

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***CRIMINAL APPELLATE JURISDICTION***  
**WRIT PETITION NO. 1917 OF 2016**

|                                         |   |                                   |
|-----------------------------------------|---|-----------------------------------|
| Smt. Jaya Talakhsi Chheda               | ) |                                   |
| Age : 52 years, Occ.:Housewife,         | ) |                                   |
| Residing at Room No.126/3518,           | ) |                                   |
| Pang Nagar, Vishal Housing Society,     | ) |                                   |
| Ghatkopar (E), Mumbai                   | ) |                                   |
| (At presently in Nashik Central Prison, | ) |                                   |
| Nashik)                                 | ) | ..... Applicant<br>(Orig.Accused) |

**VERSUS**

|                                       |   |                  |
|---------------------------------------|---|------------------|
| The State of Maharashtra              | ) |                  |
| (At the instance of DCB/CID Unit No.1 | ) |                  |
| Mumbai. Vide C.R.No.116 of 2008)      | ) | ..... Respondent |

Mr.Niranjan Mundargi, i/b. Mr.Santosh Shankar Musale for the Petitioner.

Mr.K.V.Saste, A.P.P. for the Respondent/State.

**CORAM : A.S.OKA &  
R.D. DHANUKA, JJ.**

**RESERVED ON : 8<sup>th</sup> SEPTEMBER, 2016**

**PRONOUNCED ON : 14<sup>th</sup> OCTOBER, 2016**

**JUDGMENT (Per R.D.Dhanuka, J.) :-**

By this writ petition filed under Articles 226 and 227 of the Constitution of India, read with section 389 of the Criminal Procedure Code, 1973, the petitioner has applied for quashing and setting aside the Crime No. 185 of 2016 registered with the Pantnagar Police Station and seeks suspension of the sentence for temporary period of 16 weeks from the date of the order to enable the

petitioner to take recourse of medical treatment without any mental pressure or of hypertension. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. By an order dated 31<sup>st</sup> July 2013, the petitioner was convicted by the learned Sessions Judge at Greater Bombay for an offence punishable under section 120(B), 302 read with section 34 of the Indian Penal Code, 1860 and was sentenced to suffer rigorous imprisonment for life and to pay fine alongwith other accused named therein. The petitioner impugned the said order dated 31<sup>st</sup> July, 2013 by way of Criminal Appeal (1012 of 2013) before this court. The said appeal filed by the petitioner is admitted and is pending for hearing and final disposal.

3. Sometimes in the year 2013, the petitioner preferred an application (1785 of 2013) *inter alia* praying for a temporary bail on medical grounds before this court. By an order dated 23<sup>rd</sup> December, 2013, this court rejected the said bail application. This court however directed the respondent to transfer the petitioner from the J.J.Hospital to Jaslok Hospital for treatment at her own cost including the room charges, medicine and the charges of the medical officers for performing the surgery etc. This court however rejected the application for her release on temporary bail.

4. It is the case of the petitioner that son of the petitioner was also

suffering from some serious health ailment and died in the prison. The petitioner thereafter applied for furlough to perform last rites of her son. Since the Jail Authority did not allow the said application, the petitioner filed criminal application (465 of 2014) before this court. By an order dated 25<sup>th</sup> March, 2014, this court directed the Superintendent of Yerawada Central Jail, Pune to permit the petitioner to perform last rites and rituals of her deceased son by visiting Mumbai under police escort and directed the Divisional Commissioner, Pune to decide the application for parole.

5. The petitioner thereafter filed a criminal application (1541 of 2015) before this court *inter alia* praying for temporary bail to enable the petitioner to undergo angiography and angioplasty. By an order dated 15<sup>th</sup> January, 2016, this court directed the respondent to get the applicant examined and investigated as suggested by the CMO, Nashik Road, Central Prison and to take further necessary steps as per further advise of Specialist/Physician in J.J.Hospital. This court directed the learned Assistant Public Prosecutor to submit a report of the physical health of the petitioner on the next date in order to carry out the exercise referred in the said order.

