

Shailaja

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

CRIMINAL BAIL APPLICATION NO.2487 OF 2022

a/w

INTERIM APPLICATION NO.4017 OF 2022

IN

CRIMINAL BAIL APPLICATION NO.2487 OF 2022

Ramesh C. Bawa	]	Applicant
Vs.		
Serious Fraud Investigation Office	]	
and another	]	Respondents

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Dr. Sujay Kantawala a/w Sajal Yadav, S.K. Saxena, Anukul Seth, Aayushya Geruja, Raj Raut, Harsh Ghangurde, for Applicant.

Mr. Hiten Venegaonkar, Special P.P a/w Ms. Divya Gontia and Mr. Pradeep Yadav, for Respondent No.1.

Mr. M.G. Patil, A.P.P, for Respondent No.2 – State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 7th MAY, 2024.

ORDER:

1. The applicant is a 71 years old man who has been suffering from several serious ailments including cancer and is already on temporary bail on medical grounds, now prays for confirming the said bail in light of the facts that he would be required to continue

to take treatment and that there is no likelihood of trial being commenced during reasonable period.

2. The applicant has been arraigned as one of the several accused in Company Petition No.20 of 2019 by the Serious Fraud Investigation Officer, Mumbai (for short “SFIO”) in connection with File No. SFIO/INV/UNIT – V/1003/IL & FS/2018-19 for the offences punishable under Section 447 of the Companies Act, 2013 and Sections 417, 420 r/w 120-B of the Indian Penal Code (for short “I.P.C”).

3. Shorn of unnecessary details, a few facts germane for disposal of the application can be summarized as follows.

4. The applicant who is admittedly a senior citizen is currently undergoing treatment for advanced stage of colon cancer known as “Adenocarcinoma” as well as “Stomach Cancer”. By an order dated 11th July, 2022, the Trial Court rejected his bail application on medical grounds.

5. This Court by an order dated 30th September, 2022 granted temporary bail to the applicant for a period of eight weeks solely on medical grounds in view of serious ailments for which the applicant has been under the treatment of specialized Doctors.

6. It would be apposite to refer to a few facts of the prosecution's case. The Ministry of Corporate Affairs in exercise of its powers under Section 212 (1) (c) of the Companies Act, 2013 "in public interest" and on the basis of cogent material formed its opinion that investigation into the affairs of Infrastructure Leasing and Financial Services Limited (IL & FS) and its subsidiary companies is necessary and accordingly an order of investigation dated 30th September, 2018 bearing No.03/679/2018/CL-II (WR) came to be passed by the Ministry of Corporate Affairs, *inter alia*, directing investigation to be conducted by respondent No.1.

7. After investigation, a report came to be submitted on 28th May, 2019 in the Special Court. In view of the said report, a Company Petition No.20 of 2019 came to be filed before the Special Court on 30th May, 2019. There are 30 accused arraigned by the respondent No.1 of which the applicant is accused No.7.

Admittedly, this Court by an order dated 7th March, 2024, granted bail to accused No.3.

8. Mr. Kantawala, learned Counsel for the applicant is at pains to take me through a long history of various ailments and the treatment being administered to the applicant. The applicant was suffering from severe bleeding through anus due to piles since several months. The said condition had aggravated. He had lost considerable weight in two months and his gastro health was highly inflamed. On 10th May, 2022, he was referred to St. George Hospital for fresh examination in view of his deteriorating health in Taloja Central Jail. At the time of examination, a mass to be of cancerous origin (adenocarcinoma) was detected in colon of the applicant. He was allowed to take treatment in a private hospital. He was admitted in Nanavati Hospital at Vile Parle wherein the sigmoidoscopy and biopsy report dated 6th June, 2022 confirmed the fact that the applicant had cancerous mass/lump in his body and Adenocarcinoma Colon.

9. Mr. Venegavkar, learned Special P.P, however, objected to confirm medical bail of the applicant mainly on the premise that

one more latest report is required to be called for in order to ascertain health condition of the applicant. However, Mr. Venegavkar did not seriously object the health condition of the applicant even while releasing him on medical bail by this Court on 30th September, 2022.

10. In the first week of June, 2022, the applicant underwent surgery for removal of said cancer mass from his body. However, his condition continued to deteriorate. He was at fall risk and unable to stand, walk or sit.

