

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

901 BAIL APPLICATION NO.1426 OF 2020

Shankar Sopan Shikare

Age : 28 years, occ : agri.,

R/o Balgavhan, Tal. Jamkhed,

District Ahmednagar.

Applicant

Versus

The State of Maharashtra

Through Police Station Officer,

Jamkhed Police Station,

Tal. Jamkhed, Dist. Ahmednagar.

Respondent

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Mr. R.R. Karpe, Advocate for the applicant.
Mr. A.S. Shinde, A.P.P. for respondent / State.

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CORAM : V.K. JADHAV, J.

DATE : 10.12.2020

ORDER :-

1. The applicant is seeking regular bail in connection with Crime No. 110 of 2019 registered with Jamkhed Police Station, District Ahmednagar for the offence punishable under Section 302 of the Indian Penal Code. His Criminal Bail Application No. 250 of 2019 with similar prayer came to be rejected by the learned Additional Sessions Judge, Shrigonda, District Ahmednagar vide order dated 12.10.2020.

2. I have heard learned Counsel Mr. Karpe at length. Learned Counsel Mr. Karpe for the applicant submits that the applicant came to be arrested in connection with the present crime on 09.03.2019. The applicant was initially granted Police Custody Remand and on 10.03.2019 he was remanded to Magisterial Custody. Learned Counsel submits that since then the applicant is languished in Sub District Jail, Jamkhed. Learned Counsel submits that during the course of the investigation, statement of the applicant / accused came to be recorded. Applicant has given the said statement in such a manner which apparently indicates that the applicant is suffering from mental illness. The applicant, who is 26 years of age, by giving reference to the suicidal death of his grandfather when the applicant was in 10th Standard, blamed the deceased who happened to be Pujari. According to the applicant / accused, the deceased used to play black magic and as a result thereof, the applicant himself was suffering many health problems such as headache, pains in abdomen, etc. The applicant is also having an intense feeling that his grandfather died because of the black magic played by the deceased. The applicant / accused has further explained that after killing the deceased he has tried to cut the vein of his left wrist. He is not willing

to stay alive. Learned Counsel submits that neither the Police Officer nor Assistant Superintendent of Jail, Sub- District Jamkhed, so also the learned Magistrate before whom the applicant was produced, had taken care to refer the applicant for his medical examination.

3. Learned Counsel submits that the learned Additional Sessions Judge, Shrigonda however sent the applicant for his medical examination to Sasoon Hospital, Pune before deciding the bail application below Exh.19 in Special Case No. 250 of 2019. In turn, the Sasoon Hospital has referred the applicant to Psychiatric Department of B.J. Government Medical College and Hospital, Pune. The Assistant Professor Dr. Ananya Dhar by letter dated 31.10.2020 reported to the Medical Superintendent of Sasoon Hospital, Pune that the applicant is of unsound mind and consequently incapable of making his defence. It has also reported that the applicant needs to be admitted as an indoor patient in the hospital for his further treatment. Thereafter the Medical Superintendent, Sasoon Hospital, Pune has submitted the report to the Additional Sessions Judge, Shrigonda by letter dated 31.10.2020 alongwith the report submitted by Dr. Ananya Dhar, Assistant Professor, Psychiatric Department of B.J. Government Medical College

and Hospital, Pune.

4. Learned Counsel for the applicant submits that by order dated 12.11.2020 Additional Sessions Judge, Shrigonda by recording all these factual aspects in para-7, merely rejected the application. Learned Additional Sessions Judge has simply observed that though the relatives filed undertaking, the applicant / accused cannot be released on bail since he requires medical treatment as an indoor patient. Learned Counsel submits that the Additional Sessions Judge has ignored the provisions of the Mental Healthcare Act, 2017 and simply rejected the application of the applicant seeking bail. Learned Counsel submits that it is also shocking that even after receipt of the report from B.J. Government Medical College and Hospital, Pune with covering letter of the Medical Superintendent of Sasoon Hospital, Pune, the learned Sessions Judge has not bothered to appoint any nominated representative neither provided the applicant free legal aid which is his right in terms of the provisions of Section 27 of the Mental Healthcare Act, 2017. Learned Counsel submits that by taking into consideration the provisions of Mental Healthcare Act, 2017 read with Section 330 of the Code of Criminal Procedure, necessary orders may kindly be passed.

