

CRIMINAL APPLICATION (APPA) NO.222 OF 2018
IN CRIMINAL APPEAL NO. 137 OF 2017

- Versus -

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Shri P.K. Sathianathan, Special Public Prosecutor for non-applicants.

Date of pronouncing the order : 25/03/2019

DATED : MARCH 25, 2019

ORDER (PER P.N. DESHMUKH, J.) :

By filing this application under Section 389 of the Code of Criminal Procedure, applicant/original accused no.6, who is convicted by learned Sessions Judge, Gadchiroli by his judgment and order dated 7/3/2017, seeks suspension of sentence and release on bail. The prayer clause of the application reads thus :

“It is, therefore, most humbly prayed that this Court may kindly be pleased to :

(A) direct the respondent no.2 to place all the medical records of the applicant along with all the prescriptions, investigations and tests performed so far, on record and

(B) suspend the sentence on medical grounds, pending the hearing of the appeal, imposed on the applicant vide judgment and order dated 7/3/2017 by the learned Sessions Judge, Gadchiroli in Session Case Nos. 13/2014 and 130/2015 being State vs. Mahesh Tirki and others, pending the Criminal Appeal No.137/2017 being G.N. Saibaba vs. State of Maharashtra on such terms and conditions, which this Hon'ble Court may deem fit and proper in the circumstances of the case. ”

2) By the aforesaid judgment, applicant is found guilty for the offences punishable under Sections 13, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120B of

Indian Penal Code and is sentenced under Section 13 read with Section 120B of Indian Penal Code for 7 years' rigorous imprisonment with fine of Rs.1000/-, under Section 18 read with Section 120B of Indian Penal Code for life imprisonment with fine of Rs.1000/-, under Section 20 read with Section 120B of Indian Penal Code for life imprisonment with fine of Rs.1000/-, under Section 38 read with Section 120B of Indian Penal Code for 10 years' rigorous imprisonment with fine of Rs.1000/-, under Section 39 read with Section 120B of Indian Penal Code for 7 years' rigorous imprisonment with fine of Rs.1000/- and since his conviction, is lodged in Central Prison, Nagpur. It is the case of applicant that his condition is deteriorating day by day considerably and he is facing medical emergency as he is not provided proper medical treatment by the Prison Administration. According to applicant, during the pendency of trial, since he was on bail, on 22/2/2017 he was admitted in Rockland Hospital, New Delhi with complaints of shortness of breath, chest discomfort, nausea and pain in the abdomen. The applicant was diagnosed with acute pancreatitis, cholelithiasis with sludge in distal CBD and hypertension. During his stay at the Rockland Hospital, it was further observed in his medical report that MRCD showed cholelithiasis (gall bladder with stone)

with likely sludge in distal CBD, bulky tail of pancreas with surrounding fat stranding suggestive of acute pancreatitis (abdominal pain caused by inflamed pancreas). The applicant was discharged on 28/2/2017 with medication. It is the case of applicant that as such while in above-named Hospital, he was advised laparoscopic cholecystectomy within four weeks and was recommended review after ten days. However, as he is convicted as aforesaid, said treatment could not be obtained due to which his condition is critical and serious as his right hand is being severely affected by his spinal problems and he suffers from recurring muscle cramps, which is severely painful. The applicant also occasionally loses consciousness and faints. Additionally, his kidney and gall bladder ailments have led to urinal problems and he continues to be on high medication for these ailments.

3) In this context, applicant has filed affidavit sworn by his wife Smt. Vasantha stating on oath that on her meeting applicant in Central Prison, Nagpur on 5/4/2017, it was informed that the medicine stocks are kept by the Prison Administration and only in emergency one or two doses of tablet are given. The non continuation of the regular dose of the prescribed life saving

medicines has led to the absolute deterioration of the health of applicant. In paras 3 and 4 of the affidavit, she has repeated the facts as pleaded in the application.

