IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1050 OF 2016

CHHAGAN CHANDRAKANT BHUJBAL)...APPLICANT

V/s.

ASSISTANT DIRECTOR ENFORCEMENT)
DIRECTORATE AND ANR.)...RESPONDENTS

Shri Amit Desai, Senior Advocate, a/w. Shri Y.C.Naidu, Shri Sajal Yadav, Shri Karan Vyas, Shri Sudarshan Khawase, Shri Gurdeep Sachar and Shri Ishant Srivastav i/b. Shri Shalabh K.K.Saxena, Advocate for the Applicant.

Shri H.S.Venegaonkar, Special Public Prosecutor a/w. Smt.P.H.Kantharia, Addl.P.P. for the Respondent No.1.

Shri S.H.Yadav, APP for Respondent No.2 - State.

CORAM : P. N. DESHMUKH, J.

DATE : 16th JUNE 2016.

P.C. :

1 Applicant Chhagan Chandrakant Bhujbal who is a sitting Member of Legislative Assembly of State of Maharashtra having been involved in Complaint No.2 of 2016 arising out of

ECIR No.MBZO/ECIR/07/2015 & ECIR No.MBZO/ECIR/08/2015 registered by Directorate of Enforcement, Mumbai, for the offences under the Prevention of Money Laundering Act, 2002, (hereinafter PMLA 2002) has applied for grant of bail on medical grounds under Section 439 of Code of Criminal Procedure read with First proviso to Section 45(1) of PMLA 2002. Circumstances under which the complaint came to be filed can be briefly stated as under. This court vide its roder dated 18.12.2014 passed in PIL directed to constitute Special Inquiry Team, comprising of Director General, ACB, Mumbai, the Director of Enforcement Directorate (E.D.) to conduct inquiry with reference to the allegations made against the applicant, who happened to be Minister in the earlier Government of Maharashtra and against his relatives. Accordingly, investigation was initiated against the applicant and others for the offence under the provisions of PMLA, 2002. From the FIR registered by ACB, Mumbai, and EOW, Navi Mumbai, it reveals that loss to the extent of Rs.870 Crore has been caused to the State Exchequer, alleging that applicant had accepted cash in lieu of awarding projects to the contractors of his choice and then

chanelled said illegal cash into various companies controlled by him and his relatives and invested it into those business activities and group of companies. On completion of investigation with respect to construction of New Maharashtra Sadan at New Delhi / RTO Project in Mumbai and Hexworld Project at Navi Mumbai, PMLA Complaint No.2 of 2016 has been filed before the Special Court on 30th March 2016. On the basis of material filed with the complaint, cognizance is taken by the learned Special Judge on dated 27th April 2016, and had issued process against the applicant.

2 Applicant before the learned Special court had initially claimed similar relief, which application came to be considered on merits and is rejected observing that the documents placed on record by the applicant were not sufficient to infer the fact that applicant was suffering from any major health problem for which no treatment can be provided to him while in judicial custody or at a Government hospital. It is further noted that applicant was examined on 10th May 2016 by a team of expert doctors from Sir

J.J.Hospital, Mumbai, who had specifically opined that applicant was having hemodynamically stable condition and does not require any more medication and was advised to continue with the same medication as prescribed by doctors of St.George Hospital and in the given circumstances, no relief as sought for was granted.

3 Applicant has then approached this court, wherein the learned Vacation Judge after hearing both the sides on 20th May 2016 issued directions to produce applicant before the Medical Board either headed by the Dean of the Government hospital or by any other Senior most member in the hierarchy of the hospital along with other necessary Medical Officers. It was further directed that the Medical Board so constituted shall not be of less than three Expert Members in the field. The Medical Board was to be formed by the Dean of Sir J.J.Hospital to examine the applicant, with directions to Jail Authorities to produce the applicant before the Medical Board on 24th May 2016 by 11.00 a.m., and on completing relevant tests and clinical examinations

was directed to be lodged in jail on the same day by 6.00 pm. The Medical Board was directed to produce those medical report in a sealed cover on 27th May 2016 when the matter was posted for further consideration before the Vacation court. Accordingly, Medical Report was produced before the court which was opened and its copies were made available to the learned counsel for the applicant and the learned special public prosecutor and on the application on behalf of the applicant, time was granted to go through the report and was posted for hearing.