5. Learned A.P.P. Shri Shinde has accepted that the courts below have ignored the provisions of Mental Healthcare Act 2017 and even the Assistant Superintendent of Sub-District Jail, Jamkhed has also not bothered to submit application suo-moto before the Magistrate when the applicant / accused was kept in jail. Learned A.P.P. submits that obviously since it is Sub-District Jail at Jamkhed, there are no facilities like separate cell for mentally ill patients. Learned A.P.P., on instructions, submits that even in the city like Aurangabad there are no such facilities available in Central Jail, Aurangabad, so also in Government Medical College and Hospital, Aurangabad. Learned A.P.P., however, submits that there is a General Ward for treatment of such patients in the said hospital. Learned A.P.P. submits that the court below should have taken care to refer the applicant to any suitable mental health establishment. Learned A.P.P. submits that the applicant has injury on his left wrist and he is likely to cause harm to himself so also to the other persons. In view of the same, though the learned Additional Sessions Judge has not taken into consideration the undertaking and rejected the application for bail, however, in terms of the provisions of Section 103 of the Mental Healthcare Act, 2017, the learned Additional Sessions Judge, who is a trial Judge,

should have referred the applicant to any suitable mental health establishment. Learned A.P.P. fairly submits that the necessary orders may be passed taking into consideration the welfare and aspect of the further treatment to be given to the applicant.

6. It has also brought to my notice by the learned Counsel for the applicant so also the learned A.P.P. that in terms of the provisions of Section 121 of the Mental Healthcare Act, 2017 the State Government yet to frame Rules. Learned A.P.P., however, submits that the State Government has prepared draft of the Rules and the same has been sent for approval. It is to be noted here that new Mental Healthcare Act, 2017 came to be enacted w.e.f. 07.07.2018 by repealing the earlier Acts and even in the year 2020 Rules are yet not framed.

7. It is a sordid state-of-affairs that the police machinery, the jail authorities and even the courts below have ignored the provisions of the Mental Healthcare Act, 2017. As per the statement of objects and reasons of Mental Healthcare Act, 2017, new legislation came to be enacted by repealing the earlier Act by recognizing that the persons with mental illness constitute a vulnerable section of society and are subject to discrimination in our society. Further the

families bear financial hardship, emotional and social burden of providing treatment and care for their relatives with mental illness.

8. In the instant case the learned Assistant Sessions Judge, Shrigonda has merely rejected the application of the applicant seeking bail. Though the learned Additional Sessions Judge has received the report from B.J. Medical College and Hospital, Pune forwarded by the Medical Superintendent of Sasoon Hospital, Pune about unsoundness of mind of the applicant and his incapacity of making his defence, has failed to appoint the nominated representative.

9. It is clear from the report submitted by B.J. Government Medical College and Hospital, Pune that that the applicant requires treatment as an indoor patient. It further appears from the statement of the applicant recorded during the course of investigation that the applicant may cause harm to himself and his very presence in the society at present may be dangerous unless requisite treatment is offered and given to him.

10. In view of the same, this Court left with no other option but to invoke the provisions of the Mental Healthcare Act, 2017 and to pass the appropriate order.

11. Section 103 of the Mental Healthcare Act, 2017 is reproduced herein below :

“103. Prisoners with mental illness - (1) An order under section 30 of the Prisoners Act, 1900 or under section 144 of the Air Force Act, 1950, or under section 145 of the Army Act, 1950, or under section 143 or section 144 of the Navy Act, 1957, or under section 330 or section 335 of the Code of Criminal Procedure, 1973, directing the admission of a prisoner with mental illness into any suitable mental health establishment, shall be sufficient authority for the admission of such person in such establishment to which such person may be lawfully transferred for care and treatment therein:

Provided that transfer of a prisoner with mental illness to the psychiatric ward in the medical wing of the prison shall be sufficient to meet the requirements under this section:

Provided further that where there is no provision for a psychiatric ward in the medical wing, the prisoner may be transferred to a mental health establishment with prior permission of the Board.

(2) The method, modalities and procedure by which the transfer of a prisoner under this section is to be effected shall be such as may be prescribed.

(3) The medical officer of a prison or jail shall send a quarterly report to the concerned Board certifying therein that there are no prisoners with mental illness in the prison or jail.