4) The applicant in support of his application has also filed affidavit of his brother Dr. Gokarakonda Ramadevudu, who is regularly visiting applicant in Jail and on oath he has stated about medical opinion of Dr. Gopikrishna, Medical Superintendent of CARE Hospital, Banjara Hills, Main Branch, Hyderabad and Dr. Subhendu P, M.D., D.M. (Neuro Radiology) and has also brought to the notice of this Court certain pertinent medical records of the applicant that were never disclosed to the applicant or any of his family members. He further states that he received copies of medical records given by the Office of Chief Medical Officer, Nagpur Central Prison, Nagpur along with 12 films and one DVD. The said records were shown to the expert Doctors in Hyderabad. He further states that he met Dr. Gopikrishna, Medical Superintendent of CARE Hospital, Banjara Hills Main Branch, Hyderabad on 28th November 2018 at around 6 p.m. On perusing and studying the said medical records, Dr. Gopikrishna opined that the present medical and health status of the applicant cannot be decided unless he is physically

present for various examinations and diagnosis. He further states that the said medical records were shown to another expert Dr. Subhendu P, M.D., D.M. (Neuro Radiology) by Dr. Gopikrishna. Opinions and some of the observations orally expressed by Dr. Subhendu P. and Dr. Gopikrishna are as follows :

(a) The MRI scan dated 22/5/2018 clearly indicated damage to left shoulder muscle (Brachial plexopathy) of the patient. Hence, he may not be able to lift and use his left arm.

(b) There was a wear and tear in the spine than expected at this age.

(c) MRI scan also revealed that there was an accumulation of fluid in the brain (extra-axial CSF intensity lesion in left anterior region) and to correlate the presence of this fluid with the existing health issues, more tests are needed.

(d) As per the advice of the Doctors belonging to the Government Medical College and Hospital, Nagpur, the patient needs regular physiotherapy. Whether this suggestion was implemented or not is unknown.

(e) The line of medical treatment after the tests was not known. Whether the prescribed medicines by the Government Medical College and Hospital, Nagpur, doctors were administered to the patient are not known.

According to applicant's brother, Dr. Gopikrishna has given written opinion on 2/12/2018 and he has annexed the same with his affidavit, which opinion reveals that the applicant is in definite and urgent need of treatment and therapy. The opinion also further reveals that the applicant needs to be examined further by the Hospital in Hyderabad to decide further steps that need to be undertaken for the treatment of the applicant.

5) Shri Mihir Desai, learned Senior Counsel appearing for applicant, summed up his submissions contending that the applicant not only has a medical history, but he also suffers from many chronic diseases that are progressive and expanding in nature. These chronic diseases require round the clock medical attention and observation. It has also been highlighted that the applicant is suffering from a number of life threatening medical problems for which medical experts in the field of cardiology, orthopaedics, physiotherapy, neurology, spinal and gastro are to be consulted periodically and on a regular basis. Any delay in consultation for any set of medical issues can cause spiraling impact on the other health issues. Therefore, in a nutshell, all the medical issues, though not per se interconnected require simultaneous attention and observation and

the deteriorating of one aspect of his health further weakens the other functional organs of the body. It is further submitted that the applicant has excellent antecedents and has not been charged with or prosecuted for any offence whatsoever barring the present case and in the backdrop of above submissions, prayed that application be allowed by imposing suitable conditions.

6) It is material to note that though applicant by filing this application has sought suspension of sentence exclusively on medical grounds as stated earlier, in his rejoinder dated 5/4/2018 applicant has stated that while he has mainly sought suspension of sentence on medical grounds, he also asserts that he is entitled to suspension of sentence also on merits and the grounds for the same are already made out in the appeal, which ought to be treated as if incorporated here in extenso. It is accordingly prayed that application be allowed by imposing suitable conditions as may be deemed fit and proper in the circumstances of the case.

7) The non-applicants have opposed application by filing affidavit-in-reply stating that the applicant has been provided special facilities such as single cot and bed, western toilet, wheel chair, table, newspaper, books, magazines, warm water for bathing,