4 Learned senior advocate Shri Amit Desai appearing for the applicant has submitted that this application need not be considered in a routine manner or as a routine application but it has specific dimensions as according to him the applicant is suffering from various diseases even prior to his arrest in the present crime and referring to the ailments from which the applicant is alleged to be suffering, attention is invited to paragraph 1 of the application wherein it is contended that applicant since 1980 is suffering from Bronchial Asthma for which

he is being periodically seen by Chest Physician Doctor Sujit Rajanat of Bombay Hospital. The applicant was under treatment since he was suffering from Hypertension since 1990 and is also diabetic. He is also suffering from sleep apnea since 2000 and is required to use CP / AP machine every night while sleeping. In the year 2004 the applicant has undergone Coronary Angioplasty and in the year 1985 had undergone surgery for hyperplasia of prostate gland and other urinary problems and is also a patient of bilateral osteoarthritis for which he has undergone surgery of left shoulder replacement, and is also under treatment as well as suffers from tear in retina which would trigger due to applicant having diabetes.

5 In the background of aforesaid physical condition of applicant it is contended that after applicant was taken into custody by Enforcement Directorate on 14th March 2016 and during his custodial period as his condition deteriorated, twice doctors were summoned from Government hospital. On his production before the Special Judge on 17th March 2016, he had

complained of his discomfort and of his sustaining pain in jaws and chest and was therefore on 18th April 2016 produced before St.George hospital and was examined. According to the counsel for the applicant, he therefore needs proper clinical attention and medical care since he is having number of ailments and as such provisions of exception under First proviso to Section 45(1) of the PMLA 2002 is aptly applicable in the above circumstances.

6 On 18th April 2016 applicant was medically examined at St.George Hospital and was discharged on 24.4.2016, of which report is on record. Learned counsel for applicant referred to the observations in said report with regard to -

Troponin-T on 18.4.2016 – 15.6 PG/ML (Elevated)
(Normal range 0-14)

CPK-MB on 18.4.2016 -29.68 U/L (Elevated)
(Normal range 0-25)

and co-relate said observations with the opinion of Dr.Vinod Kaneria, M.D., Cardiologist, attached to Hinduja hospital, Khar, Mumbai, and submitted that inspite of applicant having found elevated enzyme as referred above, the team of doctors, who

under the directions of this court had examined applicant, did not advised any treatment and sent him back to jail and since then there is no treatment provided to him for said elevated enzymes, though according to the opinion of Dr.Vinod Kaneria, given by him on his studying medical reports made available to him by the counsel of applicant, elevated cardiac injury enzymes and clinical notes of left-sided chest pain, radiating to the left shoulder and the neck might have developed an increase in severity of major coronary artery blockage and to confirm above, needs to undergo a cardiac angiography at the earliest followed by appropriate treatment in the form of an Angiography or a Bypass Surgery at Hinduja Hospital, Khar, where Dr.Vinod Kaneria is attached as a Senior Cardiologist.

7 Learned counsel for the applicant had contended that inspite of such specific opinion of an expert in cardiology attached to above hospital, it was necessary for the investigating agency to produce applicant on their own for further medical treatment which they failed to do and for that purpose they had approached

to the learned Special Judge, however said plea for temporary bail on medical grounds was rejected. Learned counsel has then raised serious doubts on the tests reports itself thereby contending that the medical report is prepared and signed by all Medical Officers who were members of the team of Doctors, who examined the applicant on 24th May 2016 and signed the report on 24th May 2016 itself, though according to him, as per information obtained by the applicant under Right to Information Act, the applicant was taken out of prison on 24th May 2016 at 9.50 a.m. and was produced at J.J.hospital at 10.15 a.m. and has contended that he was taken back from the hospital at 4.45 p.m and therefore it was not possible for all the Medical Officers to study the various tests reports of the applicant and to prepare the report on the same day.

8 Another ground which is seriously canvassed challenging this report is with reference to the M.R.D. number stated therein as 2035571 in respect of present applicant and has contended that this being the reference number of the patient

visiting J.J.Hospital for medical treatment, should appear on all the medical papers which itself establishes identity of the patient to whom such medical papers belong. However, submitted that documents being pathological tests reports filed with the medical report does not bear such M.R.D. number.

9 It is then submitted that the medical test papers state date of birth of applicant as 24th May 1947 whereas the date of birth of applicant is 15th October 1947, and is thus contended that for this reason also, it cannot be said that the document placed on record along with medical report belongs to the applicant, but such documents are in respect of some other patient having no ailment and in fit condition used by prosecuting agency to bring on record that applicant is not suffering from any serious ailments.

10 Further, advancing submissions it is pointed out that even the ECG reports which are obtained on 2th May 2016 and are computer generated documents show time as 9.42.55 a.m., 9.43.32 a.m. and 10.47.17 a.m. and same documents also bear

time of 3 p.m. and 2 p.m. on two reports having name of patient written manually. It is thus contended that these aspects also raise doubts as to the truthfulness of the reports.

