

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1656 OF 2018
IN
CRIMINAL APPEAL NO.702 OF 2018

John Saver D'souza ... **Applicant**

V/s.

The State of Maharashtra ... Respondent

Mr. Aniket Vagal for the applicant.

Mr. P.H. Gaikwad-Patil for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 1st OCTOBER 2018.

P.C. :

1. Though the prayer in the instant bail application is to release the applicant on bail, the learned Counsel for the applicant submitted that the applicant may be released on bail for limited period on medical ground considering the emergence situation that has occasioned.
2. The applicant is an accused who is convicted of offences punishable under Section 376 of the Indian Penal Code as well as

under Section 6 of the Protection of Children from Sexual Offences Act (for short, “POCSO Act”) on each count he is sentenced to suffer rigorous imprisonment for 10 years apart from imposition of fine of Rs.10,000/- .

3. The learned Counsel for the applicant, on the basis of pleadings in the application has contended that during penency of the trial, the applicant had suffered two massive heart attack and he has already suffered from heavy diabetes. It is further argued that in the line of the pleadings in the instant application that the applicant is 65 years of old and his health condition is deteriorating day by day and he is lodged in the Civil Hospital at Nashik from 22nd September, 2018 where his condition is reported to be serious.

4. The learned Counsel further argued that the applicant is desirous of getting better medical treatment at his cost and therefore he needs to be released on bail for suitable period.

5. Despite taking adjournment in the matter on earlier occasion, the learned Additional Public Prosecutor has no

instructions about facts as to whether the applicant had suffered two massive hard attack in the past and whether the applicant is suffering from heave diabetes. However, the learned Additional Public Prosecutor has tendered some documents across the bar. He submits that if some more time will granted then further instructions can also be taken.

6. Considering the fact that the application is for release of the applicant on medical ground because of peculiar situation, I am not inclined to grant any further adjournment to the learned Additional Public Prosecutor.

7. Documents furnished by the learned Additional Public Prosecutor shows that the present applicant is suffering from pleural effusion. The certificate issued by the medical officer of the Civil Hospital, Nashik shows that the applicant is hospitalized as indoor patient in the said hospital on 22nd September, 2018. It is seen that by inserting ICD Tube, pus is being drained from lungs of the present applicant. The medical officer of the Civil Hospital, Nashik has reported that air column movement is also present in

the lungs.

8. After this report of 29th September, 2018, it is seen that today i.e. 1st October, 2018, the medical officer of Civil Hospital, Nashik informed to the Superintendent, Central Jail Nashik that the applicant is required to be referred to higher center for further treatment. It is seen from this letter that condition of the applicant has further deteriorated. The learned Additional Public Prosecutor is stating that the applicant is still lodged at the same hospital i.e. the Civil Hospital, Nashik.

9. Foregoing factual position reflected from the papers of medical treatment of the applicant indicates that the applicant cannot be provided with required medical treatment at the Civil Hospital, Nashik and he is not even sent to the higher Center by the State as of now.

10. The learned Counsel appearing for the applicant on instructions is stating that the health condition of the applicant is so deteriorated that he is now weighing 30 kg.

11. In view of the foregoing discussion, I am inclined to release the applicant on temporary bail for his further medical treatment at his own costs. Therefore, the order;

::ORDER::

- (i) Initially for the period of six months, upon executing P.R. Bond in the sum of Rs.15,000/- and furnishing surety in the like amount, the applicant be released on bail for limited period of six months.
- (ii) The applicant should get himself re-admitted in the concerned prison after lapse of the period of six months by surrendering himself before the jailor.
- (iii) Initially for a period of six weeks the applicant be released on furnishing cash security of Rs.15,000/-.
- (iv) The application is accordingly disposed of.

12. Parties to act upon authenticated copy of this order.

Vina
Arvind
Khadpe

Digitally
signed by
Vina Arvind
Khadpe
Date:
2018.09.30
16:47:24
+0530

(A.M.BADAR J.)