

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

12 CRIMINAL APPLICATION NO. 4299 OF 2022
IN APEAL/347/2019 WITH APEAL/347/2019

MAHESH VINAYAK KHANJOLKAR (BARI) APPLICATION THROUGH
GORAV AVINASH KHANJOLKAR (BARI)
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for the Applicant : Mr. A. K. Bhosle h/f Mr. R. H. Mewara
APP for Respondent-State : Mr. R. D. Sanap
.....

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 30 JANUARY 2023

PER COURT :-

1. Learned Advocate Mr. Mewara for the applicant is absent. On the earlier occasions, Advocate Mr. A. K. Bhosale had appeared as Advocate holding for Advocate Mr. Mewara. Today, Mr. Bhosle is also absent. The facts will have to be brought on record that by this application, the applicant prayed for interim bail on medical ground. It was tried to be contended that the applicant is suffering from heart deceased and there is medical emergency of undergoing angioplasty. He was referred to J. J. Hospital, Mumbai on the earlier occasions also. It was pointed out by learned APP that the State is giving every medical help to the applicant, yet he is not cooperating. He also

submitted that an amount of Rs.2,30,228/- has been deposited with the J. J. Hospital by the State Government for the angioplasty. In fact, even the Medical Officer, Byculla District Prison has also certified that the applicant was admitted in J. J. Hospital on 07.12.2022 and when he was diagnosed with ischemic heart disease and angioplasty was planned, the applicant gave negative consent and mentioned that he is not willing at present. Under said circumstance, J. J. Hospital discharged him on 23.12.2022 with medications. Communication to that effect has been filed by learned APP which is now marked as Exhibit "A".

2. When the State is giving every kind of help to the applicant but intentionally if he is not giving consent for the operation, then, it cannot be taken as a good ground for releasing him on interim bail.

3. Another fact to be noted is that in the entire application, the applicant has not stated where he is planning to get the operation done and what is the financial arrangement he has with him. Rather he has made a wrong statement that he is not getting proper treatment. If he is giving negative consent, he cannot blame the doctors.

4. Taking into consideration all these facts when it was asked to the learned Advocate Mr. Bhosale, who was then holding for Advocate Mr. Mewara for the applicant, as to why the applicant is not giving consent, then it was stated that the concerned Advocate would prevail over the applicant and would advise the applicant to undergo operation at J. J. Hospital. We would like to impress upon that J. J. Hospital is one of the renowned hospitals in Mumbai and therefore there should not be a hitch in the mind of the applicant. Twice thereafter adjournment was sought to get the consent of the applicant in writing. However, till today it has not been produced. When the matter was called out in the morning, learned junior holding for Mr. Mewara submitted that Mr. Mewara has personal difficulty and has requested for adjournment of one week. This situation we are unable to understand. At one place he is representing a convict who has been directed to undergo angioplasty and on the medical ground the applicant is praying for release on interim bail, and then at the another breath the Advocate representing the applicant is interested in getting adjournment. This means the applicant himself appears to be not serious or there appears to be some communication gap between the applicant and the learned Advocate representing him which cannot be considered now because the applicant has given Advocate of his choice.

5. We are concerned with the health of the victim and therefore, at this stage, without waiting for written consent of the applicant, we would like to say that if emergency so arises, then even without consent of the convict, his operation should be performed. The jail authority as well as the hospital authority should give every kind of medical help to the applicant.

6. After the above part was dictated, learned Advocate Mr. Bhosale appeared and submitted that the applicant is not giving written consent. We are not satisfied with the adamant attitude of the applicant. He cannot insist that he should be released on bail when his regular bail application/suspension of sentence application was rejected by this Court in the past. We reiterate that every kind of medical help was tried to be given but he is not accepting. Under such circumstance, if need arises, then, medical help can be given with force. Under such circumstance, we reject the bail application.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]