canteen facility, etc. As far as food is concerned, apart from routine food, special food is given to the applicant consisting of onion, tomato, curd, khichdi, milk, eggs, banana, non spicy dal, etc. According to the Jail Doctor, the general condition of the applicant is satisfactory. The prosecution has denied that during his stay as under-trial prisoner at Nagpur Central Jail, the applicant's health had deteriorated considerably and he has faced medical emergency, but no attention has been paid by the Prison Administration towards his life threatening and debilitating ailments. With reference to affidavit of applicant's wife, it is submitted that the medicines supplied by the relatives to the applicant through mulakat are provided regularly and only 3 to 5 drug doses were given at a time not only to applicant, but also to other patients specially who are under long term medication to avoid misuse of the drugs, i.e. taking over doses with an intention to harm self health. Therefore, the claim of wife of the applicant in her affidavit that the prescribed medicines supplied by the relatives of the applicant to the Prison Authorities are not being supplied to him is totally false. With reference to claim of applicant that there are no special facilities in the Prison, specially for the physically disabled inmates, non-applicants claim that all the necessary facilities looking to the

physical condition of applicant are already made available to him inside the Prison.

8) With regards to applicant's case that there are no emergency medical facilities nor non-applicants do have any basic equipments or human resources to deal with such medical emergency, non-applicants have submitted that the Chief Medical Officer and Medical Officer attend the high security cell regularly and whenever called. As such, the OPD is conducted at the site where table and chair are kept, just near entrance of Cell, but considering the situation of the applicant, he is examined in his barrack (room) by Doctors of Nagpur Central Prison from time to time. The details of such examination would demonstrate that from 7/3/2017 to 27/3/2018 the applicant has been examined on 84 occasions and in support of above contentions, non-applicants have placed on record relevant case papers. In fact, according to non-applicants, on 29/8/2017 applicant was required to attend SSH for gastroenterology OPD for examination, investigation and treatment. However, in presence of Senior Jailor and other staff, he refused to go outside Prison. According to non-applicants, to cater with the emergency medical facilities and basic equipments or human

resources to deal with medical emergency, the Hospital of Nagpur

Central Prison consists of following :

Medical and paramedical staff :

- i) Chief Medical Officer (CMO)-1
- ii) Medical Officer – Male (regular)-1
- iii) Medical Officer – Male (deputation)-1
- iv) Pharmacist-1
- v) Clinical Psychologist- Male 1
- vi) Clinical Psychologist – Male 1
- vii) Clinical Psychologist – Female 1
- viii) Laboratory Technician (LT)-1
- ix) Nursing Orderly Male 3

Visiting Specialist Doctors (once a week)

- i) Visiting Psychiatrist – 1
- ii) Visiting Gynecologist-1
- iii) Visiting Dentist-1

Indoor facilities :

- i) Indoor ward for general patients (20 bedded)-1
- ii) Indoor ward mental patients (30 bedded) 1
- iii) Separate (isolation) cells for infected patients-4

Referral Services :

- 1) Approximately 15-18 prisoner patients are referred daily to GMCH, SSH, IGMCH, Dental Hospital, Nagpur for expert opinion, investigations and treatment.
- 2) In emergency situation, prison patients are first treated in prison hospital and then referred immediately to GMCH casualty for further management.

- 3) 24 hours Ambulance service is available in prison.
- 4) Some prisoner patients are referred to JJ Hospital, Mumbai, KEM Hospital, Mumbai, TATA Memorial Hospital, Mumbai as advised by experts of GMCH/SSH Nagpur for further treatment.

With regards to case of applicant about advice given to him by Doctors from Rockland Hospital where he was admitted till 28/2/2017, i.e. immediately prior to his conviction, it is the case of non-applicants that while in prison, he is being regularly examined by the Doctors of Central Prison as well as Government Medical College and Hospital and he is produced in Super Speciality Hospital, Nagpur as and when required and on obtaining his investigation, is provided continuous medical treatment. It is the specific case of non-applicants that having been continuously under medical treatment since provided from time to time, general condition of applicant is satisfactory.

- 9) In response to pursis filed along with medical report of Dr. M.F. Gopinath placed in support of application, thereby highlighting complaints of applicant, non-applicant no.2 has filed rejoinder and with regards to applicant suffering from severe chest

