

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3261 OF 2018

Ashish Balkrishna Gupta, Age 48 years,
Occ.Business, R/o.A-18, Kaveri Mahima
CHS Ltd; Bangur Nagar, Goregaon,
Mumbai-400 062. (presently lodged at
Thane Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Nilesh Tribhuvan with Mr.Pranav Avhad for applicant.
Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th January 2019

PC :

1. This is an application for bail for a temporary period on medical ground. The applicant is arrested in connection with CR No.I-179 of 2015 registered with Bangur Nagar Police Station, Mumbai for offences under Sections 409 and 420 of Indian Penal Code. The applicant had preferred an application for bail viz Bail Application No.758 of 2018 which was rejected on merits vide order dated 30th October 2018. However, liberty was granted to the applicant to prefer separate application for bail on medical grounds.

2. The applicant was arrested on 6th November 2017 and he is presently detained at Thane Jail. It is contended that the applicant is suffering from severe ailments and disorder viz depressive disorder, diabetes, bilateral sensorineural hearing loss and weight loss. It is contended that the applicant has been suffering from severe clinical

depression and is under the care and treatment of Dr.Kiran Shandilya. Since his incarceration the applicant is displaying aloofness and withdrawal from interaction with the inmates. He regularly withdraws from food intake voluntarily and minimal interaction with other inmates. The applicant is presently in the care of Thane Mental Hospital undergoing treatment. As per various psychiatric associations, if the applicant is displaying symptoms of aggravated depression, it is essential to rehabilitate him by providing familial care and proper prescribed diet. He needs regular counseling. If left untreated, the applicant may develop self harm tendencies and suffer irreversible damage. Reliance is placed on the letter issued by Dr.Kiran Shandilya noting the relevant details and prescription for treating depression of applicant. It is further contended that the applicant suffers from diabetes with sugar levels in the blood shooting up to 400 mg/dl. Such uncontrolled sugar level and sudden fluctuation leads to the applicant suffering seizures and loss of consciousness. His dose of regular prescription of medicines controlling sugar levels is on hold given his food intake has drastically reduced. The applicant has placed reliance on letter issued by his regular doctor confirming his medical condition. It is contended that the applicant also suffers from bilateral sensorineural hearing loss. In both his ears ranging from 60% to 80% implying that the applicant has minimal ability to hear or communicate. This has caused severe hardships to the applicant as the medical condition is restricting his ability to even merely interact with other individuals to perform even his daily routines. This has aggravated his clinical depression. The applicant has placed reliance on letter of his doctor under whom he is taking treatment. The applicant has also suffered weight loss of more than 20 kgs of body

weight since the last three months. The applicant's mental and bodily health has been deteriorated. It is submitted that the condition of health of applicant is fortified by the medical examination of applicant. It is, therefore, prayed that the applicant may be released on bail for a temporary period so that he can be rehabilitated and proper treatment can be given to him by his family doctors. It is submitted that being incarcerated in custody, it is not possible to provide requisite treatment to the applicant as the atmosphere in which the applicant is detained, would not support the requisite treatment which is to be given to the applicant.

3. By order dated 13th December 2018 this Court had directed the prosecution to call for medical report from the concerned jail authority about health condition of the applicant. In view of the said direction the medical case papers have been submitted by the investigating officer. It is apparent that the applicant was examined on 21st December 2018 and the medical report in respect to the health condition of the applicant has been placed on record. The said documents along with report of police are taken on record and marked "X" for identification.

4. The applicant had preferred application for bail being Bail Application No.758 of 2018 before this Court, which was rejected vide order dated 30th October 2018. While rejecting the said application it was observed on the basis of earlier medical case papers that the treatment is being provided to the applicant and that he was admitted in jail hospital. Further, while arguing the said application learned counsel for applicant had contended that the health condition of the applicant is deteriorating and he is also

required to be granted bail on that ground. Considering the submission the applicant was granted liberty to prefer a separate application while rejecting the application for bail on merits. Pursuant to that present application has been preferred.

