

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

CRIMINAL BAIL APPLICATION NO.269 OF 2022

Mohammad Furkan Faroukh Shaikh Applicant

versus

State of Maharashtra Respondent

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- Mr.N. M. Nadar, Advocate for Applicant.
- Smt.A.A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 10th FEBRUARY, 2022
(through video conferencing)

P.C. :

1. This application is for release of the Applicant on temporary bail for a period of 12 weeks in connection with C.R.No.737/2019 registered at Virar Police Station.

2. Heard Mr. N. M. Nadar, learned counsel for the Applicant and Smt.A.A. Takalkar, learned APP for the State.

3. The case against the Applicant is that he had committed murder of one Krushnendra on some money dispute.

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He was helped by his associates. The Applicant was arrested on 07/08/2019. The Applicant's bail application was allowed to be withdrawn by this Court (Coram : Sandeep K. Shinde, J.) vide order dated 09/09/2020 passed in Bail Application No.823 of 2020. After that he preferred an application for temporary release on bail on health grounds. This Court (Coram : Prakash D. Naik, J.) observed that considering the medical report of health condition of the Applicant, relief of temporary bail could be granted to him and accordingly the Applicant was directed to be released on bail for a period of four weeks. At the end of four weeks extension was sought and it was extended from time to time till finally he was asked to surrender vide order dated 12/10/2021. After that order, the Applicant duly surrendered. The Applicant's case is that he needs to undergo similar surgery on the same kidney and it would be safer if the second surgery is performed by the same private doctor, who had performed the surgery of the same kidney earlier.

4. For that purpose, I had called for medical report. The medical report dated 08/02/2022 is produced before me. It is

taken on record. It was mentioned in the report that the prisoner was referred to Sir JJ group of Hospital, Mumbai. He was not having any active urological symptoms but on radiological evaluation, it was seen that he had right non-functioning kidney with stricture urethra. Patient needed cystoscopy SOS VIU with RGP + right nephrectomy.

5. Learned APP on instructions agrees that based on this report the Applicant needs to undergo second surgery. The Applicant had not given his consent for undergoing surgery at the government hospital.
6. Learned counsel for the Applicant submits that the Applicant's conduct in the past shows his bonafide intentions. He has not made frivolous application. He really had health problems relating to his kidney for which he had undergone surgery and on the same kidney he needs to undergo second procedure. Therefore looking at the past conduct of the Applicant as well as the medical health condition of the Applicant, he be granted interim bail.

7. I have considered these submissions. It is not disputed that on the earlier occasion, the Applicant was granted bail in June 2021 and he had surrendered after the order dated 21/10/2021. In the meantime, the first surgery was performed on him by a private doctor. Now the medical report shows that he needs to undergo another procedure on the same kidney. Therefore it is a reasonable submission that it would be safer if the same private doctor performed the second procedure on the same kidney. Considering the past conduct of the Applicant of surrendering after the Court's order, it can be reasonably expected that the Applicant will show his bonafide again. Therefore taking a humanitarian approach, considering the Applicant's health condition as well as his past conduct of surrendering after the Court directed him to surrender, I am inclined to grant temporary bail on health ground to the Applicant, so that second surgery can be performed on his right kidney. It is made clear that this order should not be used for wrong advantage by the Applicant in prolonging the period to undergo the surgery. He is expected to act expeditiously.

8. Hence, the following order :

ORDER

- (i) In connection with C.R. No.739/2019 registered with Virar Police Station, the Applicant is directed to be released on temporary bail for a period of eight weeks from the date of his actual release, on his executing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or more sureties in the like amount.
- (ii) The Applicant shall provide the details about the treatment given to him and the place where he would be treated, to the Investigating Officer, every week while he is on bail.
- (iii) The Applicant's family shall co-operate and keep Investigating Officer informed about his treatment.
- (iv) The Applicant shall give particulars of his residential address and contact numbers before being released on bail.

- (v) The Applicant shall not take undue advantage of this order and shall take his treatment at the earliest.
- (vi) The investigating agency is free to verify the actual whereabouts and medical treatment which the Applicant is likely to undergo.
- (viii) With these observations, the application is disposed of.

(SARANG V. KOTWAL, J.)