

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 443 OF 2024
IN
CRIMINAL BAIL APPLICATION NO. 2471 OF 2023

Dheeraj Wadhawan

Age : 45 Years, S/o. Rajesh Wadhawan,

R/o. : 13th, 14th, 15th, & 16th Floor,

D.B. Breeze, Khar (West),

Mumbai : 400 052.

...Applicant

Versus

1. Central Bureau of Investigation
Mumbai Branch, 11th and 12th Floor,
CBI Building, Plot No. C 35A,
'G' Block, Bandra Kurla Complex,
Bandra (East), Mumbai : 400 052. ...Respondent No.1
2. State of Maharashtra
Through Public Prosecutor,
High Court, Bombay. ...Respondent No.2

Mr.Amit Desai – Senior Advocate a/w Mr.Gopalakrishna Shenoy,
Mr.Rohan Dakshini, Ms.Pooja Kothari, Ms.Janaki Garde and Ms.Urvi
Gupte i/b. M/s. Rashmikant and Partners – Advocates for Applicant.

Mr.A.M.Chimalkar – Special Public Prosecutor a/w Mr.Tusshar C.
Nirbhavane, Mr.Akash Kavade and Ms.Aishwarya Sharma – Advocates
for Respondent No.1 - CBI.

Mr.Rattandeep Vij – APP – CBI – Delhi (Through V.C.) a/w
Mr.Mukesh Kumar Dy.S.P. – CBI.

CORAM : S. M. MODAK, J.

DATE : 22nd FEBRUARY 2024

P. C. :-

1. Heard learned Senior Advocate Shri.Desai at great length and also heard learned Special Public Prosecutor Shri.Chimalkar for Respondent No.1 – Central Bureau of Investigation [“CBI”].

2. There are two prayers made in this Application. They are :-

- (a) Modify the order dated 8th December, 2023 permitting the Applicant to undergo other procedures or treatments. This prayer was made because in direction No.15(a)(i), an Interim Medical Bail was granted for spine operation and the word ‘*only*’ is added. Whereas, as per the order dated 14th February, 2024, it was made clear that the doctors at Lilavati Hospital are at liberty to continue the treatment which the patient deserves.
- (b) There is a prayer to extend an Interim Medical Bail for eight (8) weeks period.

3. The following medical papers are annexed with this Application :-

- (a) A report dated 19th December, 2023 given by Panel of Doctors.
- (b) A report dated 27th December, 2023 given by Panel of Doctors.
- (c) A report dated 6th January, 2024 given by Panel of Doctors.
- (d) A report dated 12th January, 2024 given by Panel of Doctors.

- (e) A report dated 19th January, 2024 given by Panel of Doctors.
- (f) A report dated 25th January, 2024 given by Panel of Doctors.

These reports were given in pursuance of the direction No.15(b)(ii) of the order dated 8th December, 2023.

4. The CBI has opposed the prayer by filing following Affidavits :-

- (a) An Affidavit-in-reply dated 5th February, 2024
And
- (b) An Affidavit of additional submissions dated 13th February, 2024.

The Applicant has refuted the contentions by filing an Affidavit of rejoinder dated 13th February, 2024 and dated 21st February, 2024.

5. During the course of arguments, learned Senior Advocate Shri.Desai has filed a copy of one more report dated 21st February, 2024 given by the Panel Doctors from Lilavati Hospital. He has read over its contents. It is true that this Court as per the order dated 14th February, 2024 has granted a liberty to the doctors from Lilavati Hospital attending the patient to be available through V.C., today.

Accordingly, I have heard the following doctors :-

- (a) Dr.Vinod Agarwal – Consultant Orthopedician
- (b) Dr.Nitin Dangre – Consultant Neurosurgeon

- (c) Dr.Jalil Parkar – Consultant Pulmonologist
And
 - (d) Dr.Nitin Gokhale – Consultant Cardiologist.
6. Mr.Chimalker has made following submissions :-

- (a) The team of doctors from All India Institute of Medical Sciences – Delhi (“AIIMS”) have conducted a meeting on 2nd February, 2024 at Delhi and thereafter, certain examination reports were called. Whereas, they have visited the Lilavati Hospital on 5th February, 2024. This team was formed as per the directions given by the CBI – trial Court at Delhi. He read over the contents of the report given by that team dated 6th February, 2024 annexed at Page No.84.

