, Assisting counsel
Mr. Faheem Nissar Shah, GA.

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.

JUDGMENT

Rajesh Sekhri-J

01. This appeal under Section 21 of the National Investigation Act, 2008 (NIA) has been directed against order dated 20.07.2024 passed by I/C Special Judge Designated under NIA Act, Pulwama ("trial court" for short), vide which the short term bail, on account of medical exigency, in favour of the appellant came to be withdrawn.

02. An overview of the background facts is that appellant came to be arrested on 05.12.2018 in FIR No. 288/2018 for offences under Sections 302, 120-B RPC, 7/27 Arms Act and 16, 18, 20, 38 and 39 of ULA(P) Act. The appellant came to be charged by the trial court for the aforesaid offences. During the currency of the trial, father of the appellant laid a

motion before the trial court for grant of short term bail on account of medical exigency on the ground that the appellant since the date of her arrest was gripped by serious health snags, but she was being provided normal medication by the jail authorities and not proper medication. Learned trial court, in order to ascertain truthfulness of the pleas sent for the health status of the appellant from District Jail Karnal and on the basis of medical report submitted by the jail authorities, appellant came to be admitted to short term bail by the trial court for a period of one month, vide order dated 28.05.2024, which came to be extended till 20.07.2024.

03. Case of the appellant is that interceding the period of short term bail, her health deteriorated, she was referred by the Cardiologist of SKIMS Soura to the Department of Cardiology AIIMS New Delhi for proper medical observation and on the advice of the doctors, she laid a motion for extension of medical bail before the trial court, however, learned trial court, vide impugned order dismissed the application, withdrew the concession of bail and she was committed to District Jail Karnal.

04. The appellant is aggrieved of the impugned order primarily on the ground that learned trial court has failed to appreciate her health status and impugned order is violative of her fundamental right to health.

05. Having heard the rival contentions, we have carefully gone through the record.

06. This Court at the motion stage, vide order dated 02.08.2024 directed the respondents to take the appellant from District Jail Karnal for

medical evaluation to AIIMS Delhi or any other medical institute, with a request to the hospital authorities to furnish a report with respect to the treatment to be administered to the appellant and whether same would require institutionalized treatment in the hospital or whether same can be administered in the jail itself. Learned counsel for the appellant has also placed on record latest medical report of the appellant submitted by the jail authorities on 06.11.2024 before the trial court.

07. It appears that pursuant to the aforesaid order dated 02.08.2024, Sr. Superintendent of Police, District Jail Pulwama made a request and a Medical Board came to be constituted by the Post-Graduate Institute of Medical Education and Research (PGIMER), Chandigarh and appellant came to be examined by the Board comprised of 05 doctors on 27.08.2024, 09.09.2024, 17.09.2024, 30.09.2024, 03.10.2024 and 07.10.2024. As per the Medical Board Report, the appellant came to be examined in detail by the Board Members with reports of fresh investigations. As per the said report, all the investigations came out to be normal and there was no abnormality detected on echocardiography. As per the Psychiatry evaluation, no clear-cut features of active psychopathology in the protocol has been observed by the Board. As per Gynecological assessment, there is no history of irregular cycles or any other gynecological complaint other than mild dysmenorrhea, for which appellant has been advised medication therapy and as per ophthalmological opinion, the appellant has been advised to use glasses for refractive error. Pertinently, in the final impression/assessment of the

Medical Board, as per the diagnosis and current status of the appellant, treatment can be provided in the jail itself and no inpatient treatment is required. A perusal of another medical report dated 29.08.2024 on the record reveals that appellant is regularly taking medications as prescribed by various consultants including Psychiatrist, Cardiologist, Physician and Gynecologist and she is also taking Ayurvedic medications for diabetes on her own. As per the said report, appellant is being regularly monitored and evaluated by jail doctors along with visiting specialists on monthly basis.

08. Hon'ble Supreme Court in **Asha Ram vs. State of Rajasthan; 2017 (1) RCR, Crl. 1016 SC**, denied bail to the accused in a similar fact situation. Relevant excerpt of the judgment reads as below:-

“the medical condition of the petitioner has been described as stable, and, as such there is no question of extending him the concession of bail on medical grounds”

09. It is evident from latest medical report of the Medical Board comprised of five doctors that health status of the appellant is not only being regularly monitored by the jail authorities, but she is being provided proper medical treatment from PGIMER, Chandigarh, a premier health institution of the country and her condition is stable.

10. In view of the above, since health condition of the appellant is being regularly monitored by the jail authorities and as per the opinion of the Medical Board, all the investigations of the appellant are normal and as per the diagnosis and current status of the appellant, treatment can be provided to her in the jail itself and there is no requirement of inpatient

treatment, we do not find any illegality and impropriety in the impugned order.

11. For the foregoing reasons, the present appeal is found devoid of merit, hence dismissed.

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Chief Justice

Jammu
24.12.2024
Abinash

*Whether the judgment is speaking? **Yes***
*Whether the judgment is reportable? **Yes***

