

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 425/2020 & CRL.M.A. 8824/2020**

Judgment reserved on : 12.10.2020

Date of decision: 22.10.2020

TAUFIK

..... Applicant

Through: Mr. P.K. Dhaka & Mr. Satendra
Singh, Advocates.

Versus

STATE

..... Respondent

Through: Mr. Kamal Kr. Ghei, APP for State.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant, vide the present application under Section 439 of the Cr.P.C., 1973 seeks the grant of bail in relation to FIR No.322/2018, PS Sagarpur under Section 376 of the Indian Penal Code, 1860 and Section 6 r/w Section 10 of the POCSO Act, 2012 submitting *inter alia* to the effect that he suffers from mental illness from the time of his arrest;

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- that it is on the record in the charge sheet that he did not try to run away from the place of occurrence because either as he might have not committed the offence or he might not be aware of the act which he committed due to his mental incapacity;
- that even before two years of the date of offence the applicant had undergone treatment at IHBAS but his condition did not improved as he could not visit the hospital regularly due to poor financial condition of his family;
- that as per the prescription slip issued from the department of Psychiatry Ref No. 2016-2-121666 dated 14th March 2016, it is manifestly clear that the accused/applicant has been administered Risperidone Tablets/ medicine which on a research from the website i.e. www.drugs.com and www.risperidone.com, it was found that Risperidone is an antipsychotic medicine which works by changing the effects of chemicals in the brain and is used to treat schizophrenia in adults and is also used to treat symptoms of bipolar disorder (manic depression) in adults;
- that the applicant was also prescribed the medicine sodium valporate which is used to treat the epilepsy and bipolar disorder; that the fact of the mental illness of the applicant is mentioned in a letter given by the head of the village to which the applicant belongs stating that the applicant belongs to a poor family and is of unsound mind;

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that the applicant on 20.11.2018 had requested the learned Trial Court to send him to IHBAS for conducting a clinical psychological examination and treatment under the Mental Health Care Act 2017, which mandates for providing of mental healthcare and services for persons with mental illness and to protect, promote and fulfill the rights of such persons including the prisoners under Section 103 of the MHC Act 2017;

- that the applicant/accused was admitted in IHBAS for treatment and evaluation for few months and the medical board of IHBAS submitted a medical report vide reference No. CRF No. 2016-02-12666, dated 17.05.2019, declaring that the "Patient was a case of Bi-Polar affective disorder, currently hypomania and that he needed regular monitoring for improvement and follow up with the psychiatrist" and that after medical evaluation the applicant/accused was transferred to jail on 04.06.2019;
- that the application filed by the applicant before the learned Trial Court seeking grant of bail was rejected vide order dated 18.11.2019 of the learned ASJ. It has further been submitted on behalf of the applicant that vide order dated 18.11.2019, it was observed as under:-

***“The chargesheet has been filed u/s 376 IPC and Sections 6/10 POCSO Act. The accused is alleged to have inserted his finger in the private part of the victim who was of tender age as she has not been completed 4 years. The offence is no doubt grave.*”**

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Bail is sought on the ground that his parents shall get him properly treated. It is however noted in the application and submitted that his treatment could not be continued on account of financial condition of the family. Admittedly his treatment was not continued from 2016 onwards. Even if it be accepted, for the sake of arguments, that the accused is mentally ill and requires treatment, it is evident that his family is unable to provide the same. On the other hand, through the State Instrumentality, appropriate treatment can be made available to him. The fact as noted in the application that he left his house without intimating his family also shows that his family members are unable to take care of him. Further as reported by Medical Board despite 'patient is a case of Bipolar Affective Disorder, currently Hypomania', he is fit to stand trial. This implies that he is capable of entering his defence and capable of comprehending the circumstances.

In view of above stated discussion, application is dismissed.”

2. It is submitted on behalf of the applicant that he had no *mens rea* to commit any offence and any overt act without *mens rea* is not culpable. It is further submitted on behalf of the applicant that in as much as he is of unsound mind and unable to understand the Court proceedings, in terms of Section 330 of the Cr.P.C., 1973 he has to be released on bail entrusting him to the custody of his relatives prescribing conditions with a view that he would not cause harm to himself or to others and to also ensure his constant medical care. It is also submitted on behalf of the applicant that even in terms of Section

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439 of the Cr.P.C., 1973, if the applicant is unwell, may be released on bail. It is further submitted on behalf of the applicant that at this stage, the Court ought not to look into the nature of the offence that the applicant is alleged to have committed and that the applicant is not required for any custodial interrogation and that the charge sheet in the matter has already been filed and that there is no chance of the applicant absconding or tampering with the prosecution evidence if admitted to bail.

