

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***INTERIM APPLICATION NO. 1604 OF 2021
(ON MEDICAL GROUNDS)***

***IN
CRIMINAL BAIL APPLICATION NO. 167 OF 2019***

Sarfraz Jaffar Ahsan @ Amar Khanna	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Nitin Sejpai for the Applicant

Mr. S. V. Gavand, A.P.P for the Respondent–State

Mr. Ravindra Tonge, Jailor-Gr-2, Taloja Central Prison, Navi Mumbai, is present in Court

API Mr. Dharade, from DCB CID, Unit-IX, Bandra, is present in Court

***CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO-CONFERENCING)
WEDNESDAY, 30th JUNE 2021***

P.C. :

1 Heard learned counsel for the applicant and the learned A.P.P
for the State.

2 At the outset, learned counsel for the applicant does not press

the prayer seeking interim bail, but only requests that the applicant be admitted to the Hospital, for removal of his stent (in kidney).

3 The grievance of the learned counsel for the applicant is that despite the report of the doctors showing that the stent in the kidney has to be removed, the same has not been done, till date. He submits that the applicant is not being taken to the hospital by the prison authorities for removal of his stent and when taken, is taken late and not at the time, the applicant has been called for check-up/procedure for removal of the stent. He submits that though the Sessions Court vide order dated 16th March 2021, had directed the prison authorities to take the applicant to OPD-Urology Department of J.J. Hospital for removal of Stent as per advice given by CMO, Taloja Central Prison, the applicant was not taken to the J.J.Hospital. He submits that the learned Sessions Judge has in his order dated 30th April, 2021 observed that despite the order dated 16th March 2021 directing the Superintendent of Jail to refer the applicant to Urology Department in J.J. Hospital in OPD for removal of Stent, the applicant was not taken to the Hospital. He submits that the learned Sessions Judge issued directions to the Superintendent of Jail to take appropriate steps for compliance of order dated 16th March 2021 passed by him immediately and report compliance. He submits that even after the said order dated 30th

April, 2021 was passed, the applicant was not taken to the Hospital and hence the applicant was constrained to file this application. He submits that it was only pursuant to the order dated 21st June, 2021 passed by this Court, that the applicant was taken to J.J. Hospital on 22nd June 2021. Learned counsel for the applicant prays that in these circumstances, having regard to the fact that the jail authorities are not taking the applicant to the Hospital as directed, and having regard to the medical condition of the applicant and that the stent in the kidney has to be removed expeditiously for which medical tests will have to be done, the applicant be admitted to the J.J. Hospital for further treatment, including removal of Stent. He prays that the applicant be kept in the J.J. Hospital under observation, till the Stent in the kidney is removed.

4 Learned A.P.P does not dispute the fact that the Sessions Court has passed two orders directing that the applicant be taken to the J.J. Hospital and that the same was not complied with by the Superintendent of the Jail, till an order was passed by this Court on 21st June 2021. Learned A.P.P, on instructions of Mr. Ravindra Tonge, Jailor-Gr-2, Taloja Central Prison, Navi Mumbai, who is present in Court, states that they have no objection, if the applicant is admitted in the J.J. Hospital, till his Stent is removed by the doctor.

5 Perused the papers. It is not in dispute that whilst the applicant was on interim bail, he underwent a surgery, whereby, a Stent was implanted in his kidney on 19th November 2020. The said Stent was to be removed within a couple of weeks thereafter. The applicant surrendered on 15th January 2021 before the trial Court, pursuant to the order passed by the Hon'ble Supreme Court. Whilst in jail, the applicant filed an application praying therein that the Superintendent of the Taloja Central Prison be directed to take the applicant to the J.J. Hospital for removal of his stent. The trial Court passed the following order dated **16th March 2021** :

“Perused medical report. The accused be referred to OPD-urology department of J.J. Hospital for removal of stent as per advice given by CMO, Taloja Central Prison. Adjourned to 30-03-2021 for appearance.”