6. By an order dated 18<sup>th</sup> March, 2016, this court rejected the said application for temporary bail. This court however directed that if the Chief Medical Officer, Nashik Central Prison so desires, the petitioner could be again re-

examined in the J.J.Hospital by a senior Cardiologist. This court in the said order considered the medical report of the petitioner signed by the Chief Medical Officer, Nashik Road Central Prison dated 17<sup>th</sup> March, 2016 and the report submitted by the Department of Cardiology, J.J.Hospital dated 3<sup>rd</sup> March, 2016. This court was of the view that the petitioner was put on medical treatment and did not require any intervention procedure like angiography at that time. The Medical Officer however advised to continue medical treatment, stress test on Friday and regular cardiology follow-up on Friday.

7. On 26<sup>th</sup> April, 2016, the petitioner was released on furlough leave by Nashik Central Prison, Nashik. It is the case of the petitioner that on 10<sup>th</sup> May, 2016, the petitioner suffered severe chest pain and visited the Civil General Hospital, Thane. The doctor of the said hospital suggested her to undergo the angiography. It was her case that she fell down at home and she sustained grave inner injury and was thereafter taken to her family doctor Mr. Sharad Jhakatia. The said doctor advised her for M.R.I. scan of whole body. It is her case that she thereafter visited Parel Midtown on 19<sup>th</sup> May, 2016 for M.R.I. scan. The learned doctor made an observation regarding spine fracture at neck, possibility of D4-D5 infective tuberculous spondylodiscities and slip disc at L1, L2 and L3 lower spine. The petitioner therefore filed a criminal application (654 of 2016) before this court *inter alia* praying for temporary bail on the medical ground in view of the injury

sustained by her on 18<sup>th</sup> May, 2016 and praying for an order and direction that the Jail Authority to admit the petitioner at J.J.Hospital by shifting her from St.George's Hospital after taking custody of the petitioner.

8. On 27<sup>th</sup> May, 2016, the Vacation Court recorded the statement made by the Assistant Public Prosecutor that the facilities for Neurology as well as angiography were available in J.J.Hospital at Mumbai. This court accordingly held that this court was not inclined to entertain the said criminal application. This court however directed that after taking her custody from St.George's Hospital, the petitioner should be admitted in the J.J.Hospital wherein necessary treatment for spinal problem as well as cardiac treatment could be undertaken. The relevant paragraphs of the said order are extracted as under :-

4. Taking into consideration the health condition of the applicant we find that instead of directing the applicant to surrender before the Jail authority, we permit the Jail authority or the Police authority to take her in custody from St.George Hospital and admit her in J.J.Hospital.

5. Needless to state that the applicant would be continued in the hospital until her treatment is completed.

9. On 28<sup>th</sup> May 2016, the Pantnagar Police Station lodged an FIR against the petitioner alleging that though the petitioner was required to surrender within 28 days from the date of granting parole i.e. on or before 27<sup>th</sup> May, 2016 to the Prison, Nashik Road Central Prison, she did not surrender and was thus declared as

absconder. The respondent registered (Crime No.185 of 2016) for the offence punishable under section 224 of the Indian Penal Code, 1860 against the petitioner.

10. On 3<sup>rd</sup> June, 2016 the petitioner was taken to the J.J.Hospital by the Crime Branch from St.George's Hospital. The guards were deployed by the police in the hospital premises. There is no dispute that the petitioner was taken into custody by the Crime Branch Unit and was taken to the J.J.Hospital from St.George's Hospital.

11. On 9<sup>th</sup> June, 2016, the Crime Branch took the custody of the petitioner from the hospital and produced the petitioner before the learned Magistrate.

