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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 7th November, 2017
Order pronounced on: 8th December, 2017

+ **BAIL APPLN. 1682/2017**

SUKHBIR KATARIA

..... Petitioner

Through: Mr. Sumit Chaudhary, Mr. M. P. Sinha
and Mr. Kanwar Kochhar, Advocates.

versus

STATE DELHI ADMINISTRATION

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel
(Criminal) with Ms. Anita Abraham, APP
for the State with Inspector Paramvir
Dahiya, PS-Vasant Vihar.
Mr. Harish Tyagi, Superintendent and
Mr. Anjani Kumar, Dy. Superintendent,
Tihar Jail, Delhi.
Inspector P. S. Rana, 3rd Bn.
Mr. Anupam S. Sharma, Advocate with
Ms. Prachee Satija, Mr. Prakash Airan,
Mr. Sachin Gautam, Advocates for the
complainant.
Ms. Reena Chaudhary, Medical Record
Incharge, Vimhans Primamed Hospital

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred 'Cr.P.C.') for **grant of regular bail** in case FIR No. 964/2017 under Sections 304-B/498-A/302/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station–Vasant Vihar.

2. The brief background of the present case is that, on **25.08.2017**, notice was issued on the application seeking grant of regular bail filed by the petitioner. It was prayed on behalf of the petitioner that as the medical condition of the petitioner was quite serious, his medical record be called for.

➤ This Court vide order dated **25.08.2017** called for the medical report of the petitioner from the concerned Jail Superintendent for the next date of hearing i.e. **07.09.2017**.

3. On **07.09.2017**, medical report of the petitioner was filed on behalf of the State wherein it was stated as under:-

“xxxxxx The inmate was referred to IHBAS Hospital on 19.08.2017 whereby the inmates was inter-alia advised to get admitted in IHBAS Hospital if require, with proper reception order.

On 21.08.2017, the inmate was referred to Emergency Department at DDU Hospital wherein the inmate got admitted and was later shifted to ICU on 21.08.2017 and was transferred back to ward on 26.08.2017. Thereafter, the inmate was discharged from DDU Hospital on 29.08.2017 and was admitted to the Casualty of the Jail Hospital on 29.08.2017 in view of his sick medical condition. The inmate was again unstable to the extent that he was referred to Casualty Department at DDU Hospital 30.08.2017 wherein he was again admitted by the doctors there and was thereafter discharged from DDU Hospital on 04.09.2017 with the advice to review in Cardiology Department at Higher Centre. In view of his sick medical condition, the inmate was admitted in the casualty of Jail Hospital on 04.09.2017 and he was referred to Cardiology Department at GB Pant Hospital without any delay on 05.09.2017.”

➤ Keeping in view the medical condition of the petitioner, this Court vide order dated **07.09.2017**,

directed the jail authorities to produce the petitioner before the Director, IHBAS, Delhi within 24 hrs of receipt of the order under the custody of Tihar Officials for further treatment of the petitioner and fixed the matter for 15.09.2017.

4. On **15.09.2017**, Dr. Kumar Gourav from IHBAS appeared before this Court and submitted a medical report of the petitioner praying that the petitioner be shifted to a multispecialty hospital including departments of Medicine, Cardiology and Psychiatry, facility like AIIMS, RML Hospital, GB Pant Hospital and LHMC. Relevant portion of the report read as under:-

“Patient had been earlier examined and diagnosed as suffering from Severe Depressive Episode. Currently on the basis of records provided and examination, patient is found to have comorbid diagnosis of Persistent Hypotension and Bradcardia.

*It is further submitted for consideration of the Hon’ble High Court that as earlier communicated to the Hon’ble High Court that for medical condition, patient had to be sent to Medicine Emergency of GTB Hospital where he was kept for around 8 hours on 12.09.2017. Patient again became medically unstable ad developed Bradycardia on 14.09.2017 for which patient was sent to Department of Cardiology, G. B. Pant Hospital where he was kept for observation overnight. Hence, **considering the unstable condition (Hypotension and Bradycardia) of the patient, it will be in the best interest of patient if he can be shifted to multispecialty hospital including departments of Medicine, Cardiology and Psychiatric facility like AIIMS, RML Hospital, GB Pant Hospital and LHMC.***

- Keeping in view the fact that urgent medical attention was required to the petitioner, this Court vide order dated **15.09.2017**, granted three weeks interim bail (i.e. expiring on 06.10.2017) to the petitioner, from the date of his release whilst observing as under:-

"Keeping in view the unstable medical condition (Hypotension and Bradycardia) of the petitioner and that he is unmanageable in the jail hospital as well as in IHBAS and also the opinion of the Associate Professor of Psychiatry, IHBAS that the petitioner be shifted to multispecialty hospital including departments of Medicine, Cardiology and Psychiatric facility like AIIMS, RML Hospital, GB Pant Hospital and LHMC, I find it appropriate to grant three weeks interim bail to the applicant from the date of his release, subject to following condition."