11 Lastly, by referring to the pathology lab report of Metropolis it is contended that said report is in respect of blood sample of patient collected on 25th May 2016. The report is prepared on the same day. However, there is nothing to establish that the sample collected and tested by this lab belongs to applicant, as said report is silent on this aspect, nor there is reference number, which is referred as M.R.D. number on medical documents, mentioned on the said report.

12 In the background of above submissions and raising doubts on the medical report as well as on the tests reports particularly the pathology, and ECG test reports, it is contended that respondents are not coming before this court with true facts with regard to physical condition of applicant, and has thus submitted that applicant, in view of opinion given by Dr.Vinod

Kaneria of Hinduja hospital based on the medical papers forwarded to said doctor by the advocate of applicant to seek his opinion, is entitled for having his treatment from the doctor and hospital of his choice. It is further contended that applicant even otherwise is not claiming regular bail nor bail on medical grounds for a longer period but having considering the physical condition and the ailments suffered by him since sufficient long period of which he has recently developed chest pain, for which he was, on his request, medically examined on 18th April 2016 and subsequently on 24th May 2016, is claiming for bail and in the alternative bail on medical ground for a temporary period of three months. In support of said contention, applicant has tendered on record affidavit of his daughter.

13 Learned counsel in support of his submissions has relied upon the authority in the case of **Surjit Singh vs. State of Punjab & Ors. AIR 1996 SC 1388** and of our High Court in **Bail Application No.535 of 2013,** decided on 25th April 2013, in the case of **Kashinath Mangtoolal Tapuriah vs. Union of India & Anr.**

14 On hearing learned counsel for applicant, on 14th June 2016, Learned Special Public Prosecutor had sought time to seek instructions from the investigating agency as well as other authorities concerned with reference to various points orally raised by learned counsel for the applicant. Accordingly, matter was adjourned for a day as even otherwise court time was over.

15 Today, learned special public prosecutor with reference to various doubts raised by the applicant on the medical report has dealt with it on obtaining instructions from the concerned doctor and authorities.

Firstly, with reference to doubt raised by applicant upon observations with regard to Troponin-T which on 18th April 2016 was found elevated to the extent of 15.6 PG/ML having normal range of 0-14 and about CPK-MB found elevated to the extent of 29.68 U/L having normal range of 0-25, has pointed out that admittedly after being referred to government hospital, applicant was indoor patient and after monitoring his physical condition by providing necessary medicines within 48 hours, later,

both above elevated enzymes on 20th April 2016 came within normal range.

16 In view of said fact on record established from the medical report, reliance is placed by applicant on computer print out of “Mediline Plus” which is taken on record for certain observations that even a slight increase in the Troponin-T level will often mean that there has been some damage to the heart and very high levels of troponin are a sign that a heart attack has occurred, and can only be considered for the purpose of construing the same when such troponin levels are found, are of no material consequences as in instant case, the elevated enzymes deformities were within normal range, and thus, that by itself can be no ground to hold that the health condition of applicant was so serious.

17 In this background when opinion obtained by learned counsel for applicant on the basis of medical reports provided to Dr.Vinod Kaneria of Hinduja hospital does not stand for any

reason as from the letter addressed by said doctor to concerned advocate reveals that on the basis of report dated 18th April 2016 to 24th April 2016, finding that cardiac injury enzymes are elevated had opined that applicant has developed an increase in severity of major coronary artery blockage and thus certified that he needs to undergo a coronary angiography at the earliest. Said opinion however is silent with regard to observations in report of patient dated 20th April 2016 when the elevated cardiac injury enzymes are stated to be normal.

18 Similarly, much has been canvassed on behalf of applicant with reference to the date of birth of applicant which is stated to be 15th October 1947 while the date of birth appearing in investigation papers is 24th May 1947. With reference to this aspect, learned APP has stated that the information of patient is entered at the time of their registration for MLC cases on the basis of information supplied by patient to the hospital authorities for the purpose of giving treatment to patient. The HMIS system does not certify the date of birth as only age is taken as input and

system calculates backwards for date of birth. It is also contended that patients do not carry the age proof document while visiting the hospital for treatment. Hence, in the given case when RMO gave the age of patient as 69 years the system calculated the date of birth and recorded the same in database as 24th May 1947, instead of actual date of birth of applicant. The above system appears to have been evolved in the government hospital keeping in mind that patient coming from rural areas are illiterate, when their date of birth is asked, most of them do not know it and give it by approximation. Even otherwise the purpose of capturing age is only for the purpose of giving treatment to patients and the date of birth appearing on medical reports does not authenticate such date is date of birth under any circumstances. In that view of the matter, there is no substance in this contention.