12. Being aggrieved by the said impugned Crime No.185 of 2016 registered by the Pantnagar Police Station, the petitioner filed this writ petition *inter alia* praying for quashing and setting aside the same and also seeking suspension of the sentence under section 389 of the Criminal Procedure Code, 1973 on various grounds.

13. This matter appeared before this court on 6<sup>th</sup> June, 2016 when the Division Bench directed the learned Assistant Public Prosecutor to submit a report on medical condition of the petitioner on the returnable date i.e. 13<sup>th</sup> June, 2016. On 8<sup>th</sup> August, 2016 this court recorded the statement made by the learned counsel for the petitioner that the petitioner was already admitted in St.George's Hospital,

Mumbai on 1<sup>st</sup> June, 2016 and on 8<sup>th</sup> June, 2016 the custody of the petitioner was handed over to the Jail Authority. On 25<sup>th</sup> August, 2016, this court decided to hear this criminal writ petition finally at the admission stage and directed the office to place the petition on board on 7<sup>th</sup> September, 2016. This court accordingly heard the matter finally.

14. Mr. Mundargi, learned counsel for the petitioner invited our attention to various orders annexed to the writ petition and also to the FIR in Crime No. 185 of 2016, a copy of the discharge issued by the St. George's Hospital on 1<sup>st</sup> June, 2016 and discharge card issued by Grant Government Medical College & Sir JJ Group of Hospitals dated 6<sup>th</sup> June, 2016. Our attention is also invited to the doctor's certificate dated 11<sup>th</sup> June, 2016 issued by Dr. Manoj Jain giving medical advise to the petitioner.

15. It is submitted by the learned counsel for the petitioner that the petitioner was on parole for a period of 28 days w.e.f. 28<sup>th</sup> April, 2016 and was required to surrender before the Nashik Central Prison on or before 27<sup>th</sup> May, 2016. He invited our attention to the order passed by this court on 27<sup>th</sup> May, 2016 in Criminal Application No. 654 of 2016, Criminal Application No. 774 of 2014 and Criminal Application No. 135 of 2015 filed by the petitioner. He submits that by the said order dated 27<sup>th</sup> May, 2016, this court had directed the respondent to admit the petitioner in J.J. Hospital after taking her custody from the St. George's

Hospital. He submits that after taking into consideration the health condition of the petitioner, this Court specifically directed that instead of directing the petitioner to surrender before the Jail Authority, this court permitted the Jail Authority or the Police Authority to take her in custody from St.George's Hospital and admit her in J.J.Hospital. He submits that this court had also made it clear that the petitioner would be continued in the hospital until her treatment was completed.

16. It is submitted that admittedly on 2<sup>nd</sup> June, 2016, the Superintendent of St.George's Hospital, Mumbai had issued instructions to discharge the petitioner from the St.George's Hospital and take her to J.J.Hospital OPD for admission as per the order passed by this court. On 3<sup>rd</sup> June, 2016, the petitioner was admittedly shifted to J.J.Hospital by the Jail Authority from St.George's Hospital. Learned counsel appearing for the petitioner also placed reliance on the case diary produced by the learned Assistant Public Prosecutor dated 29<sup>th</sup> May, 2016 and 4<sup>th</sup> June, 2016 and would submit that the police had already deployed the guard in the hospital premises i.e. in J.J.Hospital where she was admitted pursuant to the order passed by this court and was discharged from the hospital on 9<sup>th</sup> June, 2016 and was produced before the learned Magistrate. He submits that the petitioner was thus all throughout in the police custody and had not escaped from the police custody and did not make any attempt to escape from the police custody within the

meaning of section 224 of the Indian Penal Code, 1860.

