

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

CRIMINAL BAIL APPLICATION NO. 47 OF 2021

Nilesh Shriniwas Baswant

...Applicant

Versus

The State of Maharashtra

...Respondent

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Dr.Abhinav Chandrachud i/b. Ms. Meenakshi Sukeshi, Advocate for the Applicant.

Mrs. A. A. Takalkar, APP for the Respondent – State.

ASI- Sanjay Kadam, Kondhava Police Station, Pune.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th FEBRUARY, 2021.

PC :

1. In accordance with order dated 27th January, 2021 passed by coordinate bench, this application was listed before me.

2. This is an application for bail under Section 439 of Cr.PC. The applicant is arrested on 5th August, 2016 in connection with C.R. No. 477 of 2015, registered with Kondhava Police Station, Pune for the offence punishable under Sections 307, 387, 487, 504, 506(ii) r/w. 34 of Indian Penal Code, 1860 ("IPC" for short). Sections 3(1) (ii), 3(2), 3(3), 3(4) of M.C.O.C. Act were invoked.

3. The applicant had preferred an application for bail before M.C.O.C Special Court on merits. The said application was

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rejected by order dated 24th October, 2017. Thereafter, applicant preferred another application for bail before same Court. The said application was rejected on 9th July, 2018.

4. The applicant then approached this Court seeking bail on merits. Application was rejected on 30th January, 2020. While passing the said order, this Court has taken into consideration, evidence on record and observed that, in view of nature of evidence against applicant, no case for grant of bail is made out. In pursuant to that the applicant had preferred Special Leave Petition before the Hon'ble Supreme Court on 30th March, 2020 challenging Order dated 30th January, 2020 passed by this Court, rejecting application for bail.

5. The Hon'ble Supreme Court by Order dated 8th April, 2020 granted bail on medical grounds for a period of four weeks. He was directed to surrender after a period of four weeks. The contention of the applicant was that he has been diagnosed with Neuroendocrine neoplasm which is akin to cancerous tumor which requires urgent proper investigation. Thereafter, the applicant preferred Misc. Application No. 925/2020 before the Apex Court for extension of interim bail. The Hon'ble Supreme Court by Order dated 8th May, 2020 issued notice to respondents and extended bail till further orders. According to applicant Shaswat Hospital, Pune issued

certificate that applicant is suffering from colonic well differentiate neuroendocrine malignancy. He requires DOTA PET scan to ascertain stage of the disease. Duration of treatment will depend on staging of the disease as per PET scan report. He will require multiple cycles of chemotherapy. Subsequently, the application was moved before Apex Court seeking extension of bail by relying upon the medical case papers. The State had filed an affidavit dated 21st May, 2020 before Apex Court. By Order dated 26th May, 2020, the Hon'ble Supreme Court extended the bail for a period of 3 months. The Apex Court had observed that affidavit in reply has been filed by respondent state accepting that the petitioner suffers from cancer and that he requires multiple courses of chemotherapy. Considering the entirety of matter bail was extended.

6. In pursuant to aforesaid order the applicant preferred an application for bail before Special Court under the M.C.O.C. Act on 13th June, 2020. Reliance was placed on the medical case papers, in support of the prayer for bail. The applicant relied upon medical report dated 22nd June, 2020 from Cell Vision, Pathology Suggesting Immuno-histo chemistry and clinical and radiological treatment and medical report from Onco-life cancer centre, Mumbai stating that applicant requires six cycles of chemotherapy weekly as he has “well-differentiated Neuroendocrine tumour”. The said certificate was

purportedly issued by Dr. Dattatraya Andure. Learned Sessions Judge by Order dated 9th July, 2020 rejected the said application. While rejecting the said application, it was observed that the applicant requires chemotherapy which is available at Sasoon Hospital.

7. The applicant preferred this application in this Court. The applicant then preferred Misc. Application before the Hon'ble Supreme Court and bail was extended vide Order dated 25th August, 2020 for a period of about two months. The applicant was granted liberty to approach High Court for taking up pending appeal. Thereafter the applicant again approached Apex Court and by Order dated 27th October, 2020 bail was extended for four months.

