

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 442 OF 2015
IN
NDPS SPECIAL CASE NO. 63 OF 2009

Mr. Vicky Ranjeetsingh Oberoi	...	Applicant/Approver Accused No.1.
vs.		
The State of Maharashtra	...	Respondent

Mr. Abhijeet Mantri i/b. Mr. Vaibhav G. Bagade, Advocate, for the applicant.

Mr. S.H.Yadav, APP, for the State.

Mr. Nilesh Kamble, API, ATS Juhu Unit, Mumbai, present.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 27th July, 2015.

P.C.

Heard. This is an application seeking modification of the order dated 13.7.2015 passed by the Special Judge, Under the NDPS Act, Greater Mumbai. The applicant herein has been charge-sheeted under the provisions of the NDPS Act. He was apprehended in C.R. No.1/2009 registered at ATS Police Station for the offences punishable under Section 8(c), 21 read with Section 29 of NDPS Act, 1985. The case is registered as NDPS Special Case No.63 of 2009.

2. In April, 2012, the present applicant had made an application seeking pardon under Section 307 of Cr.P.C. and had volunteered to be an approver in the case. The Court had noticed that the applicant herein had made a full and true disclosure about the commission of the offence. The statement of the accused was recorded by the learned Magistrate under Section 306(4) of Cr.P.C.

3. The recording of substantive evidence of the applicant was completed on 18.10.2012. The applicant had deposed before the Court in accordance with the statement recorded under Section 306 sub-clause (4) of Cr.P.C. and had also filed an application seeking “tender of pardon”. The cross-examination of the applicant has commenced. However, it is not completed since the defence of the other accused has to be considered. There are in all three accused persons. The cross-examination by the Advocate for accused No.3 is completed. However, it appears that the applicant has been recalled for the purpose of cross-examination by the Advocate of accused No.2.

4. The learned APP, on instructions from the officer of the ATS submits that the co-accused of the applicant are in custody.

5. In the midst of the trial, the health of the present applicant had deteriorated. He was taken to the hospital by the Jail authorities. The report of the Department of Nuclear Medicine dated 1.7.2015 shows that the applicant has been diagnosed with large area of non-transmural infarct with VIABLE myocardium involving the apex, apico-anterior, apico-lateral and entire inferior wall suggestive of TVD. The medical case papers are placed on record. The applicant was taken to the Grant Medical College and Sir J.J. Group of Hospital. He was recommended Cardiac PET Scan. Thereafter, he had undergone Angiography. The Department of Cardiology, J.J. Group of Hospital had reported to the Jail authorities on 3.7.2015 that the patient requires procedure as early as possible, preferably within one week. The Hospital had also determined the cost at Rs.3,50,000/-. Pursuant to the said recommendation, the applicant had filed an application before the Special Court, NDPS, seeking temporary bail for a period of three months to enable him to undergo the operation at the earliest. He had given choice of 3 Hospitals in Mumbai where he would like to undergo the operation, the hospitals being Kokilaben Hospital, Jaslok Hospital and Breach Candy Hospital.

6. The learned Special Court by an order dated 13.7.2015 was pleased to consider the application filed by the applicant on humanitarian grounds. The learned Judge had also considered that the applicant has been advised to undergo bypass surgery. The learned court had also considered that the applicant has agreed to bear the cost of the surgery as well as post-operative treatment. The prosecution had also fairly on humanitarian grounds, given no objection for granting temporary bail for surgery. The learned Court allowed the application and granted bail for three months from 13.7.2015. The applicant was granted cash bail for a period of three months. The learned Court had directed the applicant to take treatment within this period and communicate the medical papers of his treatment to the prosecution/ATS after which the applicant was directed to surrender to the Court after 3 months with the opinion of the concerned medical officer. It is pertinent to note that the Court had directed the prosecution/ATS to take care of the witness/accused/applicant as there was threat perception to his life while on bail.

