

CRIMINAL WRIT PETITION NO. 2334 OF 2021

Versus

**CORAM : S. S. SHINDE &
N.J. JAMADAR, JJ.**
DATE : 11TH AUGUST 2021

JUDGMENT (PER N.J. JAMADAR, J.)

1. This petition under Article 226 of the Constitution of India is preferred by the petitioner-accused for grant of temporary bail on medical ground.

2. The petitioner is arraigned in C.R. No. 136 of 2019, registered with Rajarampuri Police Station for the offences punishable under sections 307, 395, 143, 147, 349, 353, 332, 109, 324, 420, 427 and 120-B of the Indian Penal Code, 1860 ('the Penal Code'), sections 4 and 5 of the Maharashtra Prevention of Gambling Act, 1887,

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section 37 read with section 135 of the Police Act, 1861, section 65(e) of the Maharashtra Prohibition Act, 1949, sections 21(2), 21(3) and 23 of the Banning of Unregulated Deposit Schemes Act, 2019 and sections 3(1)(ii), 3(2), 3(4) and 3(5) of Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act'). The petitioner is alleged to be a member of an organised crime syndicate. The petitioner and co-accused were arrested 22nd May 2019. Since then, the petitioner is in custody.

3. The petitioner avers that he is suffering from chronic diabetes and hypertension. On 27th March 2021, the petitioner suffered an injury on his left leg, which lead to pus formation. The petitioner was initially taken to Chhatrapati Pramila Raje Hospital. An application preferred by the petitioner for temporary bail on medical ground came to be rejected by the learned Sessions Judge by an order dated 5th April 2021. However, the learned Sessions Judge, by an order dated 8th April 2021, directed that the petitioner be admitted at Diamond Superspeciality Hospital, Kolhapur for treatment, the expenses of which shall be borne by the petitioner or his relatives.

4. The petitioner preferred Bail Application No. 1632 of 2021. By an interim order dated 2nd June 2021, a learned Single Judge

permitted the petitioner to avail the treatment at Diamond Superspeciality Hospital, Kolhapur and directed that the State shall not re-lodge the petitioner in prison without obtaining the leave of the Court. On 18th June 2021, the said application came to be disposed of as withdrawn. However, the direction to the State not to re-lodge the petitioner in prison was continued for a period of 15 days therefrom.

5. In view of the interdict contained in section 21(4) of the MCOC Act, the petitioner invoked the writ jurisdiction of this Court for grant of temporary bail. By an order dated 1st July 2021, while continuing the interim direction, not to re-lodge the petitioner in prison, we had called the report from Diamond Superspeciality Hospital, Kolhapur where the petitioner has been undergoing treatment.

6. The latest Medical Report, dated 29th July 2021 reads as under :

“ The patient..... (was) admitted on 11/4/2021 for uncontrolled Diabetes a/w. ischemic limb wound with necrosis of deep tissue of lower limb extremities. Operated for same by Dr. S.M. Rane twice on 14/4/21 and 22/4/21. Then patient developed CVA with lower limb weakness so treated accordingly. Now patient is shifted to Shshrusha Hospital on 23/7/21 due to natural calamity of flood at our Diamond Hospital. Patient is recovering and wound is healing so can be discharged in next 3-4 days.

Patient needs alternate day dressing which

can be done on OPD Basis.”

7. The Sub-Divisional Police Officer, based on the aforesaid certificate, filed a report to the effect that after the petitioner is discharged from hospital, he would be taken to Diamond Superspeciality Hospital, Kolhapur, as and when instructed by the Medical Officer, for dressing and treatment on OPD basis. In view of the aforesaid medical report, which clearly records that the petitioner was on the course of recovery, wound was also healing and the petitioner could be discharged soon, the purpose for which the petitioner sought bail on medical ground stood served. In any event, it is imperative to note that the petitioner has been under treatment since 11th April 2021, pursuant to the orders passed by the learned Special Judge and this Court, from time to time. More than four months have elapsed. The petitioner seems to have substantially recovered.

8. Mr. Parkar, the learned counsel for the petitioner would, however, urge that the petitioner has not completely recovered. He still cannot put his foot on the ground. Mr. Parkar would, therefore, urge that to recuperate the petitioner be granted bail for a suitable period lest the condition of the petitioner may again deteriorate.

9. It is imperative to note that the treatment, which the

petitioner now requires, is dressing or bandage. The Medical Officer has opined that the alternate day dressing can be done on OPD basis. The Police Officers have submitted a report that the petitioner would be taken to the hospital for the said purpose as per the instructions of the Medical Officer.

10. In this view of the matter, especially when the petitioner has been under treatment for almost four months, pursuant to the orders passed by the Special Judge and this Court, the prayer for release on temporary bail does not seem justifiable. The condition of the petitioner does not appear to be such that the treatment cannot be availed on OPD basis. We are thus not inclined to accede to the submissions on behalf of the petitioner. In our view, the purpose for which, the temporary bail was sought, i.e. treatment, has been served.

11. We, however, direct the Sub-Divisional Police Officer, City Division, Kolhapur to make necessary arrangement to take the petitioner to Diamond Superspeciality Hospital and/or any other hospital, as the circumstances may warrant, for the purpose of treatment, dressing (bandage) or any other treatment on OPD basis, on the dates and time, as may be advised by the concerned Medical Officer, without fail.

12. We emphasize that absence of police escort or other logistical reasons shall not be a ground for not taking the petitioner to the hospital for the aforesaid treatment on OPD basis.

13. With the aforesaid clarification, we vacate the interim direction not to re-lodge the petitioner in prison, and, consequently, after discharge from the hospital, the petitioner be re-lodged in Prison.

14. The petition stands dismissed with the aforesaid directions and clarification.

15. All concerned to act on an authenticated copy of this order.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]