5. In between, another application (Crl.M.A.16404/2017) filed on behalf of the petitioner for seeking extension of interim bail of three weeks granted to him on 15.09.2017, was heard on **27.09.2017**. Extension of bail granted to the petitioner was prayed on the ground that the petitioner is under constant medical supervision; being treated for various diagnosed health problem including mental health neuro; has shown little improvement; and requires constant medical attention.

- Therefore vide order dated **27.09.2017**, the interim bail previously granted by this Court was extended till 09.10.2017 on medical grounds. Directions were issued that the Medical record submitted on behalf of the petitioner be verified and report be submitted on

09.10.2017. Matter was listed for 09.10.2017 for further consideration.

6. On **09.10.2017**, a case summary was filed by the counsel for the petitioner as per which the petitioner was admitted to VIMHANS Hospital on 21.09.2017 and Dr. Shivani Aggarwal, VIMHANS Hospital, reported that *“Patient is getting treated for severe depressive episode and patient has shown partial Improvement **but still needs further inpatient stay for further two weeks.** During the inpatient stay, patient has developed intermittent high grade fever for which all relevant blood investigation and adequate treatment started. Patient has been shown by general physician and advised for further stay for better evaluation and management.”*

➤ Therefore vide order dated **09.10.2017** this Court extended the interim bail granted to the petitioner till 11.10.2017 on the basis of the medical report submitted by Dr. Shivani Aggarwal, VIMHANS Hospital, and also directed the petitioner to file an affidavit stating the date of his release/day to day medical treatment/visit to hospital(s)/admission in hospital(s) from 15.09.2017 or from the date of his release. Vide the same order, Dr. Shivani Aggarwal/Admitting Consultant, VIMHANS, Nehru Nagar, New Delhi was directed to appear in person on 11.10.2017 with the entire relevant record of the petitioner w.e.f. his date of admission i.e. 21.09.2017. Matter was listed for 11.10.2017 at 03:30 p.m

7. On **11.10.2017** an affidavit was filed on behalf of the petitioner, however none appeared on behalf of Dr. Shivani Aggarwal, VIMHANS Hospital.

➤ Vide order dated **11.10.2017**, a fresh notice was directed to be served on Dr. Shivani Aggarwal/Admitting Consultant, VIMHANS, Nehru Nagar, New Delhi returnable on **12.10.2017** at 02:30 p.m.

8. On **12.10.2017** Dr. Rajeev Ranjan Raj, Senior Resident, VIMHANS appeared before this Court with relevant record. It was also brought to the Court's notice that the petitioner had already been admitted to PRIMAMED Department, VIMHANS Hospital as he suddenly developed intermittent high grade fever and abscess in knee.

➤ This Court vide order dated **12.10.2017** directed that latest medical report be filed for 13.10.2017 and also directed that Dr. Shivani Aggarwal shall appear in person on **13.10.2017** at 02:30 p.m.

9. On **13.10.2017** Dr. Shivani Aggarwal appeared in person and submitted a hand written medical report of the petitioner which reads as under:-

"The above patient was discharged from VIMHANS on 12.10.2017 at 2:00 p.m. and admitted to VIMHANS PRIMAMED under Dr. Namita Kaul. She has shown improvement in depression symptoms and psychiatric facility. He needed attention to the abscess formation in left knee and so he was discharged from psychiatric facility. In terms of mental health a weekly review by

psychiatric is advised with continued medication and counselling."

- Therefore in view of the report submitted by Dr. Shivani Aggarwal, VIMHANS Hospital, this Court vide order dated **13.10.2017** recalled the interim bail granted to the petitioner and observed as under:-

"Keeping in view the fact and circumstances of the case and the report submitted by Dr. Shivani Aggarwal, the interim bail granted to the petitioner is recalled with a direction that the petitioner/applicant shall surrender on 14.10.2017 before 4 p.m."