3. Notice of the application was issued to the State and the status report was also called for from the State through which it was stated that the complaint in the instant case was lodged on 14.06.2018 on receipt of a PCR Call vide DD No. 37A was received at Police Station Sagarpur regarding molestation of a 4 year old girl at Gali No.2, Kailashpuri Extension. New Delhi and thereafter Insp. Saroj Bala had examined the mother of the victim child regarding the incident who had given a written complaint stating that her child 'A' aged 4 years studied in nursery in the SDM Public School, Kailashpuri and had gone to get her gas stove repaired at 02:45 PM and in front of the shop of barber a boy named Taufik i.e. the applicant herein who had been

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working there since 3-4 days, called her daughter to his shop and after sometime the girl came out weeping and informed that Taufik i.e. the applicant herein had put his finger in her urine passing part and then the mother of the victim went to ask him, she also slapped him 2-4 times and after some time her spouse came there and called the police, whereupon the FIR No. 322/2018, U/s 376 of the Indian Penal Code, 1860 & Section 6 of the POCSO Act, 2012 was registered and that the MLC of the prosecutrix No. 271/2018 dated 07.08.2018 reflected “*Vulval Injury Redness*” and that the applicant was arrested and the statement under Section under Section 164 of the Cr.P.C., 1973 of the prosecutrix was recorded.

4. In as much as submissions were made on 07.07.2020 on behalf of the applicant that he is also suffering from TB and had received treatment earlier for the same, the medical status report in relation to his medical condition after getting him medically examined qua the stated ailment of TB as well as qua his stated mental ailments was called for from the Superintendent, Central Jail, Mandoli Delhi where the applicant is presently lodged. Vide order dated 16.07.2020, the status report qua the medical condition of the applicant after his

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examination which was to be conducted at the DDU Hospital on 16.07.2020 as per the report dated 07.07.2020 received from the Superintendent, Central Jail No.14, Mandoli, Delhi was called for. The said status report dated 27.07.2020 was received from the Superintendent, Central Jail, Mandoli, Delhi which indicated a positive report in relation to the aspect of the applicant having been given ATT in as much as vide report dated 27.07.2020 it was reported by the Senior Medical Officer, Central Jail-14, Mandoli, Delhi that on 25.07.2020, the patient i.e. the applicant was sent to the RBIPMT Hospital where he was advised for a test and to review the reports and thus, the updated medical status report was called for, for the date 19.08.2020, whereafter, the status report dated 17.08.2020 was received from the Superintendent, Central Jail No.14, Mandoli, Delhi which indicates to the effect that ATT (TB Medicines) had been started from the GTB Hospital and that the vitals of the applicant were stable.

5. Vide paragraph 14 of the status report dated 27.07.2020 received from the Senior Medical Officer, Incharge, Central Jail No.14, Mandoli, Delhi, it was stated to the effect:-

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“the opinion of the jail psychiatrist during his MSE is that the applicant is feigning/ exaggerating symptoms. Learned counsel for the applicant submits that the same is erroneous and that even when the applicant was examined at IHBAS, there has been an initial problem in relation to the ailment of the applicant but that vide the report placed as Annexure-P4 bearing No.F.19(62)/Recep/IHBAS/2019 as given by the medical Board of IHBAS, the applicant is a case of Bipolar Affective Disorder, i.e. Hypomania and that he is showing improvement with medication and that he needs regular monitoring for improvement and follow-up with psychiatrist, though, he was fit to stand trial.”

6. It has thus been submitted on behalf of the applicant that the applicant at the jail was not being provided any medication whatsoever in relation to his ailment of Bipolar Affective Disorder, in as much as, the jail authorities have been repeatedly reporting to the effect that the applicant was feigning/ exaggerating symptoms. In view thereof, vide order dated 04.08.2020, it was considered essential that the Board comprising of Dr.Om Prakash, Assoc. Prof. of Psychiatry, Dr.U.K.Sinha, Addl. Prof. of Clinical Psychology Member and Dr.N.G. Desai, Director and Chairman of the Medical Board of IHBAS had examined the applicant qua his present medical status.