8. Learned counsel for the applicant submitted that the applicant has good case on merits. The provisions of M.C.O.C. Act are not applicable. There are no previous cases. The applicant has been acquitted in other cases. It is further submitted that the applicant is ailing from serious disease, which is evident from the medical case papers, which are placed before the Court. Interim bail was granted by Apex Court on medical ground which has been extended from time to time. Learned counsel for the applicant also placed on record the certificate dated 8th July, 2020 issued by Shaswat Hospital, stating that as per Sasoon Hospital report dated 7th July, 2020, the

applicant is suffering from pulmonary tuberculosis and require treatment. As per advice of onco physician dated 24th June, 2020 chemotherapy advised will be given after the tuberculosis treatment is over. He relied upon medical case papers of Sasoon Hospital. The Supreme Court while extending bail vide order dated 26th May, 2020 had observed that in the affidavit by state, it is accepted that the applicant suffers from cancer and required multiple courses of chemotherapy. If there is any doubt regarding medical case papers. The applicant may be directed to be examined by any other doctor. It is submitted that the applicant is undergoing treatment and bail can be granted to him on merits as well as on medical ground.

9. Learned APP opposed the application for bail. It is submitted that previous application was rejected on merits. There is no change in circumstances. Affidavit is filed opposing bail. There are statements of witnesses, confessional statements under Section 18(1) M.C.O.C. Act. The material against applicant has been considered by this Court while rejecting application for bail. It is further submitted that applicant has relied upon false medical certificate for seeking interim bail. Learned APP placed for consideration the report dated 22nd February, 2021 with regards to investigation conducted by Police, in that regard. It is submitted that the applicant had claimed that he is suffering from cancer. Learned APP tendered the report

dated 25th February, 2021. Submitted by pulmonary division of Sasoon Hospital with case papers. The report indicate that, the applicant was suffering from tuberculosis. He was taking treatment for the same from 7th July, 2020. He is cured and medication is stopped from 1st January, 2020. It is submitted that FIR has been registered against applicant on 23rd February, 2021 with Shivaji Nagar Police Station for offences under Section 465, 468, 471, 198, 420 of IPC for fabricating medical certificate and investigation is in progress. The applicant was not suffering from cancer.

10. It is submitted that even otherwise in view of embargo under Section 21(4) of M.C.O.C. Act temporary bail cannot be granted on medical grounds. Learned APP has placed reliance upon decision of this Court in the case of *Sambhaji Haribhau Kudale Vs. State of Maharashtra 2006 ALL MR (Cri) 3193, Anil Umrao Gote Vs. State of Maharashtra 2005 ALL MR (Cri) 350 and Yogesh Ahiwale Vs. State of Maharashtra dated 28th July, 2020* delivered in B.A. No.120 of 2020 wherein it was observed that the Special Judge or the High Court cannot release the accused charged for offences under M.C.O.C. Act on temporary or interim bail.

11. The applicant preferred application for bail before Special Court on merits which were rejected on 24th October, 2017

and 9th July, 2018. The applicant preferred application on merits before this Court which was rejected on 30th January, 2020. He preferred Special Leave Petition before Supreme Court challenging Order dated 30th January, 2020. Applicant was granted interim bail on medical ground. The relief was extended till 27th February, 2021. The applicant preferred application for bail on merits as well on medical ground before Special Court on 13th June, 2020. The said application was rejected on 9th July, 2020. It was submitted before the Special Judge that applicant is cancer patient. He is in custody for Five years. Due to Covid situation it is unsafe to be in custody. The Special Court observed that applications were rejected by the said Court and also by High Court. Prosecution pointed out that sufficient care is taken of all inmates. It was also submitted at the instance of applicant that, applicant is diagnosed with neuroendocrine neoplasm which is a kin to cancer. The Court observed that, certificate issued by Dr. Dattatraya Andure, Onco Life Cancer Centre dated 24th June, 2020 which requires chemotherapy depending upon review of IHC and PET CT SCAN. The said treatment is available at Sasoon Hospital. Hon'ble Supreme Court principally granted interim bail for investigation. Application was rejected.

