

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

CIVIL WRIT PETITION NO.5385 OF 2024

Asharam @ Ashumal Thewardas

.... Petitioner

Versus

The State of Maharashtra and Ors.

.... Respondents

.....

Mr.Subhash Jha a/w. Ms.Priti Singh, Ms.Praveena Venkatraman,
Mr.Kunal Jadhav, Mr.Ritesh Kesarwani i/b. M/s.Law Global
Advocates, Advocate for the Petitioner.

Dr.Birendra Saraf, A.G. a/w. Mrs.P.P. Shinde, APP for Respondent-
State.

.....

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

DATED : 8th APRIL 2024.

P.C. :

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Not on Board. Mentioned. Taken on Board.

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By this Petition, the Petitioner seeks the following
reliefs:

“a) *that this Hon’ble Court may be pleased to call
for the records and/or proceedings concerning*

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the impugned communication/report dated 19.3.2024, being Exhibit - 'A' annexed herewith, from the Respondent No.3 and after examining the legality, validity and/or propriety thereof, may be pleased to quash and set aside the same;

- b) in the alternative, but without prejudice to prayer clause (a) above, this Hon'ble Court may be pleased to direct the State of Maharashtra to provide all the necessary and required protection to the Petitioner while undergoing medical treatment in Madhavbaug Multi Disciplinary Cardiac Care Clinics and Hospital, Plot No.88, 6, Kalote, Tal.Khalapur, Dist. Raigad, Maharashtra during the time when the Petitioner receives medical treatment in the said hospital;*
- c) that this Hon'ble Court may be pleased to consider laying down some guidelines for being followed while dealing with the facts and situations which are akin to that of the Petitioner so that hereafter no report is submitted by any public servant which reflects casual and cavalier approach of the instrumentality of the state bereft of the same being sensitivity and/or without comprehending the facts and situation and/or background under which the report was called for and moreover those issues which could have far reaching consequences concerning image and reputation of the state;*
- d) pending the hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct the Respondent No.1 to forthwith provide*

police protection to the Petitioner for receiving medical treatment at Madhavbaug Multi Disciplinary Cardiac Care Clinics and Hospital, Plot No.88, 6, Kalote, Tal.Khalapur, Dist. Raigad, Maharashtra for such period as may be ordered and/or indicated by the High Court of Rajasthan, subject to such order concerning the period for medical treatment that may be passed by the High Court of Rajasthan, Jodhpur bench;

e) interim and/or ad-interim relief in terms of prayer clause (d) above be granted;”

3 Mr.Jha, submits that by this Petition, the Petitioner has impugned the communication dated 19th March, 2024, sent by the Superintendent of Police, Raigad, to the Government Advocate Cum Additional Advocate General, Jodhpur. The said communication is at Exhibit–“A” at page 30 of the Petition. Mr.Jha submits that the Petitioner is entitled to proper medical facilities and that the same can be provided at Madhavbaug Multi Disciplinary Cardiac Care Clinics and Hospital, Khopoli, Maharashtra (Madhavbaug). He submitted that the Raigad police be called upon to explain how the communication dated 19th March, 2024, was sent so promptly to the Additional Advocate General Jodhpur. He submitted that the Petitioner is entitled to

proper care and treatment and that the same can only be provided at Madhavbaug Hospital, Raigad. He submitted that the State of Maharashtra ought to have extended protection to the Petitioner to enable the Petitioner to undergo treatment at Madhavbaug Hospital.

4 Dr.Saraf, the learned Advocate General opposed the Petition. He submitted that the impugned communication dated 19th March, 2024, cannot be questioned in this proceeding, in as much as, there are several orders passed by the High Court of Rajasthan, at Jodhpur. The learned Advocate General in particular relied on the order dated 21st March, 2024. He submitted that the Petitioner's own counsel had agreed that, the Petitioner can be treated at Arogayadham, Jodhpur. He submitted that *vide* the said order dated 21st March, 2024, the Commissioner of Police was also directed to permit any expert(s)/ doctor(s) from the Madhavbaug Hospital to treat the Petitioner at Arogayadham Centre at Jodhpur, and as such, there is no merit in the grievance made by the Petitioner in this Petition.

