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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
CRIMINAL APPLICATION NO.416 OF 2016 IN
CRIMINAL APPLICATION NO.134 OF 2016 IN
CRIMINAL APPLICATION NO.1353 OF 2015 IN
CRIMINAL APPEAL NO.913 OF 2013

Suhas Mahadev Roge ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.Rajiv Patil, Senior Advocate a/w Mr.B.G.Tangsali
i/b Mr.Santosh Shankar Musale for the applicant
Ms M.H.Mhatre, APP for the State

CORAM : A.S.OKA, &
A.A.SAYED, JJ.
DATE : JULY 13, 2016

P.C.:

1 The applicant has been convicted for the offence punishable under section 302 read with section 34 of the Indian Penal Code and sentenced to suffer RI for nine months.

2 An appeal against the order of conviction preferred by the applicant is pending in this Court for final hearing. On 1st December 2015, in Criminal Application No.1353 of 2015, a Division Bench of this Court granted temporary bail to the applicant for a period of eight weeks on the basis of the Medical Certificate issued by Dr.Vijay Tapase, a Medical Officer who is attached to St George's Hospital. By further order dated 8th February 2016 in Criminal Application No.134 of

2016, this Court extended the temporary bail till 31st March 2016. Thereafter, the present application is filed by the applicant for further extension of temporary bail by a period of 24 weeks. The present application is filed on 24th March 2016. Perusal of the orders passed in this application show that this Court proceeded on the footing that the applicant requires surgical intervention. This approach is based on opinion of Dr.Tapase. Initially, the applicant was admitted to St. George's Hospital. Orders of this Court record that the surgery could not be performed on the purported ground that the Operation Theatre was under repairs. Therefore, under the order dated 28th June 2016 passed by this Court, the applicant was ordered to be transferred to Sir J.J.Group of Hospitals for purpose of undergoing surgery.

3 On 12th July 2016, the Investigating Officer submitted a report along with the report dated 11th July 2016 addressed to the Superintendent of Sir J.J.Group of Hospitals. The report is signed by Dr.M.B.Tayade, Professor and Head of the Department of General Surgery, Dr.Amol Wagh, Assistant Professor and Dr.P.N.Vaswani, Associate Professor. In the said report, it is recored that aspirated fluid has been sent for culture and sensitivity test in view of past Tuberculosis infection and report is awaited. It records that the applicant is vitally stable and has no local tenderness or pain in abdomen on full diet. He was discharged on 9th July 2016 on oral antibiotics. The three Doctors have

recorded that at present, the applicant does not require any active surgical management.

4 The learned senior counsel for the applicant invited our attention to the certificate dated 23rd June 2016 issued by Dr.Tapase, which is relied upon in this application and which is referred to in one of the earlier orders passed by this Court. He invited our attention to the said certificate which records reasons as to why surgical intervention is necessary.

5 We may note two aspects. Firstly, Dr. Tapase has issued a certificate on his private letter head. It is not clear whether the applicant was examined by him in St. George's Hospital or in his personal clinic. Now, the applicant has been examined by a panel of three Professors including the Head of Department of General Surgery of Sir J.J.Group of Hospitals. We have already referred to the report dated 11th July 2016 submitted by the three Doctors in which they have categorically stated that the applicant has been discharged from the said Hospital on 9th July 2016 and that he does not require any active surgical management.

6 In view of the report dated 11th July 2016, there is no reason to extend the temporary bail granted to the applicant. He has been discharged from hospital on 9th July 2016. The temporary bail was earlier granted on medical grounds. Needless to add that the Jail Authorities of Kalamba Central

Prison, Kolhapur will call for the report of the Culture and sensitivity test from the Sir J.J.Group of Hospitals and will ensure that necessary treatment is extended to the applicant either by the Doctors attached to Jail Hospital and/or the Doctors attached to Civil/Government Hospital at Kolhapur.

7 Hence, we dispose of the application by passing the following order:

- (I) The application is rejected;
- (II) We direct the applicant to surrender and report to the Jail Superintendent of Kalamba Central Prison at Kolhapur within a period of one week from today.

(A.A.SAYED,J.)

(A.S.OKA,J.)