

via Video-conferencing

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

+ BAIL APPL. 1481/2020

OMKAR @ OMI

..... Applicant

Through: Mr. Rajat Katyal, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Ms. Neelam Sharma, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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15.07.2020

The applicant is an undertrial in case arising from FIR No. 263/2019 dated 15.07.2019 registered under sections 354A/506/328/366A/376/34 IPC and section 12 of the POCSO Act at PS : Janakpuri.

2. By way of the present application, the applicant seeks interim bail on medical grounds.
3. Status report dated 03.07.2020 has been forwarded by e-mail. Let status report be brought on record.
4. Nominal roll dated 09.07.2020 and medical status report dated 09.07.2020 have been received from the Jail Superintendent.
5. The complainant/prosecutrix has joined the video-conference hearing from the police station and has been identified by S.I. Reema, who is the substitute Investigating Officer.
6. Mr. Rajat Katyal, learned counsel for the applicant places reliance upon the applicant's medical records dating back to 2016 and 2018 to

show that the applicant was suffering from subdural hematoma/ subdural hygroma, which is a condition of blood/fluid collection on the surface and under the outer covering of the brain, causing episodes of seizure. Counsel argues that at that time immediate surgery was advised and performed ; the fluid/blood was extracted ; and then by another surgery titanium plates were inserted to keep the skull in place since it had become flaccid.

7. Mr. Katyal submits that the episodes of seizure have repeated themselves, which requires immediate attention at a private medical facility. Mr. Katyal also submits that the applicant is diabetic and therefore in the high-risk category, susceptible to coronavirus infection in prison.
8. Ms. Neelam Sharma, learned APP for the State points-out that in the status report it is recorded that the medical certificates, reports and documents filed by the applicant have not been verified since one of the laboratories is stated to have closed permanently, while the other diagnostic centre has said that no records of the applicant's reports are available with them and that the records do not relate to that diagnostic centre.
9. Ms. Sharma has further drawn attention to the statement of the complainant/prosecutrix recorded under section 164 Cr.P.C., where she has reiterated the allegations against the applicant and co-accused Rahul, who is his brother, which allegations, the learned APP submits, are grave and serious.
10. The complainant/prosecutrix, who has joined the video-conference hearing, has also been heard in the matter. Standing by the statement

made under section 164 Cr.P.C., she states that the applicant's brother, co-accused Rahul, who is out on regular bail has threatened her with dire consequences if she persists with the case. She has also submitted that by reason of the incident, she has stopped going to school.

11. The nominal roll received from prison shows that the applicant has undergone about 11 months of custody as an undertrial ; and that his jail conduct is satisfactory. Enclosed with the nominal roll is the medical status report dated 09.07.2020 issued by the Medical Officer in Charge of the prison, which report, after reciting the applicant's history, records as follows :

“On 03.07.2020 inmate presented in OPD CJ – 07 with complaint of severe headache, he was examined by Doctor on duty and after giving primary treatment he was referred to DDU Hospital on emergency basis for further management. At DDU Hospital he was seen by neuro surgery doctor on duty and was advised CT Scan of head. CT Scan was not available at DDU Hospital. CT Scan was carried out at Safdarjung Hospital on 04.07.2020 which showed left sided Sub Dural Hygroma. On same day inmate was taken to DDU Hospital neuro surgery department for re-evaluation along with CT Scan reports. The doctor on duty advised him to be reviewed at neuro surgery department at higher centre. Inmate was taken to RML Hospital on same day for review, where he was seen by Doctor on duty in casualty and was advised to come on Monday in neuro surgery OPD at 2:00 PM in RML Hospital. On 06.07.2020 inmate was sent to neuro surgery OPD at RML Hospital where he was seen by Doctor on duty and advised for follow-up in DDU Hospital for further management. He was prescribed medicines for 15 days which were provided to him from CJ-07 dispensary. Inmate is planned to review at DDUH Neuro-Surgery Department next week .

At present the condition of inmate is stable and he is receiving all medicines from this dispensary only ”

12. In view of the doubt expressed in the status report as regards the medical certificates, prescriptions and documents filed by the applicant, this court is inclined to ignore those documents.
13. Be that as it may, from the medical status report received from the medical officer in-charge in the jail itself, it is evident that there is a serious neurosurgical problem with the applicant, for which he has been taken to Deen Dayal Upadhyay Hospital, Safdarjung Hospital and to Ram Manohar Lohia Hospital. The last medical examination conducted on 06.07.2020 at the Neurosurgical OPD at RML Hospital has advised follow-up at DDU Hospital for further management and certain medicines have been prescribed, with a review at DDU Hospital being due at the Neurosurgery Department.
14. It is also clear from his medical record that the applicant has had serious problems in the brain; there is little doubt that the applicant had undergone brain surgery at the DDU Hospital in May, 2018, which fact is also borne-out from photographs filed along with the bail application.
15. In this view of the matter, this court is of the opinion that, other things apart, at this stage the applicant is certainly entitled to attend to his serious medical requirements at a medical facility of his choice, and in the care of his family.
16. However the apprehension expressed by the complainant/prosecutrix with regard to threats extended by the applicant's brother and the fear that if both the applicant and his brother are out on bail, they may

further threaten the complainant/prosecutrix, who also resides in the vicinity, certainly need to be addressed.

17. Upon a conspectus of the foregoing facts and circumstances, this court is persuaded to grant to the applicant *interim bail* for a period of 3 (three) weeks from the date of his release, subject to the following conditions:

a. The applicant shall furnish a personal bond in the sum of Rs.25,000/- with 01 surety in the like amount from a family member, to the satisfaction of the Jail Superintendent ;

b. The applicant shall not leave the State of Delhi without permission of the court and shall *ordinarily* reside in his place of residence as per prison records;

c. Unless he is hospitalised, the applicant shall present himself before the Investigating Officer/SHO PS: Janakpuri every Saturday between 11 am and 11:30 am to mark his presence. However, the applicant shall not be kept waiting for more than one hour for this purpose;

d. The applicant shall furnish to the Investigating Officer/ SHO a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times ;

e. If the applicant has a passport, he shall also surrender the same to the Jail Superintendent;

f. The applicant shall not contact nor visit nor offer any inducement, threat or promise to the first informant/complainant or to any of the prosecution witnesses. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the matter;

g. The applicant shall file on record *and* furnish to the I.O. copies of his medical prescriptions and documents relating to the follow-up treatment undertaken by him, for which interim bail is being granted;

h. Upon expiry of the period of interim bail, the applicant shall duly surrender before the concerned Jail Superintendent;

i. Furthermore, to allay the apprehension expressed by the complainant/prosecutrix, it is directed that the I.O. in the matter shall place a call *twice a week*, at a time of the I.O.'s convenience, to the complainant/prosecutrix to ascertain if the applicant has in any manner tried to approach, contact or threaten her.

18. Nothing in this order shall be construed as an expression on the merits of the pending matter.
19. The application stands disposed of.
20. Other pending applications, if any, also stand disposed of.
21. A copy of the order be sent to the Jail Superintendent.

ANUP JAIRAM BHAMBHANI, J.

JULY 15, 2020/uj