

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (BA) No. 415 of 2019

[Deepak S/o Khubchand Bajaj ..vs.. State of Maharashtra, Anti Corruption Bureau, Nagpur]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. P. Dharmadhikari, Senior Advocate with Mr. C. S. Dharmadhikari
and Mr. Raghav Bhandakkar, Advocates for the applicant
Mr. N. R. Rode, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 09-09-2021

This application is preferred by Deepak Khubchand Bajaj who is an accused in Crime 3674/2015 registered with Jaripatka Police Station, Nagpur for offences punishable under Section 13(1)(d), (e) and (c) read with Section 13(2) of the Prevention of Corruption Act and Sections 486, 420, 468, 471 34, 168, 120(B), 201, 409, 467 and 193 of the Indian Penal Code.

2. The applicant was arrested on 12-11-2015 and is presently on temporary bail. The applicant has suffered pre-trial detention of three years and eight months.

3. The applicant did make several attempts to secure bail, but in vain. This Court was pleased to reject the applications

preferred under Section 439 of the Code of Criminal Procedure, 1973 on merit, and the last order of rejection is rendered on 22-2-2018 in Criminal Application (BA) No. 65/2018.

4. The learned Senior Counsel Mr. S. P. Dharmadhikari would submit that there are two circumstances which would warrant a re-look at the applicant's entitlement to bail. The first circumstance is that there is no possibility of early culmination of the trial since the prosecution has examined only 30 out of the 169 witnesses cited in the charge-sheet. The second circumstance is that the applicant is seriously ill and denial of bail would fall foul of Article 21 of the Constitution of India. Mr. Dharmadhikari would emphasize that even an accused is entitled to live a dignified life and to be in a position to avail the best possible treatment in a conducive ambience.

5. It is axiomatic that the trial is progressing at a leisured pace and considering that 169 witnesses are cited, early trial would be an unrealistic hope. I did request the learned Additional Public Prosecutor to ascertain from either the Investigating Officer or the Prosecutor whether the number of witnesses can be curtailed and some assurance of a reasonably

expeditious trial can be extended. Learned Additional Public Prosecutor Mr. Rode states, on instructions, that it would be difficult to determine the number of witnesses which would have to be examined to unfold the entire prosecution story.

6. The delay in conducting the trial, and neither the trial Judge who is already overburdened nor the prosecution, is at fault, apart, it is not seriously disputed that the applicant is suffering from multiple health issues. The applicant did assert in Criminal Application (BA) 65/2018 that he was critically ill and was suffering from chronic kidney disease, severe Diabetes Mellitus and heart ailments for more than two years prior to the filing of the application. While rejecting the said application, this Court was alive to the medical condition of the applicant and directed that he be admitted to a hospital of his choice. Notably, in the order dated 20-2-2018, this Court (Coram : Sunil Shukre, J.) observed thus :

“It appears to this Court at this stage that there is something seriously wanting in medical care and assistance being provided to the applicant and his health condition continues to be serious. Learned Senior Counsel submits that the fundamental right to survive the trial is much more important than another fundamental right relating to speedy trial of the

applicant. He submits that basic right of survival, in the present case, is under great threat and, therefore, he submits that the applicant be released on bail forthwith to enable him to avail of better medical treatment of his own choice.”

7. Record reveals that the medical condition of the applicant was noted by this Court in more than one order and this Court permitted the admission of the applicant in paid ward at the Government Medical College and Hospital, Nagpur. The Doctors at the Government Medical College and Hospital advised the applicant to undergo a Coronary Bypass Surgery. This advice was in view of the mean blockage of more than 80% in arteries diagnosed after the Coronary Angiography was done.

8. This Court vide order dated 1-7-2019 was pleased to grant temporary bail considering the serious health condition of the applicant. While the bail was initially granted till 3-9-2019, the same was extended from time to time. While on temporary bail, the applicant underwent Coronary Bypass Surgery at Fortis Hospital, Mumbai. While the applicant was discharged on 9-9-2019, due to infection in urinary tract, he was again admitted at Criticare Hospital from 21-9-2019 and then on 4-10-2019.

9. In the interregnum, in view of the direction issued by this Court, the applicant was examined by the Committee of Doctors constituted by the Dean, J. J. Hospital, Mumbai. Shorn of technical details, what is discernible is that the Committee, after referring to the multiple health issues, recommended that the applicant would have to abide by the medical advice and follow the medication prescribed by the various medical experts from time to time.

10. The material placed on record reveals that the applicant is undergoing treatment as an outdoor patient at the Breach Candy Hospital, Mumbai. During the course of hearing, two certificates which the applicant placed on record, turned contentious since the prosecution contended that same were not issued by Dr. Ahuja who signature the certificate purported to bear. I have not found it necessary to dwell deeper in the controversy since it is not in dispute that the other certificates which are placed on record are, even according to the prosecution, authentic and are issued by Dr. Ahuja.

11. Be that as it may, it is not even argued by the prosecution that the applicant is hale and hearty. While Mr. Rode did argue that the applicant would be taken care of in prison, in view of the nature of the illness and observations of this Court in the earlier order/s, denial of medical treatment at a hospital of choice and at the hands of a medical expert of the applicant's choice is fraught with serious risk. This is surely not a case where the detention of the applicant in prison is must in societal interest or for similar reasons. It is not even the case of the prosecution that while on temporary bail, the applicant has misused the liberty. During the course of hearing, a submission was indeed made that since the witnesses are based in Nagpur and many of them are employees of the institution controlled by the applicant, the presence of the applicant at Nagpur may pressurize the witnesses, the learned Senior Counsel Mr. Dharmadhikari sought to allay the fears of the prosecution by assuring that unless the presence of the applicant is required by the trial Court, he shall not enter the territorial limits of Nagpur City.

12. I am satisfied that considering the medical condition of the applicant and the possibility of further delay in trial, denial of bail would be a pre-trial punishment and infringement of the applicant's right to life enshrined in Article 21 of the Constitution of India.

13. The application is allowed.

14. The interim order dated 1-7-2019 is made absolute subject to the following additional conditions.

(a) The applicant shall not enter the territorial limits of Nagpur City till the conclusion of trial unless his presence is required by the trial Court.

(b) The applicant shall, within the next seven days, furnish to the Investigating Officer his current cell phone numbers and the detailed residential address and shall keep the Investigating Officer updated of any change.

(c) The applicant shall surrender, if not already surrendered, his passport and shall deposit the same with the Investigating

Officer within the next 7 days.

15. The application is disposed of in aforesaid terms.

JUDGE

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