

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Sugato Majumdar

CRM 7021 of 2021

Akhtar Parwez
versus
The State of West Bengal

For the Petitioner : *Mr. Amit Desai, Ld. Sr. Adv.,*
Mr. Sekhar Basu, Ld. Sr. Adv.,
Mr. Sudipta Maitra, Ld. Sr. Adv.,
Mr. Rajdeep Mazumder,
Mr. Kallal Mondal,
Mr. Mayukh Mukherjee.

For the State : *Mr. Saswata Gopal Mukherjee, Ld. P.P.,*
Mr. Nequive Ahmed, Ld. A.P.P.,
Ms. Trina Mitra.

Hearing is concluded on : *9th March, 2022.*

Judgment On : **16th March, 2022.**

Tapabrata Chakraborty, J.

1. The present application for bail under Section 439 of the Code of Criminal Procedure (in short, the Code) has been

preferred by the petitioner, namely, Akhtar Parwez, on behalf of the accused, namely, Raghiv Parvez, in connection with Shakespeare Sarani Police Station Case no.159 of 2019 dated 17.08.2019 under Sections 279/304/308/427/201/212 of the Indian Penal Code read with Section 3 of the PDPP Act and Sections 119/177 of the Motor Vehicles Act.

2. Shorn of unnecessary details, the facts are that in connection with Shakespeare Sarani Police Station Case no. 159 of 2019 dated 17.08.2019, the accused was arrested on 21st August, 2019. Upon completion of investigation charge sheet was submitted on 18th September, 2019. The case was thereafter committed to the Court of the learned Chief Judge, City Sessions Court. On 12th March, 2020 an application was filed by the petitioner under Section 329 of the Code before the learned jurisdictional Court. While in judicial custody, the accused was admitted in the Institute of Psychiatry, Kolkata (in short, the said Institute) and on 7th April, 2020, he filed an application before this Court under Section 330 readwith Section 439 of the Code. Considering a medical report dated 16th March, 2020 issued by the Director of the said Institute, an interim bail for a period of

two months was granted by this Court on 8th April, 2020. Seeking permission to take the accused to Bangalore for better treatment, an application for modification of condition of bail was preferred by the petitioner and by an order dated 21st September, 2020, a report was called for from the Superintendent of the said Institute. Pursuant to such direction, a report was furnished on 20th October, 2020. Considering such report, the interim bail granted earlier was extended for a period of 4 months granting liberty to the accused to have himself treated in the National Institute of Medical Health and Neurosciences, Bangalore (in short, NIMHNS). Thereafter on 23rd February, 2021, upon examining the accused, NIMHNS submitted a report observing *inter alia* that the accused is fit to face the trial procedures. Thereafter, the bail application came up for final hearing and by an order dated 13th April, 2021 the same was dismissed. Aggrieved thereby, the petitioner preferred a Special Leave Petition before the Hon'ble Supreme Court. The same was also dismissed by an order dated 19th April, 2021. In the midst thereof, the accused filed an application on 18th February, 2021 in continuation of the earlier application dated 12th March, 2020 filed under Section 329 of the Code. The said application and the

connected application for bail were rejected by the learned Court below on 24th August, 2021. Thereafter, the present application has been preferred by the petitioner on 26th October, 2021.

3. Records reveal that during pendency of the present application, the accused was clinically examined by the members of the Medical Board on 3rd December, 2021 and a report was forwarded by the Superintendent, Presidency Correctional Home *vide* memo dated 7th December, 2021. Thereafter the accused was examined by the Medical Board twice on 20th December, 2021 and 25th January, 2022 and the reports were forwarded by the Director of the said Institute.

4. Mr. Desai, learned senior advocate appearing for the petitioner submits that the accused is suffering from Bipolar Affective Disorder since the year 2016. Prior to the unfortunate incident, he had to be admitted six times in different hospitals. His ailments aggravated thereafter as would be explicit from the report of the Medical Board dated 16th March, 2020. In spite of administration of high doses of medicine there was hardly any improvement and his condition deteriorated in the Correctional home for which he had to be admitted in the said Institute on 3rd

May, 2021 and could not be produced before the learned Court below on several occasions. He was ultimately discharged in the month of February, 2022. A composite reading of the medical reports would reveal that the accused needs continuous treatment for Bipolar Affective Disorder. Thus, there can be no doubt about the fact that the present health status of the accused would face deterioration if he continues to remain in custody. In similar fact situation and in cases of Bipolar Affective Disorder, Court had always exercised discretion in favour of the ailing persons in custody. In support of such contention, Mr. Desai had placed reliance upon the judgments delivered in the cases of *Deepak Surendran –vs- Sub Inspector of Police and Another*, reported in 2019 SCC OnLine Ker 16606, *Virender –vs- State of Haryana*, reported in 2015 SCC OnLine P&H 12484, *Sasidharan–vs- State of Kerala*, reported in 2018 SCC OnLine Ker 2202 and in the case of *Dr. P.V. Varavara Rao –vs- National Investigation Agency and Another*, reported in 2021 SCC OnLine Bom 230.

5. He contends that Section 439 of the Code empowers the Court to grant bail to a person on medical ground. The petitioner

is suffering from Bipolar Affective Disorder which is a severe mental illness. In support of such contention he has placed reliance a judgment delivered in the case of '*X*' *versus* *State of Maharashtra*, reported in (2019) 7 SCC 1. Continuous incarceration of the accused whether in jail or in a jail like situation, keeping him away from his near and dear ones, will aggravate his mental illness. In such circumstances, the Court can grant him bail and hand him over to his relatives, who are ready to take care of him.