Following is the opinion :-

“At the point of current assessment Mr.Dheeraj Wadhawan requires follow up with the respective specialties on an outpatient basis for his ongoing conditions. There is no indication for hospitalization as on date”. (Page No.86).

- (b) He also invited my attention to the judgment delivered by Hon’ble Apex Court in case of ***Central Bureau of Investigation v/s. Kapil Wadhawan & Anr.***¹
- (c) His contention is, as per the said order, Hon’ble Supreme Court has cancelled a default bail granted to this Applicant in an offence registered at Delhi.

7. Whereas, as per learned Senior Advocate Shri.Desai, now the matter is kept before the High Court of Delhi in coming week for

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hearing the parties. He has invited my attention to an order passed by the trial Court dated 8th February, 2024. There was a request made by the Applicant before that Court to issue direction to CBI to wait till 20th February, 2024 as the hearing is kept before this Court. This request was rejected. They have challenged this decision before High Court of Delhi.

8. Learned Special Public Prosecutor – CBI trial Court – Delhi is present virtually. In order to ascertain the facts from him, I have also heard him. He has also confirmed that the matter is kept in coming week before the High Court of Delhi. He reiterated the prayer made by Mr.Chimalker for deputing two CBI officers along with installation of C.C.T.V., camera in case this Court is inclined to extend an Interim Medical Bail.

9. When I have read the latest report dated 21st February, 2024 and interacted with the various doctors from Lilavati Hospital, what I find is :-

- (a) The Applicant was operated on 3rd January, 2024 for **Microlumbar Discectomy** at two levels.
- (b) **Patient's Cystoscopy procedure** was deferred till the patient is declared fit from cardiac point of view and till

- the surgical wound heals completely.
- (c) Even Dr.Gokhale has explained this during interaction. According to him, the patient is complaining of palpitation and perspiration while passing stool. **Even this symptom is noticed in AIIMS report.** (Page No.85).
 - (d) They have noticed fluctuating levels of serum potassium and increasing trend of serum creatinine. This was for the period 29th January, 2024 to 20th February, 2024.
 - (e) Even the Nephrologist and Endocrinologist are closely monitoring the health of the Applicant.
 - (f) **There were two MRIs performed**, first on 3rd February, 2024 and second on 19th February, 2024. **The first report** suggested of post operating changes. The AIIMS report (Page No.86) has also referred about post operative MRI. They have mentioned about healing of wound and improvement in clinical condition and according to them, the Applicant can be discharged and there can be physiotherapy on OPD basis.
 - (g) After review by Electrophysiologist–Dr.Yash Lokhandwala and Cardiologist Dr.Nitin Gokhale, 7 day holter monitoring was done. This is for the complaint of palpitations and perspiration.
 - (h) Whereas, the **MRI report dated 19th February, 2024**, suggests a **formation of cyst** and there was severe compression of L5 and S1 nerve.
 - (i) That is why, the Lilavati Hospital latest report suggests for revision dissection and removal of cyst and due to that, there is compression of nerve.
 - (j) Even Dr.Dange has explained the installation of implants. Even Dr. Parkar has explained the necessity of hospitalization. Dr.Gokhale has also submitted that considering the cardiac problem, any operation involves a

high risk. On one occasion, even the operation was cancelled. According to him, the patient is having several ailments and he requires continuous monitoring. Even, he submitted that he has tried to explain to AIIMS doctor about the various problems including obesity problem.

10. It is true that the team from AIIMS doctors has suggested for his treatment on OPD basis. However, when I have interacted with doctors, what I find that the operation for removal of cyst is required. The AIIMS doctors had no occasion to see the MRI done on 19th February, 2024 and had no occasion to go through the report dated 24th February, 2024. At the most, the CBI are at liberty to put up this report to AIIMS doctors.

11. At this juncture, I am inclined to extend the period for an Interim Medical Bail. It is true that the doctors virtually have also explained other ailments but still the line of action is not decided. Unless and until, it is decided and case is made out, this Court is not inclined to consider those reasons for continuation of an Interim Medical Bail. Even, any opinion on Interim Bail on that ground is not expressed. Because, it will be too early and it will prejudice rights of the contesting parties. Today, this Court has only considered the ground of

removal of cyst. I think, at this juncture, bail can be extended for six (6) weeks.