12. Learned APP submitted police report dated 24th February, 2021 opposing bail. From documents on record it appears that Police Inspector was directed to conduct enquiry and submit report since applicant has relied on medical certificate about cancer, tuberculosis and COVID and there was doubt as to from which ailment the applicant is suffering. Applicant was examined at Sasoon Hospital on 1st February, 2020 for bleeding in anus. He was advised endoscopy and biopsy on 12th February, 2020. Endoscopy and biopsy was conducted on 12th February, 2020. On 14th February, 2020 he was given report by Histopathology department stating well differentiated Neuroendocrine Neo Plasm IHC Ki67<10% and no dysplasia or malignancy seen in present biopsy. Applicant was sent to medical officer at Sasoon Hospital. He was advised DOTA Scan. He was taken to Ruby Hall Clinic on 17th July, 2020 and Dr.Amol Galge conducted DOTA Scan. On examining reports, it was noticed that infection to intestine was removed. DOTA Scan showed that there were no signs of cancer. Jail authorities were informed about it. On the basis of biopsy and endoscopy conducted at Sasoon Hospital, the applicant got himself admitted at Shaswat hospital of Dr. P. S. Karmarkar on 29th April, 2020. Certificate stating that applicant suffers from Neuroendocrine Colonic Malignancy, was issued. He was discharged. On 9th May, 2020 he was advised DOTA PET Scan due to

collitus in intestine. Dr. Karmarkar sent the report for second opinion to Dr. Gayatri Pathak of Cell Vision Pathology. It was reported that applicant has “Well differentiated Neuroendocrine Tumour” and advised Radiology. The applicant relied on certificate of Dr. Dattatray Andure of Onco-Life Cancer Centre Pvt. Ltd dated 24th June, 2020 stating that “Applicant needs be treated by chemotherapy 3 weeks for six cycles depending upon review of IHC and PET Scan”. The police approached Dr. Andure and showed him letter dated 24th June, 2020 issued by him. He stated that on 24th June, 2020 applicant had visited him for treatment. He had shown report dated 14th February, 2020 issued by Sasoon Hospital and report dated 22nd June, 2020 issued by Dr. Gayatri Pathak from Cell Vision Pathology Laboratory. Applicant was advised IHC on tissue block, PET CT Scan, routine blood investigation, somatostating scintigraphy scan, 2D eco 6, surgical oncologist opinion for resectability and review after reports and treatment will be decided as per reports and opinion on demand of patient, the remark was given on letterhead of Hospital in his handwriting and signature. Applicant was requesting that letter be issued that he needs chemotherapy. Dr. Andure told him that he do not require chemotherapy and such letter cannot be issued to him. Dr. Andure was shown photocopy of letter dated 24th June, 2020 wherein it was stated that patient needs to be treated by

chemotherapy 3 weekly for six cycles depending upon review of IHC and PET CT Scan. Doctor denied having issued such letter and stated that the handwriting and signature is not his. The police report indicate that, during enquiry and from documents received, it is disclosed that applicant by using report of Sasoon Hospital approached Shaswat Hospital and obtained certificate of Neuroendocrine colonic malignancy and for further treatment claiming interim bail. DOTA PET Scan test report were not shown to medical officers. Enquiry with doctors from Sasoon hospital revealed that applicant do not require any surgery or chemotherapy. The report contains statement of Dr.Amol Galge dated 18th February, 2021. He has stated that applicant was brought to Ruby Hall Clinic hospital for DOTA PET Scan. On 17th March, 2020 he conducted PET Scan and gave report. In the PET Scan he did not find SOMATO STAIN receptor tumour. On examination, he did not find Neuro Endocrine Tumour. The Report dated 17th March, 2017 regarding PET-CT mentions that "No Obvious Somatostatin receptor positive lesion seen elsewhere in body." Statement of Dr.Karmarkar was recorded. He stated that DOTA PET Scan test and biopsy test do not indicate Neuro Endocrine Neo plasms. Statements of Dr.Gayatri Pathak, Dr.Vora, Dr. Kiran Kumar and other Dr.Andure were recorded. Patient do not require surgery. I have also perused the certificate of

onco-life centre allegedly forged by applicant.

13. The applicant has also annexed medical case papers of Sasoon Hospital and tendered compilation of medical case papers of Sasoon Hospital. The said case papers indicate that patient is being treated for pulmonary Kochi/ Pulmonary tuberculosis. FIR is registered against applicant for forgery of documents.

14. The previous application was rejected on merits. In the light of aforesaid circumstances, it is apparent that applicant has been misleading the Courts. The applicant is not entitled for bail on merits as well as on medical ground. Application deserves to be rejected.

15. This application was listed before me on 22nd February, 2021. It was adjourned to 24th February, 2021 at the request of advocate for applicant. It was heard on 24th February, 2021 and adjourned to 26th February, 2021. Further arguments were heard today and this application is disposed of with following order.

ORDER

- (i) Bail Application No. 47 of 2021, is rejected;
- (ii) This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned

will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)