

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

**BAIL APPLICATION NO. 2471 OF 2023
ALONGWITH
INTERIM APPLICATION NO. 1368 OF 2024**

Dheeraj Wadhawan S/O Rajesh
Wadhawan

...Applicant

vs.

Central Bureau Of
Investigation And Anr.

...Respondents

Mr. Amit Desai, Senior Advocate with Mr. Gopalkrishna Shenoy, Mr. Rohan Dakshini, Ms. Pooja Kothari, Ms. Janaki Garde, Ms. Urvi Gupte, Ms. Arya Gadagkar and Mr. Raghav Dharmadhikari i/by M/s. Rashmikanth and Partners	Advocate for the Applicant
Adv. A. M. Chimalkar, Special PP for CBI a/w Adv. Tushar C. Nirbhavane	Advocate for the Respondent
Mr. H. S. Venegavkar, PP a/w Mr. A.D. Kamkhedkar	APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 02nd MAY 2024

P. C. :-

1. I have heard learned Senior Advocate Shri Desai for the

Applicant and learned Advocate Shri Chimalker at great length.

2. The issue involved in both these proceedings is to decide further line of action once the Applicant is discharged from the hospital. That is to say whether he should be sent back to the jail or whether he should be granted a medical bail.

3. Earlier Lilavati hospital administration had advised his hospitalization for treating him on various ailments. Now that administration is advising his discharge from the hospital. According to them, now he can attend the hospital for the purpose of follow-up and his hospitalization is not required.

4. The issues of his medical ailment have also cropped-up before the trial Court and before this Court also by way of Writ Petition. Certain directions were also given. This bail application is for his release on bail on medical ground. Whereas interim application is filed for extension of the interim medical bail granted by this Court.

5. Firstly, he was granted interim medical bail as per Order dated 08/12/2023 passed in Bail Application No. 2471 of 2023. From time to time, his period of hospitalization was extended. At one point of the time, the team from AIIMS Delhi have also visited Lilavati Hospital

and they have done their own assessment. They have opined that hospitalization is not required, but he can be treated on follow-up basis in OPD and by way of physio therapy. However, this Court was pleased to extend his hospitalization.

6. So far as his ailment is concerned, there is no dispute raised by CBI. According to the learned Senior Advocate Shri Desai considering the nature of the ailments and considering the line of the treatment advised, if he will be sent back to the jail, it will be detrimental to his health. According to him, the follow-up cannot be provided from the Doctors attached to any hospital from the jail which are situated in vicinity that is to say Arthur road jail, Taloja jail. Secondly, according to him, considering the urgency, it may not be possible for the Jail administration to shift him to any hospital.

7. Whereas learned Advocate Shri Chimalker submitted that the State can afford necessary treatment in the jail and even they can make necessary arrangement for shifting him to any hospital. Even according to him, the AIIMS hospital at Delhi is well equipped hospital.

8. Both of them have relied upon number of judgments.

9. Learned Senior Advocate Shri Desai relied upon certain

judgments on the point of the bail on ground of sickness as per proviso to Section 437 of the Criminal Procedure Code. He also relied upon few of the judgments wherein the Court have granted bail for the reason that necessary arrangement are not available in jail.

10. Whereas learned Advocate Shri Chimalker also relied upon few of the Orders wherein the Court have refused to grant medical bail for the reason that treatment can be provided in the jail hospital. It is also true that few of the Orders relied upon by Shri Chimalker were also considered in the judgments relied upon by learned Senior Advocate Shri Desai.

11. On the point of the sickness as ground of the bail, learned Senior Advocate Shri Desai relied upon the observations in case of *Satender Kumar Antil Vs. Central Bureau of Investigation*¹ and the observations in case of *Dipak Shubhashchandra Mehta Vs. Central Bureau of Investigation*²,

12. In para no. 69 of the *Satender Kumar Antil (supra)*, the provisions of proviso to Section 437 of the Code are interpreted. It is responsibility of the Court to satisfy whether the accused is sick or not.

1 (2022) 10 SCC 51

2 (2012) 4 SCC 134

He stressed on the observations in para no. 78. There is insistence on giving of purposive interpretation to those proceedings. The Hon'ble Supreme Court has nowhere indicated that **in every case** bail has to be granted when sickness is taken as a ground. It depends upon the facts and circumstance of the case. Whereas there was an occasion for the High Court of Delhi in case of *Devki Nandan Garg Vs. Directorate of Enforcement*³ to consider the meaning of the word 'sick', in para no. 36.

13. As per the oxford English dictionary, it refers to "being affected by illness, unwell or ailing". As said above, CBI has never raised dispute about the Applicant suffering from ailments. Their contention is about what should be further line of action. They have also filed an affidavit in-reply. They have also pleaded about misuse of the liberty when unauthorized persons have visited the hospital. According to them, when majority of the operations are already performed, the Applicant can be taken up for follow-up even by detaining him in jail and bail is not required.

14. When learned Advocate Shri Chimalker submitted that facility

3 2022 SCC Online Del 3086

can be made available either in jail hospital or by taking him for follow up to Lilavati hospital.

15. Learned Senior Advocate Shri Desai submitted that why to burden the State for all these expenses once it is undisputed that the Applicant is sick, law does not contemplates his detention by contending that treatment can be made available. He submitted that this is not the stage wherein the investigation is going on. According to him, at the stage of the investigation, the Court can refuse medical bail on that ground. According to him, even though earlier charge-sheet are filed and even though CBI claims that investigation is going on, the investigation which remains is not the initial investigation.