7. A report dated 02.09.2020 was received from IHBAS stating to the effect that its Standing Medical Board on that date comprised of only two persons i.e. Dr. N.G. Desai and Dr. Om Prakash as Dr. U.K.

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Sinha who was earlier the member of the Board could not be a part of the Medical Board. Vide order dated 09.09.2020, it was observed that as per the report received from IHBAS as per the examination conducted on 02.09.2020, it was opined by the Medial Board of IHBAS to the effect that:-

“1. The patient is being assessed for “current mental status.”

2. The patient did not respond to any questions, did not make any eye to eye contact and kept looking downwards throughout the assessment.

3. Hence, currently it is difficult to comment on “current mental status”. We recommend inpatient observation and assessment, to opine about the same.

4. Hence, kindly pass order under Section 103 of Mental Healthcare Act, 2017 and transfer the patient to IHBAS for inpatient evaluation.

5. Any other opinion besides “current mental status” (if required), may be clarified.”,

and thus, IHBAS had sought that that an order under Section 103 of the Mental Health Care Act, 2017 be passed and that the patient be transferred to IHBAS for an inpatient evaluation to which prayer there was no opposition on behalf of the State.

8. Initially on behalf of the applicant, it was submitted that the applicant could himself go to IHBAS qua which, vide order dated 09.09.2020, it was observed to the effect that the said aspect cannot be

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granted presently but that in relation to the aspect of grant of any such transfer of the applicant into IHBAS for inpatient evaluation, in as much as, there was an observation made in the report dated 05.09.2020 of IHBAS that it was currently difficult to comment on the current medical status of the applicant and that the Board recommended the inpatient observation to assess and opine about the same, it was observed vide order dated 09.09.2020 that it was essential for the Court to know the period of time that would be required for such inpatient evaluation of the applicant and the report was thus called for from the Medical Board of IHBAS for the date 05.10.2020. The report dated 22.09.2020 received from the Medical Board of IHBAS with reference to the order dated 09.09.2020 as sent by Dr. N.G. Desai, Director and Chairman of the Medical Board of IHBAS reads to the effect:-

“The Standing Medical Board conducted in absence of patient on 16.09.2020 with respect to the Hon'ble Court order dated 09.09.2020. The Medical Board has opined that:-

1. The period of assessment required in such cases cannot be fixed precisely. Generally 4-6 weeks of observation has been requested by IHBAS. At the very minimum, 2-3 weeks would be essential for the nature of opinion requested.

2. It is also opined that the assessment and opinion would

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depend significantly on the cooperativeness of the patient and the other sources of information. In this case, there is already some indication of lack of cooperativeness/active lack of participation by the person concerned.

3. In any case to the best of our understanding, Section-103 of Mental Healthcare Act, 2017 does not require duration of admission to Mental Health Establishment, to be specified. Nonetheless, if the Hon'ble High Court would ask us to indicate time frame, we request for assessment for 3 weeks, extendable by another 3 weeks.”

9. Section 103 of the Mental Health Care Act, 2017 provides as follows:-

“103. Prisoners with mental illness.—(1) An order under Section 30 of the Prisoners Act, 1900 (3 of 1900) or under Section 144 of the Air Force Act, 1950 (45 of 1950), or under Section 145 of the Army Act, 1950 (46 of 1950), or under Section 143 or Section 144 of the Navy Act, 1957 (62 of 1957), or under Section 330 or Section 335 of the Code of Criminal Procedure, 1973 (2 of 1974), 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.

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(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 set up 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 set up 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.”

10. A submission was thus sought to be made on 12.10.2020 on behalf of the applicant that in terms of Section 330 of the Cr.P.C., 1973, the applicant was entitled to be released on bail. Section 330 of the Cr.P.C., 1973 provides as follows:-

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“330. Release of lunatic pending investigation or trial.

(1) Whenever a person is found, under section 328 or section 329, to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government: Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).”

11. In the instant case, it is essential to observe that it was reported vide the report dated 31.08.2020 by the Standing Medical Board examination conducted at IHBAS after examination conducted on 29.08.2020 and 02.09.2020 that the patient required 2-3 outpatient visits before presentation to the Medical Board and that the copy of the Standing Medical Board examination conducted on **29.05.2019** was attached to this report, wherein, it was observed to the effect:-

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“Opinion and recommendation of the treating Consultant/Unit

a) Clinical Assessment (Important historical events, Psychopathology and physical examination findings):

Patient is a 25 years unmarried male, educated till 2nd standard (could not continue further education because of the financial condition of the patient's family) previously working as a labour. R/o Hilwari Village, Barod U.P. with no history of psychiatric illness in the family.