7. The applicant was accordingly released on bail on 13.7.2015.

8. After being enlarged on bail, the applicant had taken stock of the expenses which would be incurred for his operation as well as post-

operative treatment and had ascertained that the expenses would be around Rs.8 lakhs to 10 lakhs as he would have to arrange for rental accommodation for his family to be with him. The applicant had filed an application seeking modification of the order dated 13.7.2015 and had demonstrated before the Court that the rental accommodation in and around hospital area where he would be taking treatment was not less than Rs. 1 lakh per month and survival cost at Rs.50,000/- per month. He had calculated the total amount for his operation treatment, stay and post operative care to Rs.15 lakhs to 17 lakhs. It was in these circumstances that the applicant had prayed to the Special Court that since the applicant is a permanent resident of Gurgaon, he should be permitted to undergo operation at Gurgaon in order to save the expenditure. The applicant had also demonstrated that he could not afford the cost of the operation in Mumbai since he has been in jail since 2009. The family had consulted Dr. Trehan at Gurgaon. The doctor had estimated the expenditure to Rs.6lakhs and the family of the applicant could afford the said cost. The application filed by the applicant seeking modification was rejected on two grounds. Firstly, that he had obtained temporary bail from the Court on condition that he would get operated in Mumbai in one of the three hospitals of his choice and, secondly, that there was threat perception to his

life. He is an approver and, therefore, he should not be permitted to leave Mumbai.

9. The learned counsel for the applicant submits that since 13th July, 2015, the applicant is residing with a friend, whose address was intimated to the prosecuting agency. That the said premises is being guarded by two police personnel, one is Police Naik and another Constable who guard the house and, therefore, it is clear that the applicant is not misusing his liberty as well as the fact that he is being protected by the ATS Department.

10. The learned counsel for the applicant, upon instructions, submits and prays that in the eventuality that the applicant is permitted to undergo the operation at Gurgaon, the applicant's family would pay for the security charges that would be incurred for a period of four weeks and therefore, it is clear that he would be guarded by the police at the cost of the applicant. The Protection Wing of the Police Department can give security to the applicant at his own cost. On humanitarian grounds, the application filed by the applicant seeking modification of the order, in these circumstances, deserves to be allowed.

ORDER

- (i) The application is allowed.
- (ii) The under-trial prisoner in NDPS Special Case No.63 OF 2009 be permitted to leave Mumbai for Gurgaon on 27.7.2015. He shall be permitted to reside in Gurgaon for a period of four weeks from 28th July, 2015.
- (iii) The applicant shall inform the ATS Department at Mumbai of his admission in the hospital, date of his operation, the date of discharge from the hospital, the permanent address, cellphone number, landline number. The applicant shall also furnish the cellphone numbers of his family members to the ATS Department, their place of work and other details as required by the ATD Department.
- (iv) The applicant shall bear the cost of security given by the Protection Wing of the Police Department in deputing one police constable at the hospital and at his residence.
- (v) The ATS Officer of the ATS Department is present in the Court. He shall inform the Sadar Thane Police Station of Gurgaon about departure of the applicant from Mumbai, the flight number, the arrival time of the applicant in Gurgaon as also direct the Sadar Thane Police Station at Gurgaon to give protection of a constable at Gurgaon at his own cost. The formalities be completed as expeditiously as possible.

- (vi) The officer shall furnish the E-mail address of the ATS office or any particular officer and the applicant shall inform about all the abovementioned details to the ATS Department regularly.
- (vii) The applicant shall return to Mumbai on 31.8.2015 along with the medical case papers and all other papers of post-operative treatment taken by him and other necessary documents and report to the ATS Officer on or before 5 p.m. of 31st August, 2015.
- (viii) The applicant shall travel on medical advice only.

Application is allowed in the above terms and disposed of.

11. Parties to act on an authenticated copy of this order.

(SMT.SADHANA S.JADHAV, J.)