

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1584 OF 2021

Ayub Ibrahim Kapadia

Applicant

versus

The State of Maharashtra

Respondent

Mr.A.H.H.Ponda, Senior Advocate, i/by Mr.Aashish Raghuwanshi for applicant.

Ms.PP.Shinde, APP, for State.

Mr.Pr.Yadav for complainant.

API Nitin S. Gije, Oshiwara Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th June 2021

PC :

1. This is an application for bail for a temporary period on medical ground. The applicant is arrested in CR No.155 of 2017 registered with Oshiwara Police Station for offences under Sections 420, 467, 468, 471, 120(B), 506(2), 504 r/w 34 of Indian Penal Code. The arrest was effected on 5th May 2019.

2. The applicant has contended that he has suffered paralysis of face, tongue, upper and lower limbs. He was admitted in J.J.Hospital. MRI was conducted which revealed that he suffered from brain stroke. He requires assistance to perform daily routine and nursing care. The applicant has annexed to the application the report issued by CMO, Mumbai Central Prison dated 16th February 2021.

3. By order dated 9th April 2021 this Court had called for the report regarding health condition of applicant. Pursuant to that

medical report dated 24th April 2021 was placed on record. In the said report issued by CMO, Mumbai Central Prison, it was stated that the applicant has history of diabetes. His blood pressure rose to alarming level on 16th January 2021. He was referred to J.J.Hospital. MRI was taken and he was found to be suffering from brain stroke. He was managed conservatively and discharged on 30th January 2021. He is on regular medication. He is having slurred speech difficulty in agglutination and difficulty in walking without attendant support. He requires prolonged therapy. He was posted for follow up but could not be sent to J.J.Hospital due to lack of sufficient escort. He has not fully recovered from the ailment. Thereafter another medical report dated 5th May 2021 was placed on record mentioning that he is being provided medication at prison hospital for muscular weakness in left upper and lower limb and face and shifted to J.J.Hospital as indoor patient. MRI reveals brain stroke. He is having symptoms related to neurological deficit. It requires prolong and conservative management. It is possible at prison hospital and Sir J.J.Hospital. By order dated 5th May 2021 the application was adjourned to 8th June 2021 with direction to submit report about health condition of the applicant.

4. The application was moved before Vacation Judge on 19th May 2021 on the ground that health condition of the applicant is deteriorating. By order dated 19th May 2021 the jail authorities were directed to provide urgent medical treatment to the applicant and if necessary to take him to J.J.Hospital. It was also observed that excuse of non availability of staff cannot be accepted and if applicant's health condition demands urgent treatment from J.J.Hospital. The jail authorities are expected to give all the medical

facilities and treatment which are necessary. To ascertain compliance, application was kept on 31st May 2021. Compliance report was produced on 31st May 2021. In the compliance report dated 28th May 2021, it was stated that applicant was sent to J.J.Hospital's Neurologist on 21st May 2021 and 27th May 2021. They have advised him to continue medication, physio therapy and speech therapy. He is advised to CT Scan brain. Appointment for CT Scan given on 10th June 2021. He is having slurred speech and difficulty in walking without attendant. By order dated 31st May 2021, learned Prosecutor was requested to submit as to how State proposed to give physio therapy and speech therapy to applicant. Application was adjourned to 4th June 2021. On 4th June 2021 the respondents submitted that CMO will seek opinion of J.J.Hospital whether suggested therapy is possible without instruments. The application was adjourned to 11th June 2021. Report dated 4th June 2021 was taken on record. In the report dated 4th June 2021 it was stated that as per order of the Court, prisoner was sent to J.J.Hospital on 3rd June 2021. CT Scan was conducted but did not opine about speech therapy and physio therapy. If the physio therapy is suggested without instruments, it can be done at prison. CT Scan shows changes. Subsequently report dated 9th June 2021 is forwarded to this Court. In the said report it was mentioned that the applicant was sent to J.J.Hospital on 8th June 2021 for physio therapy and speech therapy. It was also stated that speech therapist explained and taught certain exercises to the applicant and told to do everyday and send him back to the jail.

5. Learned counsel for applicant submitted that considering the ailments, such as paralysis and brain stroke, the applicant be granted

temporary bail. He is the resident of Surat. He would take appropriate treatment at Surat during the period of bail. The health condition of applicant is not good. Hence, the applicant be released on temporary bail for a period of six months or for any period as this Court deem fit and proper.

6. Learned APP opposed the application. It is submitted that all the required medical facilities will be provided to the applicant in jail and if required in J.J.Hospital. In the past applicant had attempted to abscond.

7. I have perused the medical report annexed to this application and reports submitted to this Court pursuant to the orders passed by this Court. It is apparent that required medical treatment is available and provided to the applicant in jail and J.J.Hospital. The report of CT-Brain angiography dated 3rd June 2021 mentions that tiny chronic infarct is noted in left frontal lobe. No other significant abnormality. CT-brain angiography reveals no major occlusion/stenosis seen. I have also perused the order passed by learned Sessions Court rejecting the application for bail. In the said order dated 18th March 2021 it is stated that two similar crimes were registered against applicant. The informant was intimidated at the point of fire arm in the past. The applicant had absconded from Police custody. He is likely to abscond. The investigating officer has submitted that the applicant had absconded twice. He had obtained bail on medical grounds and had not got admitted in hospital. He has cheated several banks by forging the documents. The offence is serious. The report of CMO mentions that the applicant has undergone brain stroke. He requires therapy. It was further observed that although

medical condition of applicant is shown, the fact that applicant has absconded from hospital by breaking the glass of bathroom which is evident from the say filed by police, cannot be lost sight of. The said fact speaks in volumes vis-a-vis the conduct of accused that he may abscond.

8. Considering the aforesaid circumstances, the applicant cannot be granted bail on medical grounds. The Jail Authorities shall provide all required medical treatment to the applicant. Hence, I pass following order :

ORDER

Criminal Bail Application No.1584 of 2021 is rejected and stands disposed of.

(PRAKASH D. NAIK, J.)

MST