19 With reference to another point canvassed on behalf of applicant of non-mention of M.R.D. number on all the medical tests papers, it is submitted by the learned Special Public Prosecutor that same is reference number of patient which in this

case is 2035571. It is pointed out on behalf of applicant that though said number is mentioned on some of the investigation papers, said number if not found on the pathology lab reports and it is therefore contended that the pathology reports are not in respect of applicant. On this aspect on perusal of Investigation Flowsheet it is clearly established that the results shown on the first page of flowsheet is based on the finding of the lab reports which are forming part of said documents. In that view of the matter, I find much substance when it is contended on behalf of prosecution that lab report is part of Investigation Flowsheet with M.R.D. number clearly mentioned thereon, and as such, there is no need for having said number on each of the documents of the said Flowsheet.

20 Another aspect which is heavily canvassed is with reference to the lab report of Metropolis dated 25th May 2016 and it is pointed out from said report that samples were collected on 25th May 2016 at 9.54 a.m. and the report is prepared on the same day at 12.55 p.m. It is thus contended that according to the

directions of this court applicant was produced before the Medical Board on 24th May 2016 and under the direction of the expert doctors, medical tests were to be carried out on that day itself, however there is no explanation as to why the samples collected on 24th May 2016 were forwarded for its analysis on 25th May 2016. On this aspect, it is the case of prosecution that blood report of Metropolis lab of HbA1C is dated 25th May 2016, while all other blood tests were done in J.J.Hospital on 24th May 2016 and the blood sample for HbA1C test was submitted in metropolis lab on 25th May 2016 as said blood test is not available in J.J.Hospital and patients random blood sugar on 24th May 2016 at J.J.Hospital was within normal limit (146 mg%). However to access patients sugar control during past three months Hb A1C was also evaluated. It is also contended that person from metropolis lab do not collect and process sample in evening hours hence blood sample was collected on 25th May 2016. In that view of the matter, above raised objection also does not stand for any reason.

21 On the aspect of date and time mentioned in the

investigation flowsheet report footer as of 08/08/2008 04.51 AM, it is contended that by producing such false reports, prosecution has annexed documents of some healthy patient to establish that the physical condition of applicant is normal and thereby deprived applicant from obtaining proper medical care. On this aspect it is brought to the notice by the learned Special Public Prosecutor that the time and date mentioned on the footer of the investigation flowsheet has no relation with the actual report as this date and time only represent when the printout of the report was obtained from the system. Above explanation, however, does not find to be satisfactory as it is not the case of prosecution that the printout in the instant case was obtained in the year 2008. However, from further explanation of prosecution, it is contended that so far as said contents on the investigation flow sheet are concerned, the system used to print this report was in Clinical pathology lab, 7B, OPD Building with Serial Number INA 8490046, model HP Compaq DX 7400 SFF. This particular system due to CMOS battery weakness and/or minor power fluctuation had shown date as of 08/08/2008 on 24th May 2016. To confirm this fact, it was further

investigated on 15th June 2016 and it was noted by the authorities of hospital that on the reports generated on 15th June 2016, the date which came to be printed is as 08/09/2008 4.21 AM, relevant documents are on record. In that view of the matter it thus appears that though actual reports of the patient in this case were obtained on 24th May 2016 itself, wrong date came to be stated on the investigation flowsheet at its footer. The explanation put forth by prosecution on this aspect can be acted upon being reasonable.

22 Lastly, learned counsel for the applicant after raising above doubts, had doubted the truthfulness of the medical report itself, thereby stating that there are reasons to doubt the report as the same is prepared on 24th May 2016 itself, on which date applicant was produced for his medical check up and though according to prosecution, number of tests were carried out, it is practically impossible for the team of medical officers comprising of nine in number to consider all the reports and to prepare the report on 24th May 2016 itself.

23 The special public prosecutor during the course of hearing had tendered at the bar documents which establish that the process of preparing report had commenced on 24th May 2016 and was concluded on 25th May 2016, on which date copy of the same was provided to the Dean of Government hospital who acknowledged receipt of the same. The document tendered reveals acknowledgement of concerned Medical Officer along with date as 25th May 2016 below his signature. The learned counsel for the applicant has contended that this document is fabricated after the hearing was adjourned for a day, as on the original medical report placed on record, no such endorsement finds place. However, I am not impressed with the submission for the reason that after submitting copy of medical report to the Dean, this signature must have been obtained by hospital authorities in token of his receipt of the medical report, and thus there is no reason why acknowledgement is not seen on the original report placed before this court. In the background of above facts, there is no reason to doubt the medical report, on this ground.