(4) The Board may visit the prison or jail and ask the medical officer as to why the prisoner with mental illness, if any, has been kept in the prison or jail and not transferred for treatment to a mental health establishment.

(5) The medical officer in-charge of a mental health establishment wherein any person referred to in sub-section (1) is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained

(6) The appropriate Government shall setup mental health establishment in the medical wing of at least one prison in each State and Union territory and prisoners with mental illness may ordinarily be referred to and cared for in the said mental health establishment.

(7) The mental health establishment setup under sub-section (5) shall be registered under this Act with the Central or State Mental Health Authority, as the case may be, and shall conform to such standards and procedures as may be prescribed”.

12. In terms of sub-section (2) of Section 330 of the Code of Criminal Procedure, if the case is one in which, in the opinion of the Magistrate or Court, as the case may be, the bail cannot be granted, it shall order the said accused to be kept in such a place where regular psychiatric treatment can be provided and shall report the action taken to the State Government.

13. In terms of sub-section (1) of Section 103 of the Mental Healthcare Act, 2017, if any order is passed under Section 330 of the Code of Criminal Procedure directing admission of the prisoner with mental illness into any suitable mental health establishment, shall be sufficient authority for the admission of such person in such establishment to which such person may be lawfully transferred for care and treatment therein. The learned A.P.P. has suggested that the applicant may be referred to the

Regional Mental Hospital, Yerwada, Pune for admission, care and further treatment.

14. In view of the same, the following order is passed which would meet the ends of justice. It is to be mentioned here that the learned Counsel Mr.Karpe on his own has made a statement that he would not charge the fees to the applicant for pursuing his application before this Court and he would be offering his services to the applicant free of charge. Hence, the following order.

ORDER

- I. In terms of the provisions of sub-section (1) of Section 103 of the Mental Healthcare Act, 2017 read with Section 330 of the Code of Criminal Procedure, 1973, it is hereby directed that the applicant / accused Shankar Sopan Shikare in connection with Crime No. 110 of 2019 registered with Jamkhed Police Station for the offence punishable under Section 302 of the Indian Penal Code, shall be admitted in the Regional Mental Hospital, Yerwada, Pune from Sub-District Jail, Jamkhed at the expenses of the State forthwith, for his care and treatment therein. This order shall be sufficient authority for admission of the applicant Shankar Sopan Shikare in the Regional Mental Hospital, Yerwada, Pune.

- II. In terms of the provisions of sub-section (5) of Section 103 of the Mental Healthcare Act, 2017, the Superintendent or In-charge person of Regional Mental Hospital, Yerwada, Pune shall submit a special report regarding mental and physical condition of the applicant to the learned Additional Sessions Judge, Shrigonda, once in a six months.
- III. The learned Additional Sessions Judge, Shrigonda shall pass appropriate order providing free legal aid to the applicant.
- IV. At present, as temporary adjustment, father of the applicant namely Sopan Namdeo Shikare is hereby appointed as nominated representative of the applicant and the applicant's family is at liberty to file an application for revocation of the said nominated representative, if so desired.
- V. In terms of provisions of sub-section (5) of Section 103 of the Mental Healthcare Act, 2017, if the report is submitted by the Superintendent or In-charge of Regional Mental Hospital, Yerwada, Pune, the learned Additional Sessions Judge shall review the position and pass appropriate orders in terms of the provisions of Section 328 or Section 329 and Section 330 (1) of the Code of Criminal Procedure, as the case may be. Further, depending upon such report as provided under sub-section (5) of Section 103 of the Mental

Healthcare Act, 2017, the applicant either himself or his nominated representative is at liberty to file an application for bail before the trial Court and upon filing such application for bail, it is for the trial Court to consider the same on its own merits.

VI. The learned Additional Sessions Judge, Shrigonda shall immediately report the directions as aforesaid to the State of Maharashtra in terms of the provisions of sub-section (2) of Section 330 of the Code of Criminal Procedure.

VII. Learned A.P.P. to ensure the compliance of the directions about immediate transfer of the applicant from Sub-District Jail, Jamkhed to Regional Mental Hospital, Yerwada, Pune and submit the copies of the correspondence so made to the Registrar (Judicial) of this Court.

15. Authenticated copy be supplied to learned A.P.P.

16. Application is accordingly disposed of.

(V.K. JADHAV, J.)

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