Patient was registered at IHBAS in February, 2016, he was seen in walk-in-clinic in February and March, 2016. He was diagnosed as a case of mania and was started on Tab. Sodium Valporate 100 mg. Tab Risperidone 4mg.

Patient was sent to IHBAS, December, 2018 for his assessment for fitness to stand trial (accused under POCSO Act). In December, 2018, as reported by the police personnels, patient was in Tihar Jail for 4 months.

During the assessments in Psychiatry OPD -

Patient was not co-operative, he would never make any eye contact with any of the interviewers. As the patient was not cooperative, patient was admitted at IHBAS under Section 103 of MHCA, 2017 as per the Hon'ble Court order dated 22.03.2019.

The patient was admitted in Psychiatry ICU for CCTV monitoring and recording to monitor the patient's behaviour as per the Court order.

During the observation & assessment in Psychiatry ICU -

Patient is being assessed by two independent multidisciplinary teams. He was uncooperative for the assessment. There is an observable difference when the patient is being watched by the staff or on interviewing by the doctors and when the patient is alone in the observation room.

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He would not make any eye contact, most of the times he would wear a cap. He would answer only to few questions and in a low tone. There was active avoidance in making eye contact as he would make a lateral gaze towards the interviewer. He was doing ADLs on own. He would independently go to serve himself food and then wash his utensils. He would walk in a normal pace when no one would watch him. He was not cooperative when questions were asked for assessment for fitness to stand trial.”

12. It was opined further vide this report that the applicant was fit to stand trial and had even stated that he met a counsel on one or two occasions; that he could also understand that there were consequences of charges against him and that he understood the charges against him also. In as much as, vide the report dated 05.09.2020, it was requested by IHBAS that it was currently difficult to comment on the current medical state of the applicant and inpatient observation and assessment was required for the same, coupled with the allegation against the applicant of having committed fingering of a minor girl aged 4 years, as also that the aspect of determination of the mental condition of the applicant being of unsound mind or otherwise is yet to be ascertained, the prayer made on behalf of the applicant that he be released on bail in terms of Section 330(1) of the Cr.P.C., 1973 due to reasons of his unsounded mind, cannot be granted, in as much as,

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there is nothing to indicate that he would commit no injury to any other person.

13. However, presently, in view of the opinion forwarded by Dr. N.G. Desai, Director and Chairman of the Medical Board of IHBAS vide letter No.F.19.(62)/Recep/IHBAS/2020/979 dated 22.09.2020 and the report attached thereto, it is considered appropriate and essential and it is thus, directed that the Superintendent, Central Jail No.14, Mandoli, Delhi where the applicant is presently lodged shall transfer the applicant to IHBAS, Delhi for a period of 21 days from the date of receipt of this order, whereafter, the applicant be transferred back to the Central Jail No.14, Mandoli, Delhi under the custody of the personnel of the jail authorities of the Superintendent, Central Jail No.14, Mandoli, Delhi.

14. The report of the medical examination and observation conducted at IHBAS during the period of three weeks that the applicant is in the mental health establishment of IHBAS be submitted to this Court by IHBAS in relation to the present mental condition of the applicant to ascertain the aspect of the mental soundness and capacity of the applicant to face trial.

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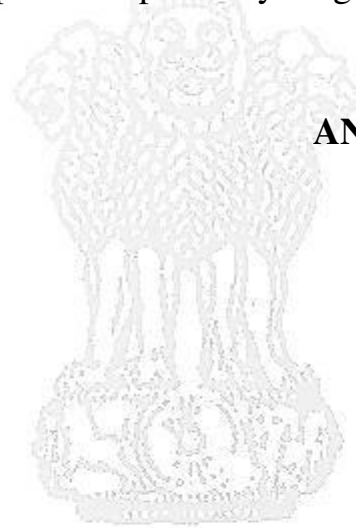
15. The matter be re-notified for 01.12.2020, for which date the report of the medical examination conducted of the applicant at IHBAS is called for. Copy of this order be sent to the Ld. Director and Chairman of the Medical Board of the IHBAS for necessary action.

16. Copy of this order be sent to the Superintendent Jail, Delhi concerned where the applicant is presently lodged, for compliance.

ANU MALHOTRA, J.

OCTOBER 22, 2020

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