pain associated with shortness of breath, it is submitted that applicant is regularly examined by Chief Medical Officer, Central Prison, Nagpur and he is referred regularly to Cardiology Department in Super Speciality Hospital, Nagpur and is provided treatment as recommended by the Cardiologist. With regards to applicant suffering from giddiness, rapid heartbeat with prolonged sweating, it is submitted that whenever any prisoner complains of any problem related to his health, Doctor on duty is immediately informed. Concerned patient is attended by Chief Medical Officer/Medical Officer as early as possible. Patient is provided appropriate treatment and if required, referred to Government Medical College and Hospital, Nagpur for expert management. It is further submitted that in fact since lodging of applicant in prison after his conviction, at no point of time he suffered from giddiness, rapid heartbeat, etc. and as such, there is no reason for providing him any medicine for this reason though for his other related complaints, he is already provided medication. With regards to his complaint of his suffering from black-out and sleep apnea repeatedly, which may last for minutes to hours, it is submitted that two attendants (inmates) accompany applicant day and night in his barrack, but so far neither applicant has informed Jail Authorities

or Doctors of any such ailment nor accompanying inmates informed about the same. Similarly, though it is the case of applicant that he has history of upper abdominal pain, which increases on taking food since one and half years, it is contended that at no point of time applicant has complained of his abdominal pain, burning of urine and bodyache. With regards to severe left shoulder and left arm pain, it is stated that he is regularly referred to Neurology Department in Super Speciality Hospital, Nagpur and Orthopaedics Department in Government Medical College and Hospital, Nagpur in addition to regular check ups and treatment provided by Chief Medical Officer and Medical Officer attached to Prison.

10) With regards to case of applicant of he being deprived of investigation though advised, it is submitted by non-applicants that according to earlier medical reports, Nerve Conduction Velocity (NCV) study and polysomnography study as advised by Super Speciality Hospital were conducted on 31/12/2018 and on 21/3/2018 he was referred to Cardiology Department of Super Speciality Hospital for follow up examination and treatment and thereafter on 22/3/2018 was referred to Government Medical College and Hospital for respiratory medicine and was produced for

follow up treatment. According to non-applicants, at no point of time any Medical Officer advised to shift applicant to any other higher Centre/Hospital or at J.J. Hospital, Mumbai. With regards to applicant's requirement of physiotherapy on daily basis, it is submitted that the said treatment is available in Government Medical College and Hospital and is given to applicant at the said Hospital as and when required. With regards to the allegation that applicant was suffering from gall bladder stones, which required laparoscopic surgery and it was not done so far since March 2017, it is submitted by non-applicants that applicant required MRI scan of abdomen and also laparoscopic surgery. It is further submitted that applicant was given appointment for admission at Government Medical College and Hospital for Laparoscopic Cholecystectomy surgery on 16/7/2018, but he refused to attend Surgery Department of Government Medical College and Hospital, Nagpur.

11) According to Shri Sathianathan, learned Special Public Prosecutor, applicant has suffered polio residual paralysis both lower limbs with systemic hypertension with cholelithiasis. He is regularly examined by Chief Medical Officer/Medical Officer in Nagpur Central Prison and is regularly referred to various Departments of

Government Medical College and Hospital and Super Speciality Hospital, Nagpur for expert opinion, follow up examination, investigation and treatment. He is provided medicines as recommended by experts of Government Medical College and Hospital and Super Speciality Hospital, Nagpur. He was advised Laparoscopic Cholecystectomy surgery and was referred to Government Medical College and Hospital Surgery Department for admission and surgery on 16/7/2018, but he refused to attend the Hospital. Similarly, he refused to undergo polysomnography test as advised by respiratory Physician. He was also advised CT-Coronary Angio and CT-Head by Cardiologist and Neurologist respectively. He was referred on 31/8/2018 for the same. But he refused to undergo these investigations. Hence, he was re-appointed on 21/9/2018. He was referred to SSH-Radiology Department on 21/9/2018 for the above mentioned investigations, but again refused for the same. Hence, due to uncooperative nature of the applicant, the investigations and diagnostic process have been repeatedly hampered. Prison Administration is taking every effort to provide all necessary health services including his regular check up by expert Doctors of Government Medical College and Hospital and Super Speciality Hospital and by Chief Medical Officer/Medical Officer of

Nagpur Central Prison. Similarly, applicant has been provided medicines as recommended by the experts. In addition to the regular diet, he is provided special diet like khichdi, fiki dal as per his request. His general condition is satisfactory at present. In view of these submissions, the application is liable to be rejected and it be rejected accordingly.