17. Learned A.P.P. placed reliance on a judgment of this court delivered on 5<sup>th</sup> April, 2016 in Writ Petition No.951 of 2015 in case of ***Mohd.Azam Aslam Butt vs. State of Maharashtra & Ors.*** in support of his submission that even during the parole period, the petitioner was in legal custody of the State and upon expiry of the parole period, she was bound to surrender to the prison authority. He submits that since the petitioner did not surrender to the prison authority on the expiry of the parole period on 27<sup>th</sup> May, 2016, the petitioner had thus escaped from the custody in which she was lawfully detained and was liable to be punished under section 224 of the Indian Penal Code. He submits that the petitioner was presented before the learned Magistrate only on 9<sup>th</sup> June, 2016 i.e. much after the expiry of the parole period. He submits that the crime (Crime No. 185 of 2016) was accordingly registered under the provisions of Section 224 of the Indian Penal Code which is in accordance with law and thus this court cannot interfere with the said registration of the crime under Section 224 of the Indian Penal Code against the petitioner.

18. Mr.Mundargi, learned counsel for the petitioner in rejoinder distinguished the judgment of this court in case of ***Mohd.Azam Aslam Butt*** (supra) on the ground that the petitioner was admitted in hospital and was allowed to continue to be in hospital by an order dated 27<sup>th</sup> May, 2016 passed by this court

until her treatment was completed. He submits that the petitioner was admittedly taken to the Magistrate by the respondent directly from the hospital.

19. The question that arises for consideration of this court is whether in view of the order dated 27<sup>th</sup> May, 2016 passed by this court in Criminal Application No.654 of 2016 filed by the petitioner permitting the petitioner to continue in the hospital until her treatment was completed and instead of directing the petitioner to surrender before the Jail Authority, permitted the Jail Authority to take her in custody from St.George's Hospital and admit her in J.J.Hospital, the petitioner not having physically surrendered to the Jail Authority on expiry of the parole period, could be charged under section 224 of the Indian Penal Code as absconder or having escaped from the jail custody.

20. It is not in dispute that the petitioner was released on parole on 28<sup>th</sup> April, 2016 for a period of 28 days and was required to surrender before the Jail Authority on or before 27<sup>th</sup> May, 2016. On 27<sup>th</sup> May, 2016 the petitioner had applied for grant of temporary bail on the ground that she was required to undergo a surgery for her spinal problem and thereafter for angiography. The Division Bench of this court by an order dated 27<sup>th</sup> May, 2016 directed the respondent to admit the petitioner to J.J.Hospital after taking her custody from St.George's Hospital wherein necessary treatment for spinal problem as well as cardiac

treatment could be undertaken. A perusal of the said order passed by the Division Bench clearly indicates that the Division Bench considered the health condition of the petitioner and instead of directing the petitioner to surrender before the Jail Authority, permitted the Jail Authority or the police Authority to take her custody from the St.George's Hospital and admit her in J.J.Hospital. This court also clarified in the said order that the applicant would be continued in the hospital until her treatment was completed. The said order was passed by this court after hearing both the parties.

21. Pursuant to the said order passed by the Division Bench of this court, the petitioner was admitted in St.George's Hospital, Mumbai on 1<sup>st</sup> June, 2016. The petitioner was shifted from the St.George's Hospital to J.J.Hospital by the Crime Branch on 3<sup>rd</sup> June, 2016. The respondent had admittedly deployed the guards in the hospital premises. The petitioner was taken into custody by the Crime Branch Unit and taken to the J.J.Hospital. The petitioner was subsequently produced before the learned Magistrate by the respondent on 9<sup>th</sup> June, 2016. It is not the case of the respondent that during the period the petitioner was in the St.George's Hospital or in J.J.Hospital, she had escaped or was absconding from the hospital. The petitioner was all throughout under supervision of the respondent even in the hospital. In our view, since this court after considering the health condition of the petitioner did not direct the petitioner to surrender before the Jail

Authority and on the contrary, permitted the Jail Authority or the Police Authority to take the petitioner in the custody from St.George's Hospital and to admit her in the J.J.Hospital and permitted the petitioner to continue in the hospital until her treatment is completed, the petitioner cannot be charged as absconder or has alleged to have escaped or attempted to escape from the jail custody.

