

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

**INTERIM APPLICATION NO. 3375 OF 2021
IN
CRIMINAL APPEAL NO. 432 OF 2016**

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Mohammad Raees Shahjade Ansari
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... Applicant/ Appellant.

Vs.

The State of Maharashtra

... Respondent.

Mr.Ganesh K.Gole,Advocate a/w. Viraj Shelatkar for the Applicant
/ Appellant.

Mr. S. V. Gavand, APP for the State.

**CORAM : PRAKASH D. NAIK, J.
DATED : MARCH 29, 2022.**

P.C. :

1. This is an Application for suspension of sentence and grant of temporary bail on medical ground.
2. The Applicant has been convicted for the offence punishable under sections 307 r/w. 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment of 10 years. He is also convicted for the offence under section 387 r/w. 34 of the IPC and sentenced to suffer imprisonment of 5 years. He is also convicted for the offence under section 506 (ii) r/w. 34 of the Indian Penal Code and sentenced to suffer intermittent imprisonment of 5 years. For the conviction under section 326, the Applicant has been sentenced to suffer imprisonment for 5 years with conviction under section 3(1)(ii)

borey/

of MCOC Act. The Applicant has been sentenced to suffer imprisonment of 10 years and fine of Rs. 5 lakhs. He is also convicted under section 3(4) of the MCOC Act and sentenced to suffer imprisonment of 10 years with fine of Rs. 5 lakhs. All the sentences are directed to run concurrently.

3. The Applicant had preferred applications for suspension of sentence and bail which have been rejected by order dated 28th November, 2016. Thereafter, the Applicant had preferred another Application for suspension of sentence and bail on medical ground. The said application was also rejected by order dated 17th April, 2017, by directing the Superintendent of Nasik Road Central Prison, Nashik to give medical treatment to the Applicant, by referring him to appropriate hospital as and when required. The medical officer attached with the Jail was directed to conduct medical checkup of the Applicant and also directed to refer the Applicant to higher centre / hospital, if it is found necessary.

4. The Applicant had preferred an application, through jail, for bail on the ground that his father had suffered paralysis attack. The application was rejected on 6th April, 2018.

5. Learned Advocate for the Applicant submitted that the provisions of MCOC Act are not applicable. The Applicant is not involved in any case with the accused no. 2. Applicant is in custody for a period of about 7 years and 11 months. The health condition of the Applicant has deteriorated. He has been suffering from high blood pressure, bleeding from nose, bleeding hemorrhoids with acute abdomen pains since long

and despite treatment being provided to the Applicant in the Civil Hospital as well as in the jail hospital, there is no improvement in the health of the Applicant. He relied upon the medical report, about health condition, which is procured by him through RTI Act. It is thus submitted that the Applicant may be granted temporary bail with a view to take treatment for a period of six months.

6. Learned APP submitted that the Applicant has been convicted under the provisions of the MCOC Act. The health condition of the Applicant or the ailment with which the applicant is suffering is not life threatening. The offence committed by the Applicant is of serious nature. Several cases were registered against the Applicant and the preventive action was also initiated against him.

7. By order dated 24th February, 2022, the Jail Superintendent of Aurangabad Central Jail was requested to forward the report regarding health condition of the Applicant to this court. The learned counsel for the Applicant tendered the documents relating to health condition of the Applicant, obtained thorough RTI. The Applicant has annexed the medical report dated 12.12.2016 to this application. The said report issued by Chief Medical Officer, Nasik Raod Central Prison mentions that the Applicant has been complaining of bleeding from annul canal, giddiness, abdominal pain with constipation and sneezing with cough. On 17.03.2016, the visiting Specialist from the Civil Hospital Nashik examined and noted down his notes on case paper and advised the convict for stool sample examination. On 08.12.2016, the visiting Physician examined

the convict and advised need of surgical opinion for annul bleeding. The visiting General Surgeon of Civil Hospital Nashik examined the convict on the same day and diagnosed as "colitis" and given appropriate medicines. The convict is taking treatment in the Jail Hospital Nasik which was advised by Specialist from Civil Hospital Nasik.

8. The certificate dated 08.07.2018 issued by the Chief Medical Officer, Mumbai Central Prison, Mumbai mentions that the Applicant is suffering from Grade-I Hemorrhoids with pain in abdomen. He has been provided medication in prison hospital and he requires treatment at higher centre / hospital. The medical case papers about examination of the convict by the Medical Officer are also annexed to the application. The report dated 05.03.2021 issued by the Medical Hospital, Aurangabad addressed to the Medical Officer, Government Medical College and Hospital, Aurangabad mentions that the Applicant was examined on 25.02.2021 and it was revealed that he is suffering from Grade-II hemorrhoids. He was given treatment. Thereafter, the convict was examined on 05.03.2021 and it was revealed that he is suffering from Grade -II Hemorrhoids without any active bleed. Medical treatment was given to him. There was bleeding from nose and he was advised to take treatment from ENT department of the hospital.

9. Learned counsel for the Applicant has also sought medical case papers through RTI. The medical case papers about the treatment given to the Applicant in the government hospital were provided to the Applicant which refers to the ailment of the Applicant and the treatment given to him.

10. Pursuant to the order of this court, the medical report has been submitted on 23.03.2022 through Aurangabad Central Prison to this Court. The report was forwarded by Chief Medical Officer, Aurangabad Central Prison. The said report reads as follows :

“PRISONER’S MEDICAL REPORT

1) REASONS / PURPOSE OF MEDICAL REPORT :

As per order of Hon. High Court, Mumbai.