16. There are various certificates produced earlier and today also one certificate is produced. It is taken on record and marked as 'Annexure-X'. It is signed by six doctors attached to the Lilavati hospital. Lumbar surgery is matter of the record. There are also few other surgeries including removal of the cyst. In today's certificate the Doctors have advised the following line of the treatment:

- (a) Continued twice daily departmental physiotherapy
mandatory

(b) Close follow-up with the Nephrologist (At least twice a week)

(c) Close monitoring of cardiac status

(d) Utilization of wheelchair as on requirement basis, pre-empting the following

(i) Giddiness while walking

(ii) Any fall that could occur in view of his double spinal surgery and hypotension which has been noticed and recorded on various occasions especially when he is walking and after using the restroom (post urination and post defecation)

17. Even though learned Senior Advocate Mr. Desai has argued that the Court should not be influenced by the submission that treatment and the facility can be made available at jail, this Court has also been considered that angle. No doubt fresh reports from the Jailers are not called, there are certain observations which were recorded in the earlier orders. They can be narrated as below :

a) Order dated 13/10/2023 passed by Coram :- Bharati Dangare, J. thereby directing the learned APP to obtain necessary instructions from DIG Prisons about course of the action for

- shifting the Applicant to take hospital.
- b) Order dated 18/10/2023 which records the report about taking the Applicant to hospital for follow up.
 - c) Order dated 23/10/2023, wherein the Superintendent of Talaja jail has assured to make necessary arrangement once the hospital will give the appointment.
 - d) Order dated 09/11/2023 wherein this Court has interacted with the medical officer of the Talaja Central Jail, Dr. Umesh Patil through VC. It was disclosed that the facility required at that time cannot be made available in the Jail, as it requires nursing and monitoring.
 - e) The Order dated 20/07/2023 passed in Criminal Writ Petition No. 2454 of 2023, the Petitioner was admitted to the Lilawati hospital for limited period of 8 days for undergoing treatment.
 - f) The Order dated 26/07/2023 passed in the WP No. 2563 of 2023 thereby extending the hospitalization.
 - g) The Order dated 27/07/2023 passed in the same petition. The issue for further hospitalization was pending decision of the

trial Court.

18. No doubt it is true that the interaction was done with the Jail authorities when various operations were not performed. Now those operations are already performed.

19. It is true that learned Advocate Shri Chimalker relied upon in as much as nine orders wherein the High Court has refused to grant medical bail. There are also orders passed by the Courts wherein the medical bail is granted and they are relied upon by learned Senior Advocate Shri Desai. Observations in both these Orders are on the basis of the facts and circumstances of that case. Individually I have not referred them. As said above, the sickness of the Applicant is not disputed.

20. Today learned Senior Advocate Shri Desai relied upon the few of the judgments wherein the Court has granted the medical bail considering the inadequate treatment available in those jails. One of such order is passed in case of *Dr. P. Varavara Rao Vs. NIA*⁴. Wherein in para no. 72 (i) the Court has noted the factual scenario about close monitoring expected at Taloja Central Prison was not undertaken.

4 2021 SCC Online Bom 230

Even para no. 74, it is observed that there are no well equipped and adequate facilities available at Taloja Central Prison. This Court observed sending back the Applicant to jail will amount to endangering his life thereby violating his fundamental rights.

21. Now the question remains whether follow-up treatment can be made available as advised by doctors to the Lilavati hospital. They have advised departmental physiotherapy twice in a day. Whereas follow-up with nephrologist is required atleast twice a week. Why this physiotherapy is due to operation of lumbar.

22. There is an issue raised and it is about possibility of the infection if he will be continued in the hospital. There are two separate findings:

- a) On page no. 1, about wound swab culture and susceptibility
- b) About eruption of eczema on both upper extremities.

23. Certain photographs are shown to me.

24. Considering all above circumstances, I feel that it will not be advisable to send the Applicant to jail once discharged from the hospital. But his prayer for medical bail need to be considered. It is matter of the record that he is suffering from various ailments.

25. Considering all the situation, I do not think that follow-up can

be arranged from jail and that too, in case of emergency. So best way available is to grant him medical bail.

26. In view of that I am inclined to allow the application. It is true that these observations are made for deciding the bail application.

27. Learned Senior advocate Shri Desai has already made it clear that they have assured the Delhi Court to apprise about passing of the Order by this Court. It is submitted on behalf of the Applicant that earlier arrangement be continued for four weeks and in the meantime they will move before the Delhi Court. It is opposed by learned Advocate Shri Chimalker. Hence the following Order :-

ORDER

a) Interim bail granted on 08/12/2023 is confirmed subject to following conditions :

(i) The Applicant shall not indulged into any activity against the law or which may amount to tampering the evidence collected including threatening the witnesses.

(ii) The Applicant is restrained from signing any documents pertaining to subject matter of the prosecutions without obtaining the leave of the trial court.

- b) The protection granted in the Order dated 19/04/2024 about not taking the custody of the Applicant without permission of this Court is extended by one week from the date of uploading of this Order.
- c) The Administration of the Lilavati hospital is at liberty to discharge the Applicant as and when they desire, subject to payment of their charges.
- d) The Applicant shall not leave India without the permission of the trial Court.
- e) Applicant to attend the trial Court punctually. He may also request to remain present virtually by taking leave of the trial Court.

28. Parties to act upon an authenticated copy of this Order

29. Bail application is disposed of. Accordingly, interim application is disposed of.

[S. M. MODAK, J.]