22. In our view, an offence can be registered under section 224 of the Indian Penal Code, if the accused is under lawful custody for which he has been charged or convicted and he has either escaped or has made any attempt to escape from such lawful custody. The prosecution has to prove beyond reasonable doubt that such delinquent had either escaped or had attempted to escape from such lawful custody intentionally. The respondent in this case has failed to produce *prima-facie* evidence in support of the charge that the petitioner had escaped or had made any attempt to escape from the hospital where she was permitted to stay by a specific order of this court until her treatment was completed.

23. In our view, the crime registered against the petitioner on 28<sup>th</sup> May, 2016 by the respondent on the premise that the petitioner had not surrendered upon the expiry of the parole period with the prison authority on 27<sup>th</sup> May, 2016 is totally contrary to and in violation of the order dated 27<sup>th</sup> May, 2016 passed by the Division Bench of this court in Criminal Application No.654 of 2016 and other two connected applications.

24. A perusal of the FIR lodged by the respondent against the petitioner in Crime No. 185 of 2016 clearly indicates that the respondent had not even considered and/or referred the order passed by this court on 27<sup>th</sup> May, 2016 permitting the petitioner to continue to be in hospital till her treatment was over and permitting the Jail Authority to take her in custody from St.George's Hospital and to admit her in J.J.Hospital instead of directing the petitioner to surrender before the Jail Authority. In our view though the constructive custody of the petitioner with the Jail Authority continued during the parole period, in view of the specific order passed by the Division Bench of this court on 27<sup>th</sup> May, 2016, we are unable to accept the submission made by the learned A.P.P. that the petitioner was required to physically surrender on 27<sup>th</sup> May, 2016 before the Jail Authority upon the completion of the parole period and not having surrendered, provisions of Section 224 of the Indian Penal Code were attracted.

25. The Division Bench of this court in case of ***Mohd.Azam Aslam Butt*** (supra) after adverting to the judgment of Supreme Court in case of ***Ashok vs. State of Maharashtra (1988) Mh.L.J. 903***, judgment of High Court of Himachal Pradesh in case of ***Philip John vs. State of Himachal Pradesh, 1985 Cri.L.J.397***, judgment of Supreme Court in case of ***Sunil Fulchand Shah vs. Union of India (2000) 3 SCC 409*** and judgment of this court in case of ***Dinesh***

***Mitaramji Gabhane vs. State of Maharashtra, 2005 All M.R.(Cri.) 484*** has held that though the prisoner is released from prison on parole for temporary period, he still continues in legal or constructive custody of the prison authorities. It is held that the period of parole is part of the sentence and is therefore required to be counted towards the sentence.

26. The Division Bench of this court in case of ***Mohd.Azam Aslam Butt*** (supra) has adverted to the dictionary meaning of the word “escape” which reads thus :-

1) the act or instance of breaking free from confinement, restraint, or an obligation.

(2) An unlawful departure from legal custody without the use of force.

[Reference : Black's Law Dictionary, 8th Edition] .

27. This Court held that if in the context of second part of Section 224 of IPC, the meaning of the word "escape" as given in clause (2) of the dictionary meaning of “escape” is considered, then, the unlawful departure from the legal custody without the use of force does amount to "escape" in the context of provisions of Section 224 of IPC. This court after adverting to the Prison Rules, Clause 10(5) of Chapter XXXVII (Furlough and Parole to the Prisoners) held that the non surrendering to the prison authorities after the expiry of parole or furlough leave period will amount to divergence from the standard rules and regulations and it could be safely said that the petitioner had unlawfully departed from the legal

custody by non surrendering to the Prison authorities after the expiry of his parole period and the same amounts to escape from the legal custody.