2) UNDER TRIAL /CONVICT NO.

Convict No. 8218.

3) NAME OF PRISONER :

Mohd.Rais Shehjade Ansari

4) AGE 50, SEX :- M.

5) DATE & TIME OF EXAMINATION : 23/03/2022 at 10.50 am.

6) PRESENT COMPLAINTS (IF ANY) :

c/o Chest pain, Back Pain, Epistaxis, Headache, cough, Backache, Swelling over forehead, Bleeding defecation.

7) PAST ILLNESS/ACCIDENT/OPERATION (IF ANY).

k/c/o Hypertension with IHD & COPD on treatment

H/O KOChs (k/c/o PTB) taken treatment for one year.

8) CLINICAL FINDINGS:

A) GENERAL EXAMINATION

Observation	Details
Blood Pressure	132/89
Temp	97.5 F
Pulse Rate	88/min
RR	20/min
Spo2	98%

B) SYSTEMATIC EXAMINATION

System	Details
CVS	S1 S2 Normal NAD
Abdomen	Soft Non tender
CNS	Concious, Oriented
RS	Aeebe

9) INVESTIGATION DONE (IF ANY):

Necessary investigations Blood, ECG, Sputum for AFB, ECG,

Biopsy, CXR etc were done in Govt. Medical college & Hospital, Aurangabad.

10) CLINICAL DIAGNOSIS :-

- a. Grade 2 Haemorrhoids managed by Sclerotherapy.
- b. Grade 4 to haemorrhoids managed by Anal Stretching f/b External Haemorrhoidectomy as per discharge Card Summary.

11) MEDICAL FACILITIES AVAILABLE IN PRISON HOSPITAL:

(whichever is available the same will be tick marked.).

Sr. No.	Item name	Marking	Sr. No.	Item Name	Marking
1	Multipara monitor		2	ECG machine	
3	Glucometer		4	Liver function Test	
5	Sputum Exam		6	Urine Test	
7	Dengue Rapid Test		8	Malaria Rapid test	
9	X-Ray Facility		10	Dental Services	
11	Renal Function test		12	Nebulisation	
13	Proctoscopy		14	ICTC lab for HIV	
15	General Ward		16	Isolation Ward	
17	Psychiatric Ward		18	In house Ambulance Service	
19	Prison Psychiatrist		20	Emergency kit with Oxygen	
21	Any other				

Note :- Pathology Laboratory available but Laboratory Technician is not available.

12) TREATMENT GIVEN :-

As per advised by experts of Govt. Medical college & Hospital, Aurangabad.

Tab Sylate 1 BD, Tab. Telma 40 mg, Tab. Stator 40 mg 1 OD, Xylocheck N/D, Nasoclear N/D, Liquid Paraffin N/D. He is giving extra medical diet in addition to regular diet.

As per available case papers he was admitted to Govt. Medical college &

Hospital, Aurangabad for two times 03/12/2021 to 09/12/2021 & 13/12/2021 to 21/12/2021 & operated for Sclerotherapy on 07/12/2021, Anal Stretching 14/12/2021 & External Haemorrhoidectomy on 18/12/2021 respectively & given treatment as per advised by experts of Govt. Medical college & Hospital, Aurangabad. He has been given treatment as follows. Tab. Augumentin 625 mg, Tab. Pan 40 mg, Tab. PCM & Seitz Bath. And Tab. PCM, Tab. Cipro, Tab. Metro] Tab. Pan 40 mg & Seitz Bath

13) MEDICAL ADVICE (IF ANY)

To continue Medications as per advised by experts & BP monitoring regularly

14) REFERRAL TO HIGHER CENTRE (IF ANY)

No Referral to Higher Centre.

15) Present Health Status:

At present he is taking treatment from Prison Hospital & experts of Govt. Medical college & Hospital, Aurangabad

16) OPINION OF MEDICAL OFFICER QUA SR.NO.1:

He has to take Medications regularly.”

11. The said medical report also contains the treatment given to the Applicant and the test conducted during the treatment.

12. The summary of the medical report indicates that the Applicant is required to take medication regularly. It is pertinent to note that the Applicant has been suffering from the ailment referred to above since 2016. Latest medical report also indicates that he is being treated for the said ailment. He is in custody for a period of about 7 years and 11 months.

13. Considering the above circumstances, the Applicant can be granted bail on medical ground for a period of six months. Hence, the following order :

ORDER

(i) Interim Application No. 3375 of 2021 is allowed.

(ii) The sentence of imprisonment imposed vide Judgment and Order dated 20th February, 2016 is suspended for a period of 6 months and the Applicant is directed to be released on bail on medical ground for a period of six months from the date of his release on executing P.R. Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

(iii) The Applicant is permitted to furnish cash bail in sum of Rs. 25,000/- for a period of eight weeks from the date of his release.

(iv) The Applicant shall surrender to the custody on completion of the period of six months from the date of the release.

(v) The Applicant shall report to Shivaji Nagar Police Station, Mumbai once in 15 days, on 15th and 30th of every month between 11 a.m. to 1 p.m..

(iv) The applicant shall provide the details of the treatment given to him to Investigating Officer, periodically.

14. Interim Application No. 3375 of 2021 is disposed of.

(PRAKASH D. NAIK, J.)