6. According to Mr. Desai, bail jurisdiction of the Court under Chapter XXXIII of the Code is wide and vast. Consideration of health condition is within the domain of Section 439 of the Code. Sections 436, 437 and 439 of the Code are intended to release persons on bail and restore their liberty. They have to be viewed from the bedrock of Article 21 of the Constitution of India as they are very much concerned with securing the liberty of the individual. Section 330 of the Code is also concerned with the personal liberty of the individual, but it is not as wide as Section 439 of the Code.

7. Mr. Desai contends that there is an abiding legislative concern to secure to an accused of unsound mind all that would truly ensure a meaningful liberty to him. Such concern led to promulgation of the Mental Healthcare Care Act of 2017 with an object to provide for mental health care and services for persons with mental illness. He relies upon the provisions of Sections 3, 19 and 20 of the said Act and submits that a person suffering from mental illness have a right to live in, be part of and not be segregated from society and such ailing patient also have a right to live with dignity. Such atmosphere is not provided in the jail and in such facts and circumstances he may be enlarged on medical bail on any stringent condition.

8. Mr. Mukherjee, learned Public Prosecutor appearing for the State submits that the petitioner has filed repeated applications with the sole intent to stall the proceedings. The sequence of facts would reveal that the bail prayer of the accused was refused on 13th April, 2021 after he substantially recovered from his ailments. In course of hearing of the application under Section 329 of the Code before the learned Court below, it was admitted on behalf of the accused that he had recovered well

after getting treatment from NIMHNS. Thereafter the mental health condition of the petitioner has not deteriorated. The authorities have constantly monitored his health conditions and whenever required, he had been shifted to one of the best institutes in the State for treatment and the last discharge certificate dated 12th February, 2022 would also reveal that his condition has substantially improved.

9. According to Mr. Mukherjee, on one hand, the accused claims himself to be mentally unfit and seeks relief under the provisions of Chapter XXV of the Code and on the other hand files the present application seeking bail on medical ground. In the said rigmarole the proceedings had been delayed and till date charges could not be framed. Had the accused allowed the proceeding to continue, the same would have substantially progressed by now. Such conduct of the accused reveals that his intent is to stall the proceedings.

10. He further submits that the petitioner's earlier application under Section 330 read with Section 439 of the Code was rejected by a co-ordinate Bench of this Court on 13th April, 2021 upon arriving at a finding that provisions of Section 330 of

the Code are not attracted. The said order has been upheld by the Hon'ble Supreme Court on 19th April, 2021.

11. In reply, Mr. Desai submits that there had been no intent on the part of the accused to delay the proceedings. The health condition of the accused is deteriorating day by day and as such his prayer may be considered sympathetically.

12. There is no dispute as regards the proposition of law laid down in the judgments upon which reliance has been placed on behalf of the petitioner. However, a decision is an authority for what it decides and not what can logically, be deduced therefrom. Even a slight difference in fact or addition of fact may make a lot of difference in the decision making process. The grant or rejection of bail will almost always be based upon the given sets of facts and situations. In the case of *Sashidharan (supra)*, the petitioner was about sixty years of age, in *Varvara Rao (supra)*, the accused was about eighty two years old. The accused here is 26 years old. In *Virendra (supra)*, the accused was suffering from schizophrenia with current episode mania and in *Deepak Surendran (supra)*, accused was having maniacal and psychotic symptoms. The accused herein was examined by the Medical

Board and upon considering all parameters the expert body had observed that the accused is stable and no neurological and neurosurgical intervention is needed.

13. On 23rd February, 2021, the Medical Board of NIMHNS observed that the accused is maintaining improvement and is fit to face the trial procedures. Considering the said report, the prayer of the accused for bail was earlier rejected by a coordinate bench of this Court on 13th April, 2021. The Special Leave Petition filed by the petitioner challenging the said order was rejected on 19th April, 2021. The accused was thereafter shifted to the Institute of Psychiatry and his health status was under constant monitoring. The Medical Board in its report dated 3rd December, 2021, observed that the petitioner is alert, conscious and cooperative. In the reports dated 20th December, 2021 and 25th January, 2022 it has *inter alia* been stated that the accused is maintaining well on medication and that no neurological and neurosurgical intervention is necessary. The accused was discharged thereafter, on 3rd February, 2022. In the discharge certificate it was *inter alia* observed that his ‘*target symptoms decreased gradually*’ and his condition on discharge was stated

to be '*Stable. No delusions or hallucinations present. Mood is euthymic. Biological functions – normal*'. *Prima facie*, it is thus not acceptable that the health status of the accused had deteriorated. He had been kept under constant monitoring by doctors and whenever required, he had undergone treatment in one of the best institutes of Psychiatry in the State. The State had discharged its duty by providing specialised medical treatment to the accused in one of the best institutes in the State and has been bearing the necessary expenditure.

14. Having given a thoughtful consideration to the arguments advanced and as the ailment of the accused has not aggravated and as he has been kept under constant monitoring by the authorities, we are not inclined to grant him bail, as prayed for, at this stage.

15. The application being, CRM 7021 of 2021 is, accordingly, dismissed.

16. The case diary be returned to Mr. Mukherjee, the learned Public Prosecutor appearing for the State.

17. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Sugato Majumdar, J.)

(Tapabrata Chakraborty, J.)