12) During the course of hearing, prosecution has also placed on record medical report of applicant dated 9/7/2018 issued by team of four Doctors formed as per orders issued and on perusal of the same, it is revealed that on 9/7/2018 he was examined by various specialists named in the medical report, who are from different fields, including Gastroenterology, Cardiology, etc. and it is found that report of panel of Doctors is based after applicant was examined by as many as 13 Doctors. The Committee has concluded that patient is suffering from many chronic ailment, which can be managed medically and for his gall stone disease, he is advised Laproscopic Cholecystectomy for which further treatment can be provided to him as available in Government Medical College and Hospital, Nagpur.

13) Record reveals that pending this application, this Court

has time and again issued necessary directions so as to facilitate grant of medical treatment to applicant. By order dated 9/8/2018 applicant's wife was allowed to accompany him during medical examination by providing her intimation about taking him for medical examination sufficiently in advance since she is stationed at New Delhi. Applicant wanted his wife to be with him as she could have knowledge of nature of medical treatment including surgery whatsoever was required to be provided to applicant and in that event, both of them can have consultation with each other and decide further course of action. In fact, non-applicants had not opposed said request of applicant and as such, she was allowed to meet him if he was admitted anywhere else as indoor patient and the Jail Authorities were directed to inform the date on which applicant was likely to be referred for medical treatment to his wife sufficiently in advance.

14) Order dated 6/10/2018 reveals that in compliance to earlier order, intimation was given to applicant's wife as well as to his Lawyer by letters dated 14/7/2018 and 6/8/2018. Accordingly, his Lawyer interviewed him on 14/7/2018, 17/7/2018, 26/7/2018, 17/8/2018 and 25/8/2018 and a wireless message to that effect was

also sent to applicant's wife. For the purpose of performing surgery, the applicant's consent was required. However, the applicant never consented for the same. As per the report, it is also noted that applicant denied to go to the Hospital on the appointed date, i.e. on 16/7/2018 for want of discussion with his family members. It is further found that on 21st and 22nd September 2018 the applicant's wife met him and had discussed the medical issues faced by the applicant along with the line of treatment being provided to him. From the endorsement put by the applicant on the report of Superintendent, Central Prison, Nagpur referred above, the fact of his wife meeting him on 21st and 22nd September 2018 has been corroborated. It is also found from his endorsement that they had discussed about ailments suffered by the applicant and had also discussed these issues with the Doctors at Government Medical College and Hospital as well as with their family Doctor, however, could not take any decision for want of entire medical record. Therefore, directions were issued that (i) the Dean, Government Medical College and Hospital, Nagpur and Super Speciality Hospital, Nagpur shall provide all the papers of medical treatment to applicant since his arrest in the month of May 2014 at this hospital from time to time and (ii) The Chief Medical Officer, Central Prison, Nagpur

shall provide a medical record in respect of applicant in respect of treatment provided to him in Jail till date.

15) On 21/11/2018 non-applicants established compliance of earlier order dated 6/10/2018 by providing applicant all his medical papers, which he endorsed to have received. All these documents including C.T. scan report, C.Ds. and other films of investigation were prayed to be delivered to applicant as he wanted to forward the same to his private Doctors and family members for deciding further line of treatment. Certain MRI films, x-rays, C.Ds. and films, which could not be copied, were provided to applicant as agreed for a limited period of ten days since it was agreed to be returned back on verifying the same by his Doctors and family friends to Chief Medical Officer, Central Prison, Nagpur, who would in turn deposit the same with Dean, Government Medical College and Hospital, Nagpur. Order dated 10/12/2018 reveals compliance of earlier order dated 21/11/2018 and *prima facie* since it was found that applicant need to be medical examined by expert Doctors of his choice, without granting any relief of bail for a limited period for this purpose, directions were issued to produce applicant before team of Doctors named by him on a fixed day at Super Speciality Hospital, Nagpur

as he has been repeatedly produced in the said Hospital for routine medical check up, instead of considering application for his release on medical ground. By the said order, applicant was accordingly directed to supply list of Doctors of his choice and names of two of his family members being his wife and brother specifying dates on which they would be available in Nagpur and in whose presence applicant shall be medically examined.