5 Perused the Petition. Orders have been passed in an Application filed by the Petitioner before the Rajasthan High Court, Jodhpur Bench. It is pertinent to note that on 11th January, 2024, the Rajasthan High Court, Jodhpur Bench, dismissed the Petitioner's fourth application seeking suspension of his sentence. Whilst dismissing the said Application, the Rajasthan High Court in Paragraph Nos.26 and 30 observed as under:

“26. During the course of arguments, learned Public Prosecutor has voluntarily submitted that the State is ready to facilitate the treatment of the appellant at Madhavbaug Hospital in police custody and in response to that an additional affidavit has been filed on behalf of the appellant, wherein though initially it is stated that the appellant is ready to undergo treatment at Madhavbaug Hospital in police custody but in the later part of the affidavit, the appellant has clearly shown his intention not to undergo treatment in Madhavbaug Hospital in police custody but insisted that he be allowed to undergo treatment on his own at Madhavbaug Hospital.

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30. *In view of the above facts and circumstances of the case, the application filed by the appellant for suspension of sentence as well as the alternate prayer of the appellant for temporary suspension of his sentence for undergoing treatment at Madhavbaug Hospital on his own are not liable to be granted. Hence, this fourth application for suspension of sentence is dismissed.”*

6 It appears that the said order was challenged by the Petitioner before the Apex Court by way of a Special Leave Petition (SLP). The Apex Court on 1st March, 2024, passed the following order:

“ *Learned Senior Advocate appearing for the petitioner states that the petitioner – Asharam @ Ashumal would like to accept the statement of the Public Prosecutor, as recorded in paragraph 26 of the impugned judgment, that the petitioner will be taken to Madhavbaug hospital for treatment under police custody. He states that the petitioner – Asharam @ Asumal will move an appropriate application in that behalf before the High Court.*

Without making any comments on the merits, in view of the statement made, the special leave petition is dismissed with liberty as prayed. Any such application filed will be considered and decided by the High Court expeditiously.

We also request the High Court to take up the appeal filed by the appellant – Asharam @ Ashumal for hearing expeditiously.

Pending application(s), if any, shall stand disposed of.”

7 Thereafter, the Rajasthan High Court, Jodhpur Bench on 21st March, 2024, in Interim Application No.4 of 2024, observed in Paragraph No.3 of the said order as under:

“3 Mr.Bajwa, learned Senior Counsel for the applicant submitted that in order to explore possibility of applicant’s treatment at Arogyadham Center at Jodhpur, he met Dr. Arun Kumar Tyagi and during the discussion, Dr. Arun Kumar Tyagi, assured that all the facilities are available in his center. He added that Dr. Tyagi has given his consent to permit any expert from Madhavbaug Hospital, Raigad to visit/perform required activities at his center to ensure best treatment of the applicant.”

8 It thus appears from Paragraph No.3 of the aforesaid order, that the Petitioner’s counsel had submitted before the Rajasthan High Court, Jodhpur Bench, that he had met Dr.Tyagi in connection with the Petitioner’s treatment at Arogyadham

Center at Jodhpur, and that during the discussion, Dr.Tyagi had assured that all facilities were available in the said Center. It further appears that Dr.Tyagi had also given his consent to permit an expert from Madhavbaug Hospital, Raigad, to visit his center to ensure best treatment to the Applicant. Accordingly, the Application preferred by the Petitioner was disposed of by directing that the Petitioner's treatment be carried out at Arogyadham Centre, Jodhpur, in police custody. Infact, while disposing of the said application, the Rajasthan High Court, Jodhpur Bench in paragraph No.7 directed the Commissioner of Police to permit any expert(s)/ doctor(s) from Madhavbaug Hospital to treat the Petitioner at Arogyadham Centre, Jodhpur.

9 It is thus evident from the said order that the Petitioner's counsel has agreed for the Petitioner's treatment at Arogyadham Centre, Jodhpur. Today, by this Petition, the Petitioner has impugned the communication dated 19th March, 2024, sent by the Superintendent of Police Raigad to the Advocate General, expressing the inability of the police to provide protection to the Petitioner for the reasons set out in the said

communication. In the alternative, the Petitioner seeks a direction to the State of Maharashtra to provide all necessary and required protection to the Petitioner while undergoing medical treatment in Madhavbaug Multi Disciplinary Cardiac Care Clinics and Hospital at Raigad, Maharashtra, during the time the Petitioner receives medical treatment in the said hospital. The Rajasthan High Court, Jodhpur Bench, has already passed an order. The Petitioner on his own volition has sought treatment at Arogyadham, Jodhpur. We cannot sit in appeal over the order passed by the Rajasthan High Court. The Petition is clearly misconceived. It was open for the Petitioner to make a grievance before the Rajasthan High Court, before whom the prayer for medical treatment was pending.

9 Considering the aforesaid facts, there is no merit in the Petition. The Petition is accordingly dismissed.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE J.