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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3539 OF 2021**

AZEEZ UNNI MOHAMMED @ AJJU ROLEX APPLICANT

V/s.

THE STATE OF MAHARASHTRA RESPONDENT

**Mr. Nitin Sejpal a/w Akshata Desai for the applicant
Mr. Ajay Patil APP for the State**

CORAM : NITIN W. SAMBRE, J.

DATE: NOVEMBER 29, 2021.

P.C.:

1] Heard.

2] On merit, prayer for grant of bail was rejected on 28/12/2019.
The attempt on the part of the applicant seeking bail thereafter before
Apex Court was also resulted in failure as Apex Court has also
rejected the prayer for grant of bail.

3] Present application is moved seeking bail on the medical

grounds. My attention is invited to the fact that applicant is suffering from Chronic Renal disease, Hypertension and Deep Venous Thrombosis. It is claimed that applicant is surviving on one kidney which is functioning at at its 20% of the capacity and as such, applicant is more prone to infection. Counsel for the applicant by relying on Division Bench Judgment of this Court in the matter of **Dr. P. V. Varavara Rao Vs. National Investigation Agency & Anr [2021 ALL MR (Cri) 1955]** would urge that even a prisoner have right to get proper medical treatment. As such, claim is, he is entitled to be released for taking treatment.

4] Learned counsel for the applicant would urge that applicant be released temporarily, medical report be called and then Court may decide further action in the matter as to whether he should be continued on temporary medical bail.

5] Learned APP based on report of the Chief Medical Officer, Mumbai, Central Prison, Mumbai would oppose the prayer.

6] Considered submissions.

7] The fact that applicant is suffering from Chronic Renal disease is not in dispute. However, during the course of hearing of the application, in the backdrop of the medical report, in response to Court's query, learned counsel for the applicant Mr. Sejpal would urge that the solution available to the issue is that of Renal transplant and for that purpose a donor has to be arranged for which his release is necessary.

8] Learned counsel for the applicant so as to substantiate his aforesaid contentions has placed on record affidavit of younger brother of the applicant thereby producing on record medical certificate issued by Dr. Jatin Kothari who is administering treatment to the applicant.

9] As far as aforesaid contentions are concerned, it is not in dispute that the solution available to the medical problem of the

applicant is Renal transplant. For that purpose, either he has to have a donor from his family or can take recourse to swapping. Applicant has not come out with any such case before the Court to claim that any of his blood relative is willing to donate kidney or otherwise also ready for swapping. As such, only purpose for which applicant is seeking his release is, to avoid he being getting infected as his immune system is not supportive. The jail authorities as is reflected in the report submitted before this Court of having taken appropriate steps in the matter thereby admitting him to the jail hospital and he is provided with home food containing low salt and protein. Apart from above, appropriate treatment is provided and there is no complaint about the same brought on record.

10] As such, what can be noticed is, applicant is seeking his release under the pretext that his one kidney has already failed whereas other kidney is functioning at 20% of the capacity. None of his blood relatives have come out in his support that they are willing to donate kidney or willing to swap the same. There is enough material to infer that applicant is provided proper treatment in the jail. Apart from

above, this Court is sensitive to the fact that after his unsuccessful attempt of release on 28/12/2019 before this Court, the Apex Court also turned down his plea recently in 2020.

11] That being so, no case for grant of temporary bail is made out. As such, application stands rejected.

12] However, it is worth to mention that in case if the applicant comes out with a case of Renal transplant, either through his donor/(blood relative) or swapping, same shall be considered on its own merits by the jail authorities in accordance with law.

13] Considering the medical condition of the applicant, hearing of the trial is expedited. Trial Court is requested to submit progress report of the trial after every three months.

[NITIN W. SAMBRE, J.]

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