10. The order dated 13.10.2017, was passed by this Court after careful perusal of the medical report submitted by Dr. Shivani Aggarwal/ Admission Consultant VIMHANS, wherein it was stated that there were improvements in the depression symptoms and psychiatric facility of the petitioner and he needed attention for an abscess formation in **left knee**. For merely treating an abscess, the petitioner was not required to be kept admitted in a multispecialty hospital as the same could be treated through the medical facilities provided by the Jail Authorities and keeping in view the said fact and the stable medical condition of the petitioner, this Court directed him to surrender. However the said Order was neither complied with nor an application was moved on behalf of the petitioner for recall of the said order. Copy of this order was also forwarded to the jail authorities vide Dak No. 38677.
11. Thereafter an *interim bail* application bearing No. 1842/17 moved on behalf of the petitioner on the ground of demise of the mother of

the petitioner and the medical condition of the petitioner himself was heard on **24.10.2017**. During the course of arguments, the learned APP for the State submitted that the petitioner failed to surrender on 14.10.2017 as he was admitted in VIMHANS PRIMAMED Hospital and an application had been moved by the surety of the petitioner on 14.10.2017 before the Trial Court seeking directions from the Court that the custody of the petitioner be taken by the jail authorities/police officials in VIMHANS PRIMAMED where the petitioner was admitted due to formation of an abscess. The Trial Court passed the following Order dated **14.10.2017:-**

"Jail Authorities may take custody of accused from that hospital as per rules."

➤ In this background on **24.10.2017**, the following directions were issued by this Court and the matter was fixed for consideration on **01.11.2017:-**

- explanation be tendered by the Superintendent, Tihar Jail as to why he failed to file a report in Court informing that the petitioner had not been discharged and order dated 13.10.2017 passed by this Court could not be complied with and also directed the same to file an affidavit mentioning the procedure followed by the Jail Authorities as and when a situation like the present case arises;

- report be filed by DCP, 3rd Bn. Delhi Armed Police giving details of police guards deputed in VIMHANS Hospital from 14.10.2017 onwards;
- Director VIMHANS Hospital, to forward the entire medical record of the petitioner from the date of his admission in the hospital till his discharge.

12. On **01.11.2017** the following records were placed before this Court by the following persons:-

- Mr. Harish Tyagi, Superintendent, Central Jail No.3, Tihar, New Delhi filed an affidavit alongwith the copy of the intimation sent to the DCP 3rd Bn. through wireless message (Annexure 'C'). The contents of the wireless message reads as under:-

"it is to kindly inform that an under trial prisoner Sukhbir Singh Kataria S/o Sh. Deep Chand Kataria has to surrender in this jail today by the Hon'ble High Court orders dated 13.10.2017 but, he has currently admitted in VIMHANS PRIMAMED Hospital, Nehru Nagar, New Delhi hence, it is requested that please take into the custody in the aforesaid accused at VIMHANS Hospital immediately."

- Dr. D. K. S. Singh, DCP, 3rd Bn. DAP, New Delhi filed his reply along with the list of staff deputed with the petitioner/accused at VIMHANS Hospital from 14.10.2017 to 24.10.2017.
- Further Mr. Harish Tyagi, Superintendent, Central Jail No.3, Tihar, New Delhi, in his explanation regarding non-

compliance of the order dated 13.10.2017 of this Court stated as under:-

"the copy of order dated 13.10.2017 was received in this office on 16.10.2017, but in the meanwhile an order dated 14.10.2017 (copy enclosed as Annexure 'A') received from the Hon'ble Court of Sh. Rakesh Pandit, ASJ, Patiala House Courts, New Delhi informing/directing therein that Interim order of bail is not extended by Hon'ble High Court and Jail Authorities may take the custody of the accused from VIMHANS PRIMAMED Hospital where the accused was already admitted.

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It is further submitted that, the order dated 13.10.2017 passed by the Hon'ble High Court of Delhi was received in late evening hours of 16.10.2017 and the vacations had commenced w.e.f. 18.10.2017, therefore inadvertently, the compliance report could not be submitted before the Hon'ble Court by this office, however, since the direction of the Hon'ble High Court has been referred by the Hon'ble Court of Sh. Rakesh Pandit, ASJ, New Delhi, and therefore the compliance report was forwarded to the Ld. Session Court. Further, the dealing assistant has been warned to be more careful in future in this regard."

- Ms. Reena Chaudhary, Medical Record In-charge, VIMHANS PRIMAMED Hospital produced the copy of the medical record of the petitioner. In the discharge summary of the petitioner it was stated that the petitioner remained admitted in Psychiatric Department from 21.09.2017 to 12.10.2017 and thereafter brought to VIMHANS PRIMAMED Hospital for further evaluation and management.

The medical record produced before this Court depicts that MRI left knee was taken on 07.10.2017 and reported on 09.10.2017; sample of '**Left Knee Pus**' was taken on 16.10.2017 and was reported on 20.10.2017; that according to Surgical Safety Checklist dated 16.10.2017, incision and drainage leg (left) Sign in (Verbal) time is 4:00 p.m. and Sign Out (Verb) time is 5:15 p.m.

