

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.373 OF 2021

AKBAR @ MIYABHAI MAHEBOOB SHAIKH
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. S. S. Jadhav, Advocate for the applicant.
Mr. N. T. Bhagat, APP for the respondent – State.

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WITH
CRIMINAL APPLICATION NO.911 OF 2021

SMT. PARVEEN W/O SHAIKH RAUF
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. H. M. Shaikh, Advocate for the applicant.
Mr. N. T. Bhagat, APP for respondent No.1 – State.
Mr. S. S. Jadhav, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29-04-2021

ORDER :-

. Present application has been filed by the accused, who has been arrested in connection with Crime No.251 of 2019 registered with Bidkin Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 120(B), 201, 307, 143, 144, 147, 148, 149 of Indian Penal Code for temporary bail on medical ground.

2. Heard learned Advocate Mr. S. S. Jadhav for the applicant and learned APP Mr. N. T. Bhagat well assisted by learned Advocate Mr. H. M. Shaikh representing the original informant.

3. It has been submitted on behalf of the applicant that the applicant has developed serious health problems while in custody. He is highly diabetic patient since last more than 8 to 9 years. He is also suffering from Tuberculosis. Thereafter, he has developed advanced kidney stone and urinal track infection. His capacity of hearing from right ear has diminished. So also, he has developed cataract in the eyes. He has been advised to undergo surgery for the kidney stone and in this pandemic situation it could be available only with Dr. Omprakash R. Mundada i.e. Mundada Urology Hospital at Aurangabad. The applicant had filed application for temporary bail at Exhibit-32 in Sessions Case No.755 of 2019 i.e. the case which is filed in view of the said crime number. The learned Additional Sessions Judge, Aurangabad by order dated 08.03.2021 rejected the bail, but directed the Superintendent, Central Jail, Harsool, Aurangabad where the applicant is placed, to refer the applicant to Mundada Urology Hospital for the purpose of kidney stone surgery. The accused was then asked to pay necessary charges of the medical aid/treatment. He was also directed to deposit amount for escorting charges. The applicant had paid the escorting charges which

were then calculated at Rs.26,000/- and, thereafter, he is ready to incur the expenses of his treatment. However, thereafter, the jail authorities are asking him to pay more than Rs.2,00,000/- as additional arrangement for deploying a guard in the said hospital, which is a private hospital. The treatment cost would be approximately Rs.1,00,000/-. The applicant is not in a position to pay the said additional amount of Rs.2,00,000/- and, therefore, he is praying for temporary bail for a period of two months to undergo the said surgery. It is also submitted that the sons of the present applicant, who are co-accused in the matter, have been released on bail. The applicant undertakes that he will not visit Chitegaon, Tq. Paithan during the period of said two months, but that period would be utilized by him to get the medical treatment only. Learned Advocate for the applicant, therefore, prayed for sympathetic view.

4. Learned APP well assisted by learned Advocate Mr. H. M. Shaikh representing the original informant objected the application on the ground that the possibility of tampering cannot be ruled out. The main allegations are against the present applicant who has taken active part in committing murder of the husband of the informant. There are many criminal cases pending against the present applicant, so also he was externed from the area earlier. The learned Additional Sessions Judge

had considered the medical emergency of the applicant and had given necessary directions. It was for the applicant to deposit the necessary amount and still he can utilize that order to get himself treated.

5. At the outset, the voluminous record of the medical treatment given to the applicant would show that he is really suffering from the kidney stone problem. He was initially treated at GHATI Hospital, Aurangbad and thereafter, he was referred to J. J. Hospital, Mumbai. J. J. Hospital, thereafter, referred him to Jahangir Hospital, Bandra, Mumbai. It is also on record that the present applicant has been advised to undergo a specific surgery for the kidney stone disease. Now, as regards the present position in GHATI Hospital, Aurangabad i.e. the Government Hospital is concerned, it has been converted into Covid Hospital and, therefore, other surgeries are not conducted. The facilities which are required for the specific surgery that is advised for the applicant is available with Mundada Urology Hospital in Aurangabad itself. Schedule was also given in respect of surgery to be carried out on the applicant by concerned doctor on 16.02.2021. It was stated that if everything goes without hitch, the patient may be cured of his kidney stone disease after about two months. The fact is also required to be taken into consideration from the medical reports of the applicant that he is highly diabetic patient and his hearing level has come down. So

also, he has developed cataract thereby diminishing his vision. It appears that without aid, he is not in a position to conduct his daily pursuits. At present also, he is admitted in GHATI Hospital, Aurangabad. Under this circumstance, a sympathetic view is required to be taken and temporary bail deserves to be granted with a strict schedule, so that the health of the applicant would get improved. Hence, the following order :-

ORDER

- I) Bail Application No.373 of 2021 for temporary bail is hereby allowed.
- II) Criminal Application No.911 of 2021 for assist to PP stands allowed and disposed of.
- III) The applicant – Akbar @ Miyabhai Maheboob Shaikh, who has been arrested in connection with Crime No.251 of 2019 registered with Bidkin Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 120(B), 201, 307, 143, 144, 147, 148, 149 of Indian Penal Code, be released on P. R. bond of Rs.30,000/- with two sureties of Rs.15,000/- each for a period of two months which would commence from 03.05.2021 and would end on 03.07.2021.
- IV) The compliance of all the formalities of submitting the bail before the Trial Court should be undertaken from today till 02.05.2021.

V) The applicant should get himself admitted to Dr. Mundada's hospital i.e. Mundada Urology Hospital, Aurangabad on or before 04.05.2021 and thereafter, as per the schedule that was given by the concerned doctor on 16.02.2021 before the learned Additional Sessions Judge, endeavour be made to complete the surgery. The concerned doctor i.e. Dr. Omprakash R. Mundada is requested to perform the surgery on the applicant as early as possible and he should also adhere the time schedule of two months provided in this order.

VI) The said schedule also states about re-admission of the patient for three days after a month of surgery and, therefore, in the said period of one month, the applicant will have to be accommodated at some other place than the hospital during that period of one month. Taking into consideration this aspect, for the entire period of this temporary bail, the applicant is restrained from visiting Chitegaon, Tq. Paithan, Dist. Aurangabad.

VII) The applicant shall not indulge in any criminal activity, nor he shall tamper with the evidence of the prosecution in any manner.

VIII) Bail before the Trial Court.

IX) The Superintendent of Jail and Dean, GHATI Hospital, Aurangabad are directed to do the necessary things in pursuant to this order.

[SMT. VIBHA KANKANWADI, J.]