16) In compliance to earlier order dated 10/12/2018 vide pursis dated 17/12/2018 applicant gave names of three Doctors, out of which two were from Telangana State and one from All India Institute of Medical Science, New Delhi, who agreed to make themselves available at Nagpur on 26/12/2018 to medically examine the applicant. In the same pursis, applicant also disclosed names of his wife and brother, who would be present at the time of his medical examination. The learned Special Public Prosecutor, on instructions, submitted that applicant shall be produced in aforesaid Hospital on 26/12/2018 at 11 a.m., which statement was accepted on behalf of applicant. Accordingly, directions were issued to non-applicants to produce applicant for his examination by his team of Doctors in the presence of his relatives as aforesaid and in the

presence of two Medical Officers to be deputed by Dean, Government Medical College, Nagpur with further direction to lodge applicant in Jail on the same day by 3.30 p.m. and matter was posted for 7/1/2019.

17) Record further indicates that before the prescribed date of medical examination, which was to be carried out as aforesaid, prosecution moved an application for recalling of said order or in alternative, to stay effect thereof contending that on the basis of vigilance report obtained by prosecution in respect of Doctors named by applicant, integrity of one of the Doctors was doubted and thus, it was not advisable to get the applicant examined through said three Doctors. In the circumstances, Court having considered physical status of applicant, who is admittedly suffering from various ailments and since was already permitted to be examined by the Doctors of his choice, did not find it necessary to recall the order, but imposed additional conditions, which are as under :

“(1) The Doctors shall be permitted to examine the applicant one by one in presence of two Government Officers from the Government Medical College and Hospital or Super Speciality Hospital of the choice of prosecution to remain present throughout the examination by three Doctors.

- (2) The Doctors examining the applicant shall use the language English or Hindi. The user of Code or other languages is prohibited.
- (3) If it is thought fit and proper by the prosecution, there can be CCTV surveillance and video recording.
- (4) The applicant/patient shall neither be administered any medicine nor there shall be performance of any kind of operation/surgery.
- (5) For the purposes of clinical examination, instruments, implements and equipments as provided by the prosecution shall only be used.
- (6) Before entering the consulting room, there shall be thorough physical check up of the Doctors and if need be, through scanning machine so that they do not carry any implements/weapons or drugs inside the consulting room.
- (7) The Police personnel can be deployed inside as well as outside the consulting room as per the choice of the prosecution.
- (8) The examination shall be completed within the time frame prescribed by this Court.”
- 18) Having considered above-stated facts, it is found that not only from the date, i.e. 7/3/2017 when applicant is convicted and lodged in Central Prison, Nagpur, but also during the period when he was under-trial prisoner and till he was ordered to be released on

bail pending trial, he was provided medical treatment as and when required, which from the documents filed on record is found to be continued even today. In fact, on 4/3/2019 when submissions on both sides came to be summed up, directions were issued to non-applicants to provide applicant whatever medical treatment is required by him without fail expecting full cooperation from applicant to the Authorities providing him medical treatment. As such, aforesaid facts demonstrate that applicant is provided due care and medical treatment as and when required in Central Prison and he is referred to Super Speciality Hospital and Government Medical College and Hospital, Nagpur as and when required regularly and there is nothing brought on record that treatment required to applicant is not available in any of these Government Hospitals.

19) Though this application is mainly pressed on medical grounds as referred earlier, since in applicant's rejoinder dated 5/4/2018 he has sought suspension of sentence also on merits, relying on the grounds made out in memo of appeal, we have found it necessary to deal with the application even on merits. Brief facts of the case are that upon receipt of the secret information from Atul Awhad, PW 6, the Assistant Police Inspector attached to the Special

Branch, Gadchiroli, an FIR was lodged on 22/8/2012 at Exhibit 220 in the Police Station at Aheri alleging that accused no.1 Mahesh Tirki, accused no.2 Pandu Narote and accused no.3 Hem Mishra were working for the prohibited/banned Organization CPI (Maoist) and its frontal Organization, i.e. Revolutionary Democratic Front (RDF) and they were active members of the said Organization (hereinafter called as "the banned Organization"). The movements of these three persons were watched in the area of Ettapalli, Aheri and Murewada and upon being found suspicious in a secluded place near Aheri Bus Stand, they were apprehended on 22/8/2013 at about 6 p.m. by PW 6 Atul along with the staff at Aheri Bus Stand. During the personal search of said arrested accused, few pamphlets regarding banned Organization along with other incriminating articles like their identify cards, mobile phone, newspaper cuttings, Railway tickets, etc. were seized. During the course of interrogation of one of the accused, namely, Hem Mishra, applicant is involved as an active member of banned Organization, who had provided said accused one memory card with direction to hand over it to Narmadakka, who is active worker of said Organisation in Gadchiroli area. His interrogation also revealed involvement of other co-accused, who were accordingly intercepted and on interrogation