- The Court not being satisfied whether it was necessary and essential to keep the petitioner admitted in the hospital despite specific Court orders to surrender, this Court vide order dated **01.11.2017** directed Dr. Rajeev K. Sharma/Senior Consultant Orthopedic surgeon and Dr. R.D. Patel/Consultant Physician, VIMHANS PRIMAMED Hospital, New Delhi to appear in person alongwith relevant record of the petitioner and clarify the doubts which had arisen from the record on **07.11.2017** specially when Dr. Rajeev K. Sharma himself allowed the petitioner to attend his mother's funeral on 13.10.2017 for three hours on the responsibility of his son in-law.

13. On **07.11.2017**, Dr. Rajeev K. Sharma/Senior Consultant Orthopedic surgeon and Dr. R.D. Patel/Consultant Physician, VIMHANS PRIMAMED Hospital, New Delhi appeared before this Court and submitted that when the petitioner was admitted in VIMHANS PRIMAMED on 12.10.2017 the petitioner was unable to walk due to the severe abscess formation in his left calf.

However his statement is contradictory as on 13.10.2017 he himself granted permission/**P-3** to the petitioner/patient to attend his mother's funeral, whereby the petitioner remained away from the hospital for three hours.

14. Further, the medical records of the petitioner prepared by the hospital authorities certainly create a doubt as when the discharge summary/**P-1** of the petitioner from VIMHANS was first filed in the Court it was very clearly stated therein that the petitioner was discharged from the hospital on **10.10.2017**. However the same records when subsequently called for, the discharge date 10.10.2017 was overwritten as 12.10.2017/**P-2** and Dr. Shivani Aggarwal/ Admission Consultant VIMHANS stated in her written report that on 12.10.2017 the petitioner was admitted to VIMHANS PRIMAMED after being discharged from VIMHANS on 12.10.2017 at 2 p.m. instead of earlier discharge dated 10.10.2017. All subsequent records received from VIMHANS PRIMAMED show that the petitioner was admitted on 12.10.2017. ***However no explanation whatsoever was tendered by the Doctors as to why two discharge summaries were available on record i.e. of 10.10.2017/P-1 and 12.10.2017/P-2.*** So the fact remains that the petitioner was discharged from VIMHANS on 10.10.2017 and he was admitted in VIMHANS PRIMAMED only on 12.10.2017 as the same is clearly apparent from the records.
15. The interim bail granted to the petitioner was to expire on 11.10.2017, but even then failed to surrender, despite being discharged on 10.10.2017 and only to overreach the order of this

Court he got himself admitted in VIMHANS PRIMAMED on 12.10.2017 by portraying an urgent requirement of treatment of abscess.

16. Furthermore the Medical Certificate dated 17.10.2017 issued by VIMHANS PRIMAMED annexed with the status report mentions that the petitioner was admitted in the hospital under care of Dr. Rajeev K. Sharma, with complaint of **pain and swelling in left calf** for 1 week. However it was earlier stated that there was formation of abscess in the **left knee** of the petitioner and now medical certificate shows that he was treated for an **abscess in the left calf**. It is stated in the Discharge Summary report dated 24.10.2017, that "*he was taken up for surgery, **Incision & drainage left calf region** was done under spinal anesthesia by Dr. Rajeev K Sharma (Sr. Consultant Orthopedic Surgeon) on 16.10.2017.*" The said contradictions again smell foul play.
17. After the surgery of the petitioner on 16.10.2017 as so depicted from the records, it has been stated that *Post Operatively he did well*. Assuming the same to be true, no justification has been tendered as to why he was kept admitted in the hospital for another 8 days until 24.10.2017 after a simple surgery on 16.10.2017.
18. Also when the discharge of the petitioner was scheduled for 23.10.2017, he was retained in the hospital again for one day and discharged on 24.10.2017 for which the only explanation rendered by the doctors is as under:-

"In view of pus discharge and soakage in wound dressing discharge of patient from hospital was postponed and is being discharged on 24.10.2017."

19. Explanation was sought from Dr. Rajeev K Sharma/Senior Consultant & Dr. R.D. Patel/Consultant Physician of VIMHANS PRIMAMED, but no satisfactory justification was tendered by both the Doctors regarding the dire need to retain the petitioner in the hospital for 13 days merely for abscess formation and that when there were specific orders from this Court to surrender.
20. **Upon a thorough scrutiny of the entire material placed on record, the only reasonable conclusion that can be drawn therefrom is that although interim bail was granted to the petitioner on medical grounds, however he misused the liberty to the hilt and prolonged his stay outside judicial custody. The very observation of this Court is further supported from the records of the hospital which bear testimony to this fact and speak volumes.**
21. **While all these explanations were being taken, the learned Counsel for the petitioner, on instructions, chose not to press his application for regular bail bearing No.1682/2017 and submitted that he wishes to withdraw the same.**
22. Accordingly, the present petition stands dismissed as withdrawn.

SANGITA DHINGRA SEHGAL. J

DECEMBER 8, 2017.//gr