5. The medical report submitted pursuant to the directions of this Court indicate that the applicant was sent to government hospital on 22nd October 2018 and J.J.Hospital on 25th October 2018 and 8th December 2018. He was sent to mental hospital on 12th May 2018 and 25th December 2018. He has been provided anti-psychotic treatment to his mental depression as per advice of psychiatrist visiting monthly to the prison hospital. He has been provided anti-diabetic medicine to maintain his blood sugar level. The hearing deficit is not recoverable as per advice by E & T specialist. The report refers to five prescriptions. He has been provided with treatment according to his various complaints like fungal infection and loose motions from time to time. In spite of giving regular treatment to the applicant for his mental and physical complaints, the applicant is still not getting proper sleep and sunk down in depression repeatedly. On observation it is found that the applicant's health condition is not improving in spite of giving treatment regularly. The said report also refers to the earlier examination of applicant in Thane Jail on 20th November 2017. It is stated that the applicant had given reference report of diabetes, psychiatric illness with hearing disability from nine years. He has produced prescription from Dr.Kiran Shandilya. Considering his mental and physical status, the patient was kept under observation at Prison Hospital, Thane from 20th November 2017 to 13th September 2018, then from 21st September 2018 to 7th November 2018. As the

applicant did not cope with prisoner in general barrack, he has been kept in the prison hospital under observation as per order of Chief Medical Officer, Thane Central Prison till today. The applicant has also annexed copy of medical certificate issued by Dr.Kiran Shandilya in which it is stated that the applicant was under his care since June-2015 for major depression disorder severe with psychotic features with diabetes. He requires regular psychiatric medication, follow up counseling and care at home with supportive family members. In the absence of such a treatment, he may be suicidal or may not be able to take adequate self care and may gradually die. Also the medicines should never be abruptly discontinued.

6. On the basis of the medical certificate and the certificate issued by Dr.Kiran Shandilya and the other documents which are produced on record, it is apparent that the health condition of applicant has been deteriorated. The current report of health of applicant which indicates examination of the applicant on 21st October 2018, just after rejection of the application for bail preferred by the applicant on 30th October 2018, indicate that the applicant has been suffering from various ailments and it is necessary that he should be provided proper care and treatment with the support of his family.

7. Learned counsel for applicant relied upon following decisions wherein bail was granted to the applicant therein on medical grounds for the purpose of treatment viz :

- (i) Dipak Subhashchandra Mehta Vs. CBI and another (2012)4-SCC-134;
- (ii) Dr.Narendra K. Amin Vs. Union of India (BA No.1770/2012 of Bombay High Court);

- (iii) Bhanudas Kotkar Vs. State of Maharashtra (Cri.Misc.Appln. No.1688/2017 in Criminal Appeal No.363/2016);
- (iv) Ramakant Vs. State of UP and another (Criminal Appeal No.291 of 2014);
- (v) Bhanudas Kotkar Vs. State of Maharashtra (BA No.1747/2015)
- (vi) Bhanudas Kotkar Vs. State of Maharashtra (Criminal Appln. No.307 of 2017 (Bombay High Court).

8. Learned counsel for applicant submitted that considering the ailment and the nature of treatment which is required to be provided to the applicant, at least the applicant be granted bail for a period of twelve weeks.

9. Learned APP has submitted that the medical report submitted by the investigating officer shows that in spite of giving regular treatment to the applicant for his mental and physical complaints, the applicant is not showing progress in his health and his health condition is not improving.

10. Considering the aforesaid circumstances the relief as sought in the present application is required to be granted. Hence, I pass following order :

ORDER

- (i) The applicant is directed to be released on bail in connection with CR No.I-179 of 2015 registered with Bangur Nagar Police Station, Mumbai, for a period of twelve weeks only from the date of his release, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (ii) While on bail, the applicant shall report the investigating officer of Bangur Nagar Police Station, Mumbai once in a week on every Saturday between 11 am and 1 pm;
- (iii) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of four weeks;
- (iv) Criminal Bail Application No.3261 of 2018 is disposed off.

(PRAKASH D. NAIK, J.)

MST