were arrested and on their physical search, incriminating articles including paper cuttings, mobile phones, etc. came to be seized. During interrogation of subsequently arrested accused, it is revealed that they along with other accused had conspired with underground member by name Ramdar of said banned Organization and as per his directions, original accused no.5 was to take accused no.4 Prashant Rahi in the forest area to meet senior Maoist leaders, who were hiding in Abuzmad forest area. Applicant is also one of the active conspirators of the said incriminating act as he gave effect to said criminal conspiracy, arranged meeting of accused no.3 with accused no.4 with underground members of banned Organization and to give effect to said conspiracy, had handed over a microchip SD memory card of 16 GB containing vital Maoist communications and other Maoist documents to accused nos.3 and 4 with an intention to further activate the banned Organization. The charges levelled against applicant including those under the Unlawful Activities (Prevention) Act are duly established, which are of serious nature having punishment ranging from seven years to life imprisonment, which offences, even otherwise, are not against individuals, but are of hatching conspiracy to wage war against Government.

20) Having considered nature of offences in which applicant's involvement is established, normal parameters to be considered for releasing accused on bail on suspending his substantive sentence cannot be applied in the present case. As on going through the observations of learned trial Judge, applicant's involvement along with other co-accused is found to have link and they were acting for alleged naxalite and banned Organization, i.e. CPI (Maoist) and its frontal Organization, i.e. RDF, assisting naxals on the basis of secret codes to facilitate them to reach their goals, the material produced forms a complete chain establishing applicant's involvement in the present crime along with other accused and as such, merely because applicant was on bail during trial, that by itself cannot be a ground to allow the application even on merits. For that purpose, reference can be usefully made to authoritative pronouncement of the Hon'ble Apex Court in the case of **Sidhartha Vashisht alias Manu Sharma vs. State (NCT of Delhi)** {(2008) 5 SCC 230} wherein Hon'ble Apex Court has laid down parameters to be considered for suspension of sentence and releasing accused on bail pending appeal, which are briefly culled out as under :

“(1) The Court should avoid to make observations on merits, which are likely to prejudice one or the other party to the appeal.

(2) The fact that the accused is found guilty and convicted by the competent criminal Court has to be kept in mind with further principle that initial presumption of innocence in favour of the accused is not available.

(3) After recording the conviction by the Sessions Court, the Appellate Court will proceed on the basis that the accused is found guilty.

(4) While considering the prayer for bail in a case involving a serious offence, the Court should consider :

- (a) the nature of accusation made against the accused,
- (b) the manner in which the crime is alleged to have been committed,
- (c) the gravity of the offence,
- (d) the desirability of releasing the accused on bail after he has been convicted for committing serious offence,
- (e) normal practice in cases of serious offence is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted,
- (f) the mere fact that during the period of trial, the accused was on bail and there was no misuse of liberty, does not per se warrant suspension of execution of sentence and grant of bail, and

(g) the Court should consider whether reasons exist to suspend execution of sentence and grant of bail.”

In that view of the matter and on considering above mentioned parameters laid down by the Hon'ble Apex Court, no case is made out for allowing the application. It may not be out of place to mention here that in fact before hearing this application, on 24/1/2019 learned Senior Counsel for applicant was informed that in the given circumstances even appeal could be heard on merits finally. The learned Senior Counsel for applicant sought two weeks' time to make a statement on this aspect. However, thereafter on 11/2/2019, on instructions, he insisted for deciding present application, which is thus considered accordingly.

21) For the aforesaid reasons, since we do not find any substance in the criminal application, we pass the following order :

ORDER

The criminal application is rejected.

JUDGE

JUDGE

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