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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. No.1951/2019

SHAKIR ALI

..... Petitioner

Through: Mr.Shadman Ali, Advocate
versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State with SI Rakesh Kumar, Spl.Cell

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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31.07.2020

(hearing through Video Conferencing)

CRL.M.(B). No. 5806/2020

Pursuant to order dated 28.7.2020 ,the status report of the review that was conducted on 28.7.2020 of the medical examination of the petitioner has been received from the Senior Medical Officer, Central Jail No.1, Tihar, New Delhi which indicates that the applicant is being provided all medicines and investigations are being done from the Jail Dispensary. The medical report however is thus to the effect that the applicant is a follow up case of ICSOL (Intra Cranial Space Occupying Lesion) Glioma (suggestive of Tumor), seizure disorder and is under treatment by the jail visiting doctors and the jail visiting specialist at G.B. Pant Hospital and DDU Hospital since 2017. The status report and the record indicate that on 11.6.2020 the applicant was reviewed at Neurosurgery Department and was advised PAC review with investigations, MRI Brain (PTC) with MRS to know the

progress and size of tumor and other morphology for further decision making to continue same medications and for further review in OPD with investigations for further management during the pendency of the present petition. The applicant was sent to the GB Pant Hospital on 05.06.2020 and was thereafter reviewed at the Neurosurgery Department of the GB Pant Hospital on 11.06.2020 and was advised PAC review with investigations and even the date of appointment for MRI Brain (PTC) with MRS was given at the GB Pant Hospital was 07.07.2020 and the applicant was scheduled for review at the Neurosurgery Department at the GB Pant Hospital on 18.06.2020 and on 18.06.2020, he was reviewed at the Neurosurgery Department where appointment date for MRI test was rescheduled for 19.06.2020 and on 19.6.2020 the MRI brain was done. It is further indicated that on 25.6.2020 the applicant was further reviewed at Neurosurgery Department at G.B. Pant hospital with MRI (Bain) reports and investigations and was advised surgery and PAC and was advised to attend OPD with patient's close relative preferably wife to explain about the disease and for consent. That on 26.6.2020, the applicant was reviewed at PAC Clinic at G B Pant Hospital and was advised COVID 19 Testing in view of his complaints of fever and cough and was advised to repeat PAC with COVID test report and other investigations. It is further indicated through the medical report that on 26.6.2020 he was kept in an isolation ward and on 27.6.2020 he was admitted in M.I.Room in view of his complaints of Giddiness, Headache, and Generalized weakness and was under treatment as advised by the G B. Pant Hospital and thereafter he was planned for COVID 19 Test and was shifted to the isolation ward of Central Jail-1, Tihar. It is further stated that on 2.6.2020 as the applicant had to go outside OPD and

after return from outside OPD, the applicant was kept in isolation ward for quarantine till 25.6.2020 because of his multiple visits to the G B Pant Hospital and 26.06.2020 after return from G.B Pant Hospital with advise for COVID 19 test he was shifted again for isolation and 27.6.2020 the applicant was shifted in M.R.I room in view of his complaints of Giddiness, Headache, and Generalized weakness as advised by the G B Pant Hospital.

The status report dated 29.7.2020 indicates that on 1.7.2020 applicant's COVID 19 test was done and the applicant was report positive on 2.7.2020 and thereafter on 2.7.2020 the applicant was referred to LNJP Hospital for further treatment and had been admitted there on 2.7.2020 and further that on 9.7.2020 the applicant's COVID test was done and he was reported negative for the COVID 19 and thereafter he was discharged from the hospital on 11.7.2020 but had been advised to be quarantined for 14 days and has been advised to follow up at GB Pant Hospital for ICSOL and that he had been kept in isolation ward in Central Jail-1, Tihar since 11.7.2020 as advised and planned for review at Neuro Surgery Department, GB Pant Hospital after completion of quarantine period. Thereafter the applicant was scheduled for PAC review at G B Pant Hospital on 27.7.2020 and 27.7.2020 the applicant was reviewed at PAC Clinic at GB Pant Hospital and was advised investigations for Pulmonary and Chest Physician Consultation and the PAC fitness was not given and was advised for review PAC after Pulmonary/Chest Physician consultation which was scheduled for review at Chest Clinic at DDU Hospital on 30.7.2020 as there was no Pulmonary and Chest Department at the G B Pant Hospital and thereafter the applicant was scheduled for PAC review at the G B Pant Hospital after chest clinic consultation as advised and thereafter at the Neurosurgery Department at G

B Pant Hospital.

The status report dated 30.7.2020 submitted by the learned APP for the State indicates that the applicant was reviewed at the Chest Clinic on 30.7.2020 and was advised for pulmonary consultation and chest physician consultation from higher centre and that the applicant has been planned for pulmonary/chest physician consultation at Safdarjung Hospital for today i.e. 31.7.2020.

On behalf of the applicant it has been submitted that he only seeks grant of bail on medical grounds as has come on the record, the learned APP for the State does not negate the medical condition of the applicant in view the allegations levelled against the applicant. On behalf of the applicant reliance is sought to be placed on the factum that the co-accused Ved Prakash @ Mistry has been granted interim bail vide order dated 19.5.2020 in Bail Appln. No. 64/2020 and vide order dated 16.7.2020 in Bail Appln. no. 64/2020 for the purpose of his surgery. Though the allegations levelled against the applicant are not identical as levelled against the co-accused Ved Prakash @ Mistri in as much as there was no recovery from the possession of the said accused of a contraband and there are averments of the recovery allegedly effected from the applicant herein that the applicant is alleged to have been found in possession of one kg of heroin and one kg of phenobarbital at the spot and 10 kg of AA which was recovered from his house during PC remand, and it is submitted on behalf of the State that the embargo under S37 of the NDPS Act 1985 would apply.

It is essential to observe that the applicant's condition repeatedly as per the record is indicated to be precarious and he has been advised a surgery of his brain for the removal of his brain tumor which is also

indicated vide the proceedings dated 8.5.2020 in as much as the report received on that date from the Senior Medical Officer, Incharge, Jail Dispensary, Central Jail-01, Tihar dated 5.5.2020 indicates that the petitioner had been advised for surgery and had been planned for admission and had also been advised for arrangement of a family member as required and needed for patient's care when admitted. To similar effect is the medical status report that has been received even for the day i.e., dated 29.7.2020. Taking into account the factum that there are repeated visits of the applicant to G B Pant Hospital and DDU Hospital which are being done and sometimes are being done on a daily basis in view of the condition of the applicant, it is considered appropriate, in the interest of justice to grant interim bail to the applicant for a period of 45 days on his furnishing a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court with the directions that the applicant shall surrender on the 45th day of his release, the applicant shall not leave the country, the applicant shall keep his mobile phone on at all times and drop a pin on the Google map to ensure that his location is available with the Investigating Officer, the applicant shall not make any contact with the witnesses of the prosecution, the applicant shall not commit any offence whatsoever and in the event of there being any FIR registered against the applicant, the State shall intimate the Court forthwith. An intimation in this regard be sent to the FRRO and to all the airports of the country.

The application stands disposed of.

ANU MALHOTRA, J

JULY 31, 2020/sv