28. In the facts of this case, it was not the case of the respondent that the petitioner had escaped from the hospital where she was admitted pursuant to the order passed by this court for a treatment and was allowed to continue to stay in the hospital till her treatment was over. There was no case of unlawful departure from the legal custody of the Jail Authorities by the petitioner. In our view, if the Division Bench of this court in the order dated 27<sup>th</sup> May, 2016 would not have permitted the petitioner to continue in the hospital until her treatment was completed after completion of the parole period and would have directed the applicant to surrender before the Jail Authorities upon expiry of the parole period, the provisions of section 224 of the Indian Penal Code and the principles laid down in the judgment of this court in case of ***Mohd.Azam Aslam Butt*** (supra) would have attracted to the facts of this case.

29. In our view since the facts in this case are different as referred to aforesaid, the judgment of this court in case of ***Mohd.Azam Aslam Butt*** (supra) is clearly distinguishable. In our view, the provisions of Section 224 of the Indian Penal Code would not be attracted to the facts of this case. There was no question of any intention on the part of the petitioner to escape or to make any attempt to escape

from the custody of the Jail Authorities in view of the specific order passed by the Division Bench on 27<sup>th</sup> May, 2016. It is not the case of the respondent that the petitioner has committed any violation of the order passed by the Division Bench.

30. In our view, filing of FIR and registering the crime report against the petitioner by the respondent on the ground that the petitioner had alleged to have committed offence under Section 224 of the Indian Penal Code by not surrendering the Jail Authorities upon completion of parole period is a gross abuse of process of law and thus FIR lodged by the respondent against the petitioner and the crime report registered against the petitioner (185 of 2016) dated 28<sup>th</sup> May, 2016 deserves to be quashed and set aside.

31. We have also perused the copy of the discharge card issued by the St.George's Hospital dated 1<sup>st</sup> June, 2016 and also the discharge card dated 6<sup>th</sup> June, 2016 issued by the Grant Government Medical College & Sir JJ Group of Hospitals giving summary of various treatments given to the petitioner and suggesting discharge medication. We have also perused the letters addressed by the concerned police station to the St.George's Hospital and J.J.Hospital for admitting the petitioner to the hospital and also recording that the security guards were deployed.

32. Insofar as prayer of the petitioner seeking suspension of the sentence for a temporary period of 16 weeks from the date of the order to take recourse of medical treatment is concerned, we have perused the discharge certificate dated 6<sup>th</sup> June, 2016 issued by the Grant Government Medical College & Sir JJ Group of Hospitals. The said hospital after examining the petitioner has opined that the petitioner was better and advised conservative treatment. It is thus clear that the petitioner did not require any operational intervention according to the said report. The conservative treatment recommended by the J.J.Hospital would clearly indicate that the petitioner did not require any aggressive treatment and can be cured utilizing non-surgical treatment i.e. treatment other than operational intervention.

33. Insofar as report issued by Dr.Manoj Jain on 11<sup>th</sup> June, 2016 which is produced by the learned counsel for the petitioner for perusal of this court is concerned, a perusal of the said report indicates that the doctor has advised to see the petitioner clinically. After considering only the M.R.I.report of the petitioner and without having seen the films, the said doctor has opined that the petitioner may require surgical intervention, the petitioner however needs to be examined clinically to take or opine anything.

34. In our view the said report dated 11<sup>th</sup> June, 2016 issued by Dr.Manoj

Jain without examining the petitioner clinically and without considering the films of M.R.I. Report cannot be considered by this court at this stage. We are thus not inclined to grant prayer (c) *inter alia* praying for suspending the sentence based on such report.

35. We, therefore, pass the following order :-

- (a) Rule is made absolute in terms of prayer clause (b).  
Accordingly Crime No.185 of 2016 dated 28<sup>th</sup> May, 2016 against the petitioner registered with Pantnagar Police Station is quashed and set aside.
- (b) Prayer (c) of the writ petition is rejected.

**(R.D.DHANUKA, J.)**

**(A.S.OKA, J.)**