6 Despite the said order, the applicant was not taken to the J.J. Hospital for more than a month and hence, the applicant again filed an application before the trial Court and the trial Court passed the following order on 30th April 2021 :

“Perused application and say. By virtue of order dated 16.03.2021 the Supdt of Jail was directed to refer the Accused to Urology Dept. of JJ Hospital in OPD for removal of strain as per advise given by CMO, Taloja

Central Prison. However, it is the grievance of Accused till today the said directions are not complied by the Supdt of Jail. Therefore, issue direction to the Supdt of Jail to take appropriate steps for compliance of order passed on 16.03.2021 immediately and report the compliance. The order be communicate to Supdt of Jail immediately through Mail. The Sheristedar, to report compliance.”

7 Despite both the aforesaid orders dated 16th March 2021 and 30th April 2021, the applicant was not taken to the Hospital for removal of his Stent. It is only during the hearing of the present application on 21st June, 2021, that the applicant was taken to the J. J. Hospital on the very same day i.e. on 21st June 2021. Accordingly, the matter was adjourned to 23rd June, 2021, for the medical report of the applicant.

8 On 23rd June, 2021, learned A.P.P produced the report dated 22nd June 2021 issued by the Chief Medical Officer, Taloja Central Prison, Navi Mumbai along with the report of the Department of Urology, J. J. Hospital dated 21st June 2021. From the report given by the Department of Urology dated 21st June 2021, it appears that the applicant was taken to the J. J. Hospital for evaluation and further management. It was stated in the said report that the applicant would have to undergo certain laboratory tests- CBC, urine routine and microscopy, urine culture and sensitivity, renal function test, to know the status of the DJ Stent-NCCT-KUB. It is further

stated that after evaluating the above investigations, the applicant will need intervention in the form of Cystoscopy + DJ Stent removal SOS adjuvant procedures as per the condition of the Stent found in NCCT-KUB scan. Till then, the applicant was advised to take certain medications. The Department of Urology had also stated that the applicant be brought to Urology Department for the aforesaid investigations for planning and management of the applicant's treatment. The applicant was to be taken to the Hospital again on 24th June 2021 for investigations but the applicant could not be taken to the Hospital due to the agitation at Navi Mumbai and as police escort was not available. Hence, applicant was taken to the J. J. Hospital on 28th June 2021. It appears, that the applicant was taken late. Learned A.P.P has not placed on record the medical report of the doctor with respect to the applicants examination/medical condition, despite assuring to produce the same.

9 Considering the earlier report of the Department of Urology dated 21st June 2021 that the applicant will have to undergo certain investigations before removal of his stent and that medication has already been prescribed, it would be expedient to direct the jail authorities to admit the applicant in J.J. Hospital, Mumbai.

10 The Superintendent of Jail is directed to get the applicant admitted to the J.J. Hospital tomorrow i.e. 1st July, 2021, so that the applicant can undergo the procedure of removal of his Stent implanted in the kidney. The applicant to be kept in the Hospital till such time his stent is removed and till such time the doctors deem it fit to discharge the applicant.

11 It is extremely unfortunate that the applicant was constrained to approach this Court despite the trial Court passing two orders dated 16th March 2021 and 30th April 2021 directing the Superintendent, Taloja Central Prison to take the applicant to J. J. Hospital for treatment. Orders passed by any court cannot be ignored and overlooked by the jail authorities. The jail authorities ought to have complied with the said orders passed by the Sessions Court promptly, as directed by the learned Sessions Judge.

12 Mr. Ravindra Tonge, Jailor-Gr-2, Taloja Central Prison, Navi Mumbai, who is present in Court, has taken note of the order passed by this Court today. He states that the applicant will be admitted to the J. J. Hospital, tomorrow for his treatment, as stated aforesaid. Statement accepted. He further states that the jail authorities will, henceforth, promptly comply with the orders passed by the trial Courts to take the

accused to Hospitals, for treatment. Statement accepted.

13 Interim Application is disposed of on the above terms. Bail Application No. 167/2019 be listed for admission on 5th July 2021.

14 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.