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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2591 OF 2021
WITH
IA/2313/2021
IN
CRIMINAL BAIL APPLICATION NO. 2591 OF 2021**

RAKESH KUMAR WADHAWAN Applicant.
V/s
THE STATE OF MAHARASHTRA Respondent.

**WITH
CRIMINAL BAIL APPLICATION NO.2776 OF 2021
WITH
IA/2314/2021
IN
CRIMINAL BAIL APPLICATION NO.2776 OF 2021**

RAKESH KUMAR WADHAWAN Applicant.
V/s
**THE DIRECTORATE OF ENFORCEMENT
AND ANR.** Respondents.

Mr. Arjun Vinod Bobde, a/w Mr. Chirag Naik, Ms. Vaijayanti S., Mr. Mahesh A., Mr. Yashraj Kinkhede, Ms. Shubhangi J., Mr Rutej Pimpal Kute, Mr. Sagar Shetty, Mr. Asmit Agarwal i/b MZM Legal for the Applicant.

Ms. P.P. Shinde, APP for the Respondent/State.

Mr. Aamir Malik for the Intervener.

Mr. Saurabh Kshirsagar i/b Mr. Hiten Venegaonkar for Respondent/ED.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 14, 2021

P.C.:-

1] Both these Applications are moved by the Applicant for grant of bail in economic offences in CC No.882/PW/2019 arising out of EOW, Mumbai C.R. No.86 of 2019 punishable for the offence under Sections 406, 409, 420, 465, 467, 471, 120B of the Indian Penal Code and in P.M.L.A. Special Case No.8 of 2019 arising out of ECIR/MBZO-I/9 of 2019 filed under Sections 3 read with Section 4 of the Prevention of Money Laundering Act.

2] Applicant is already chargesheeted.

3] Mr. Arjun Bobde, learned Counsel appearing for the Applicant would urge that the Applicant is seeking bail purely on medical ground.

4] According to him, vide order dated 18/4/2021, the Metropolitan Magistrate, Holiday Court, has considered serious medical issues as regards health condition of the Applicant, as he suffered Covid-19 lung disease with cytokine storm and associated multiple comorbidities, low WBC count and immunosuppression, as is certified

by Dean of the KEM Hospital. Applicant was permitted to be shifted to private hospital.

5] He would further claim that there is no Cardiac I.C.U. available with KEM Hospital where Applicant is presently stationed/under treatment. According to him, in view of multiple Comorbidities, Applicant has rendered himself immunocompromised. As a consequence, he is more prone to hospital acquired infections. He would claim that in government setup due to heavy patient footprints, Applicant suffered the acquired pneumonia which was required to be treated with IV antibiotics. As such, according to him, making the Applicant to undergo major procedure in infectious atmosphere would further endanger his life. As such, there is high risk of he getting infected. As such, Mr. Bobde would claim that Applicant, a senior citizen, if permitted to be shifted to private hospital, he shall bear his own cost of transportation, escort and medical expenses.

5] So as to substantiate his contention that Applicant has constitutional right to claim better medical facilities, he has drawn support from the judgment in the matter of *P.V. Varvara Rao vs*

National Investigation Agency and Another reported in **2021 SCC OnLine Bom 230**, particularly the observations made in paras 83, 84 and 85.

6] Learned APP Ms. P.P. Shinde while opposing the prayer has invited attention of this Court to the earlier orders passed from time to time on interim applications so also main application. She would rely on the report submitted by Chief Medical Officer of Mumbai Central Prison, Mumbai and also communication dated 13th October, 2021 received from the office of Dean, KEM Medical College. The said communication reads thus:

“Mr. Rakesh Kumar Wadhwan, as has been previously mentioned, is suffering from Long Covid after he was infected with Severe form of Covid-19 infection. This has resulted in his Immunocompromised status.

He has Multiple Comorbidities like Diabetes, Blood Pressure, Sleep Apnoea, Chronic Kidney Disease and a known Case of Coronary Artery Disease.

He was treated in the past with Coronary Angioplasty/Stent.

Recently he has undergone Dual Chamber Pacemaker Implantation after he developed Breathlessness, Low/Irregular Heart Beats and drop in Oxygen saturation.

His Coronary Angiogram shows Critical Calcific

Blockage of one of his Coronary Artery, which needs Angioplasty/Stent/Rotablator to stabilize his Heart Muscles.

KEM Hospital is undergoing Major Repairs/Renovation at present. The Cardiac Operation Theatre/Cath Lab/Intensive Care Unit are all in the vicinity of these Repairs.

His Angioplasty is a high risk procedure in view of his multiple Comorbidities and raw skin wound on Chest (which was used for Pacemaker Implantation).

It would not be prudent to comment on the expertise/facility available at other Government Hospitals in Mumbai.”

It is further submitted by her on instructions that already regular I.C.U. is operational at KEM Hospital where Applicant can be treated in case of emergency and Cardiac I.C.U. shall be ready in all respects within a period of one week from today. She further claimed that Application is liable to be rejected as Applicant is made available best of the treatment by expert doctors.

7] Considered submissions.

8] After health report was called from the Medical Superintendent, Arthur Road Prison by judicial order on 9/9/2021, this Court noted

about referring the Applicant to KEM Hospital on 1/9/2021 for Cardiac and other multi-organ involved medical treatment as same could not be managed in prison hospital. Thereafter, on 17/9/2021, this Court analysed report of doctor in regard to ailment and treatment given to the Applicant and observed that Applicant is entitled for medical assistance. However, once he is in judicial custody and he can be made available appropriate treatment at KEM Hospital where all expert facilities are made available to the Applicant, the Court at interim stage has not shown any indulgence. The Court also observed that in case of availing of services of expert consultants whose names are mentioned by the Applicant, Dean, KEM Hospital was directed to look into the same and permit visit of such experts suggested by the Applicant after having consent from Dean, KEM Hospital. Nothing is placed on record to demonstrate that Dean, KEM Hospital has not accepted Applicant's request for permitting visit of doctors of his choice to KEM Hospital. Thereafter, again on 24/9/2021, Court noted that patient requires immediate medical treatment of acute nature and accordingly Applicant underwent operation for pacemaker implantation and is recovering out of the same.

9] In the aforesaid backdrop, what is noticed is, best possible treatment at well known Government/Corporation Hospital is made available to the Applicant. There is nothing on record to infer that Applicant is not treated for his ailment. As regards comorbidities are concerned, this Court expects that KEM Hospital Authorities shall be taking appropriate precaution for the same.

10] In the backdrop of aforesaid, it cannot be inferred that right of the Applicant guaranteed under Article 21 of the Constitution for having proper medical treatment in super-speciality hospital is violated. Rather, various medical treatments which are given to the Applicant are proved to be lifesaving at this stage.

11] In the aforesaid background, claim put-forth by the Applicant that he is immediately required to be released on temporary bail on medical ground is not justified. As such, both these Applications lack merit and stand rejected. As a consequence of rejection of both these Bail Applications, pending Interim Applications are also rejected.

12] However, this will not preclude the Applicant from moving afresh before the Court below in case of any emergency, particularly in the backdrop of the one narrated in the foregoing para wherein Dean, KEM Hospital has recommended shifting of Applicant to private hospital.

(NITIN W. SAMBRE, J.)