12. When this Court has expressed its view about accepting the request for deputing two CBI officers, learned Senior Advocate Shri.Desai submitted that it will amount to cancellation of an Interim Medical Bail and if it is for the purpose of surveillance, it will be violating the fundamental right. He has relied upon the judgment in case of *Kharak Singh v/s. State of U.P. and Others*². He read over the observations in Para Nos.29 and 30 of the said judgment. It is true that the constitutional validity of Chapter 22 of the U.P. Police Regulations and the powers were challenged being violative of the rights under Article 19(1)(d) and 21 of the Constitution. In that case, the Petitioner Kharak Singh was acquitted for the charge of dacoity and the U.P. Police have put him into surveillance as per those Regulations. After dealing with various contentions, Regulation 236(b) authorizing “*domiciliary visits*” was struck down as unconstitutional. He also submitted that in case of *K.S.Puttaswamy and Another v/s. Union of India and Others*³, Hon’ble Supreme Court has considered the ‘*right to*

² 1962 SCC OnLine SC 10

³ 2017 (10) SCC 1

privacy' as a fundamental right.

13. It is true that the CBI is relying upon the instance that took place prior to grant of an Interim Medical Bail about misuse of liberty. It includes the instance of disposing of some paintings by the Applicant and interacting with some persons while being taken to hospital. It is true that the CBI is not coming with the case that during the period of Interim Medical Bail, there was any instance of violation of liberty. It is true that in the order dated 8th December, 2023, this Court has permitted one of the officers from CBI – Mumbai unit to visit the Lilavati Hospital twice in the week.

14. There are two issues before this Court. One is, if the CBI is permitted to depute two officers, whether it will amount to cancellation of Interim Medical Bail and violation of the fundamental right and another is, whether the interest of CBI needs to be protected. I am inclined to permit the CBI to depute two officers at Lilavati Hospital. I do not think that it will amount to cancellation of Interim Medical Bail. It is for the reason that this Court has never intended CBI Officers to take his custody. I am inclined to impose this condition for the reason that Hon'ble Supreme Court has cancelled his default bail

and now, the matter is pending before the High Court of Delhi.

15. There can be certain restrictions imposed. If, the CBI is permitted to depute two officers at Lilavati Hospital, this Court does not mean to permit them to object to visit by any person to the Applicant. The observations and conditions will make it amply clear that there are certain restrictions imposed on action of CBI officers. Further, it is expected that they will be in civil dress. At the same time, it is not expected from the Applicant to move out of Lilavati Hospital as this Interim Medical Bail is granted only for the purpose of treatment. If the CBI officers will notice any objectionable thing, they can note it down and they can inform to this Court. It is made clear that no permission is granted to install C.C.T.V., cameras. Hence, order :-

ORDER

- (i) The Interim Medical Bail is extended for a further period of six (6) weeks for the purpose of undergoing an operation about removal of cyst.
- (ii) Ultimately, that will be the decision of the treating doctors when the operation should be performed and to ascertain whether he will be in fit condition to be operated.
- (iii) So far as rest of the ailments are concerned, if the Applicant in future wants to pray for extension of this

period, let the Applicant to produce report from the doctors thereby suggesting in clear words what will be the line of action and what will be the line of treatment and which doctors and the period required.

- (iv) It is made clear that these observations are made on the basis of submissions made before this Court and this will be without prejudice to the rights of the respective parties.
- (v) The CBI is permitted to depute two officers at Lilavati Hospital. They are not allowed to enter the room in which the Applicant is kept in the Lilavati Hospital. They can remain outside the room.
- (vi) It is made clear that they are not allowed to interact with the doctors at Lilavati Hospital.
- (vii) Even it is made clear that they are not allowed to restrict the entry of any person to the room in which the Applicant is kept.
- (viii) The Applicant shall not indulge into any activity against the law or which may amount to tempering the evidence collected including threatening the witnesses.
- (ix) The Applicant is restrained from signing on any documents pertaining to subject matter of all the prosecutions without obtaining the leave of the trial Court.
- (x) Treating doctors from Lilavati Hospital are at liberty to approach this Court for seeking any assistance, if they feel any assistance is required.
- (xi) The Administration of the Lilavati Hospital is directed to submit a weekly report to CBI – Mumbai Unit.
- (xii) It is made clear that all the expenses of the hospitalization will borne by the Applicant.

16. Interim Application is disposed of.

17. It is made clear that the Bail Application No. 2471 of 2023 is not disposed of.

[S. M. MODAK, J.]