

208

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-6106-2022

Date of decision : 02.03.2022

Ajij Khan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Chanderhas Yadav, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.261 dated 12.10.2020 registered under Sections 302, 34, 404 of the Indian Penal Code, 1860 and Sections 25/54/59 of the Arms Act at Police Station Sector-6, Bahadurgarh, District Jhajjar.

An alternative prayer has been made in the case for releasing the petitioner on interim bail for a period of 30 days on account of his medical condition.

Learned counsel for the petitioner has submitted that the petitioner is only pressing the prayer for interim bail for a period of 30 days in view of the medical condition of the petitioner and does not press the

present petition for grant of regular bail, at this stage.

In view of the same, the prayer for grant of regular bail to the petitioner is dismissed as not pressed, at this stage.

With respect to the interim bail sought on the medical grounds, learned counsel for the petitioner has referred to the Medical Report (Annexure P-2) sent by the Medical Officer, District Jail, Jhajjar in order to show that in the last week of October, the patient/petitioner was complaining about pain during defecation, discharge and bleeding per rectum and it was also found that the patient was diagnosed with Pilonidal Sinus at Government Hospital, Jhajjar Surgery Department and he was given conservative treatment and, thereafter, the patient was advised for follow up. On 11.11.2021, the patient was referred to PGIMS, Rohtak and the PGIMS Rohtak had also diagnosed him with Pilonidal Sinus and, thereafter, was referred to Government Hospital, Jhajjar for further treatment on 03.01.2022 where patient was advised for admission for getting operation done regarding the disease but the petitioner/patient refused for the same.

Learned counsel for the petitioner has submitted that the petitioner did not want to get his operation done from the Government Hospital and wants to get his treatment from a private Hospital namely Shanti Shankar Kashar Suter Chikitsa Kender, Dharm Nagar Chauraha, Shamshabad, Road, Agra (UP) as the treatment in the said institute is of very high quality and would permanently resolve the problem which the petitioner is facing. He has relied upon judgment of the Hon'ble Supreme Court in **Jaya Talakshi Chheda Vs. State of Maharashtra** reported as **2018**

(2) RCR (Criminal) 816 to contend that it is the right of the accused under Article 21 of the Constitution of India to get the treatment from the Hospital of their choice including the Private Hospital.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that although it is mentioned in the Medical Report (Annexure P-2) that there is some difficulty which the petitioner is facing but the petitioner is getting treatment from well qualified and experienced Surgeon of General Hospital, Jhajjar and by following conservative management, the petitioner could be treated.

This Court has heard the learned counsel for the parties and has perused the paper book.

A perusal of the Medical Report (Annexure P-2) would show that the petitioner had been complaining of several problems including the pain during defecation, discharge and bleeding per rectum and after primary treatment, the petitioner was referred to Government Hospital, Jhajjar on 26.10.2021 and was diagnosed with Pilonidal Sinus at Government Hospital, Jhajjar Surgery Department and thereafter was referred to PGIMS Rohtak on 11.11.2021 who had also diagnosed the petitioner with Pilonidal Sinus and when the petitioner was further referred to Government Hospital, Jhajjar for further treatment on 03.01.2022, the patient/petitioner was advised to get the operation done but the patient/petitioner refused the same. It has further been stated that the patient is getting treatment from well qualified and experienced Surgeons of General Hospital, Jhajjar.

From the above report, which has been sent by the Medical Officer, District Jail, Jhajjar and the same is not disputed, it is apparent that the petitioner is suffering from Pilonidal Sinus and is in discomfort. The petitioner wishes to get his treatment from a private hospital namely Shanti Shankar Kashar Suter Chikitsa Kender, Dharm Nagar Chauraha, Shamshabad, Road, Agra (UP), which as per him, is one of the best Institutes to treat the said medical problem. The Hon'ble Supreme Court in ***Jaya Talakshi Chheda's case*** (Supra), has held as under:-

“3. Taking into account the fact that the appellant's requirement to undergo Surgery/Angioplasty is not in dispute, we find the prayers made by the appellant for being treated in a private hospital of her choice and at her own cost to be reasonable, particularly, in a situation where she is averse to taking treatment in the Government Hospital on account of the fact that her son, a co-accused, had died while undergoing treatment in a Government Hospital. We, therefore, modify the order of the High Court; allow this appeal and permit the appellant to undergo Surgery/Angioplasty in a private hospital of her choice and at her own cost details of which will be provided to the concerned Jail Authorities where after the concerned Jail Authorities will work out the necessary details so as to enable the appellant to have the requisite treatment. The appellant may move the High Court for grant of interim bail as and when the schedule and other details of the treatment is finalized.

4. With the aforesaid modification of the order of the High Court, the present appeal is disposed of.”

A perusal of the above judgment would show that it had been observed by the Hon'ble Supreme Court that the accused should be given

choice to get the treatment done from the private hospital at their own costs, moreso, when the accused is averse to get the treatment done from the Government Hospital.

Keeping in view the abovesaid facts and circumstances, the present petition, inasmuch as prayer for interim bail has been made, is allowed and the petitioner is directed to be released for a period of 30 days for getting the abovesaid treatment done. The said release would be subject to the petitioner furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court. The period of 30 days would begin from the date on which the petitioner is released and the petitioner is directed to surrender before the Jail Gate, District Jail, Jhajjar at 4 PM on 07.04.2022.

02.03.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**