24 On considering various doubts raised on behalf of

applicant as above and on the medical report, since medical report along with all the tests reports enclosed therewith are found to be truthful, they are thus duly considered to conclude if applicant is suffering from any serious ailments which needs to be immediately looked into and taken care by allowing the applicant to be released on bail to obtain medical treatment from the doctor and hospital of his choice.

25 On bare perusal of the medical report, it is seen that in view of directions issued by this court, team of nine medical officers being experts from various medical faculties like medicine, general surgery, cardiology, opthalmology, urology, pulmonary medicine, orthopedic, neurology and dentistry was formed under the chairmanship of Head of the department for Medicine. All these experts have considered test reports and had tallied them with other relevant investigation papers and has collectively diagnosed that applicant is a known case of Hypertension with Controlled Diabetes Mellitus with Bronchial Asthma with Obstructive Sleep Apnea with Root Canal treatment for 46, 47

with Periapical Osteltis 46. On duly considering the documents it was lastly concluded by the Medical Board that applicant is suffering from Chronic ailments mentioned in the Clinical Diagnosis. However his clinical condition and chronic diseases are stable with present medication. Antihypertensive drug dose is increased and adjusted and in view of his chronic disease, he needs periodic evaluation to ascertain stability of his disease. Except as above, there is no opinion by the committee of experts in the field of medicines that immediate medical treatment is required to be provided to the applicant, and that too from some specific doctor or hospital.

26 Learned counsel for the applicant in support of his application has relied on the case of **Surjit Singh cited supra**. In that case the appellant had claimed reimbursement of medical bills from the government for having obtained treatment abroad at London and on considering the documents, the department expressed its inability to sanction the bill for medical reimbursement which led the appellant therein to move the High

court of Punjab and Haryana where the Assistant Advocate General for State of Punjab made a statement that the State was ready to pay to the petitioner the expenses incurred for bypass and angiography at the rates prevalent in All India Institute of Medical Sciences, New Delhi, and on applying that yardstick, the High court of Punjab and Haryana partly allowed the case of the petitioner, thereby granting appellant expenses incurred by him for bypass and angiography on the rates prevalent in the All India Institute of Medical Sciences, New Delhi, and the Hon'ble Apex court on considering the case had observed that the applicant in that case could not have insisted to obtain the treatment free from hospital, and while allowing the appeal, further observed that appellant cannot be limited to obtain treatment from a particular hospital.

27 Another authority of our High Court relied by applicant is passed in Bail Application No.535 of 2013 dated 25th April 2013 cited supra. In that case applicant who was granted bail on medical grounds for sometime was aged 77 years and was

suffering from several ailments. While granting relief, reliance was placed upon the opinion of Chief Medical Officer, Mumbai Central Prison who had stated that considering the nature of ailments of the applicant therein, he needs long term nursing care and multi specialty treatment. In the background of facts as seen, and having considered that the applicant in the case was referred to J.J.Hospital for treatment on many occasions, but he could not get long term relief, but since had also lost his control over passing urine and stool for which surgical intervention was necessary and since was also losing his balance and sometimes total blackout, was allowed to obtain treatment in a multi specialty hospital by releasing on bail for a limited period.

28 In that view of the matter, neither of those case laws can be used in favour of applicant, having distinguishing facts, as in the case in hand, there is nothing on record to establish that applicant is suffering from such serious ailment which necessitates him to immediately obtain treatment in multi specialty hospital, from specific doctor.

29 Learned Special Public Prosecutor has relied on the

decision in the case of **State vs. Jaspal Singh Gill 1984 AIR 1503 cited supra** and had submitted that the relief sought by applicant also needs to be considered with reference to the gravity of offence he is involved in. In that case, the Hon'ble Apex court observed that applicant therein having been involved for the offences punishable under Sections 3, 5 and 9 of the Official Secrets Act, 1923, read with Section 120-B of the IPC should not have been enlarged on bail in the larger interest of the State though the respondent Jaspal Gill in that case was a person who had undergone a cardiac operation and required constant medical attention.

30 It is pertinent to note that apart from the present complaint filed under the provisions of PMLA, 2002, admittedly, charge-sheets with reference to offence punishable under the Prevention of Corruption Act are filed against the applicant and it is also informed that investigations in similar other crimes are still in progress.

31 Having considered the facts as aforesaid, thus, I find

no reason to allow the application. It is, thus, liable to be rejected and stands rejected accordingly, however, it is directed that Jail Authorities shall, as and when required, provide all the necessary medical treatment to applicant in government hospital while in custody.

The application is disposed of.

(P. N. DESHMUKH, J.)