11. On 11th August, 2022, he was allowed to shift from Nanavati Hospital to Dr. Das Hospital in Chembur. The request for shifting was made due to the applicant's need for special and personalized cancer care and treatment. There is no further progress in his health, rather it has been deteriorating to a great extent as even his immunity is compromised and his condition is extremely critical.

12. The latest report of the applicant from *Nanavati* Hospital suggests that he needs a protracted period of specialized care including stomach care, nursing care, repeated blood tests and

multiple doctor visits with a general physician, medical oncologist, urologist and Gastrointestinal onco surgeon which may not be possible if he is kept in custody. The latest report from Nanavati Hospital depicts that the applicant is in need of protracted treatment with longstanding care. Relevant report is extracted below;

“However, considering his current health status, he will need a protracted period of specialized care including stoma care, nursing care, repeated blood tests and multiple doctor visits with a general physician, medical oncologist, urologist and Gastrointestinal onco surgeon.

After a few weeks to months, once he has recovered sufficiently, he will need a revision surgery to reverse his colostomy. He was transferred to an outside nursing home on 14-8-22 for current ongoing treatment with instructions to return to Nanavati Max Hospital for the stoma reversal surgery”.

13. The latest report dated 26th February, 2024 given by Nanavati Max Super Speciality Hospital is sufficient to demonstrate not only the deteriorating health of the applicant at such an advanced age but the kind of treatment required to be administered. The said report is extracted below;

“Medical Certificate : Case Summary

Mr. Bawa presented to Nanavati hospital on 13-05-22 with h/o weight loss, alteration of bowel habits, reduced appetite and extreme weakness, all of which were progressive over the prior 3-4 months period. He also had retention of urine for which a urinary catheter was placed.

He had been investigated at outside hospitals and found to have a Hemoglobin of 7.5 gm%, Left iliac fossa mass and prostatomegaly on USG, Stool strongly positive for occult blood, CEA 27.2 and a CECT abdomen which showed a 10 x 7.2 x 6.1 mass arising from the bowel wall in the sigmoid colon.

After admission to Nanavati Max Hospital, a sigmoidoscopy and biopsy was performed which proved the mas to be of cancerous origin, adenocarcinoma colon. A PET CT revealed a large cancerous growth in the sigmoid colon and pulmonary arterial thrombi. A surgery was performed for the removal of the lesion and a colostomy drain was placed. This histopathological exam of the surgical specimen confirmed the diagnosis of cancer.

After the surgery, the patient remains very weak and fragile, needing continuous nursing care and help to perform all activities including sitting or standing. He needs a specialized stoma care nurse to take care of the colostomy site.

He had been started on chemotherapy due to which he had significant side effects of dizziness, hypotension peripheral edema, reduced appetite and hyperpigmentation. He completed 11 cycles of chemotherapy and it has currently been on hold till he regains his strength and energy.

Apart from this he also suffers from an enlarged prostate with recurrent urinary infections which further contributes to his weakness and disability. He needs a surgery for this as well which is currently deferred till he is fit for the same.

He was placed on blood thinners for a pulmonary embolism that developed at the time of initial diagnosis.

During the course of his biweekly follow up, he continued to remain fragile and required

supportive medications. Recently he developed bleeding into his colostomy, following which he was admitted to the hospital again and underwent upper endoscopy.

This revealed a large bleeding polyp at the gastroesophageal junction which showed an adenoma with a signet ring adeno carcinomam component.

Subsequent to this he underwent a PET CT which suggested a mild thickening at the site of the polyp and an additional site of uptake at the left psoas muscle. He was advised urgent surgery.

He was admitted under my care on 31.08.23 to Nanavati Max Super-speciality Hospital.

On 1-9-23, he has undergone a partial esophago-gastrectomy with D2 lymphadenectomy. Proximal stomach and extensive distal esophagus was needed to be resected with a laparotomy and a left thoracic incision. The procedure lasted about 9-10 hours and was performed under general anesthesia.

His post op period was marred by a chest fluid collection which continues to hamper his movements and breathing.

He has been on close follow up since this procedure. His is recovering but very slowly. He remains weak, dependent on nursing care and at least 1 person at all times for support for minimal ambulation. He is also unable to eat properly to meet his total nutritional needs due to his surgery. He has lost more than 20 kg since the procedure.

Overall with his current poor general condition and the burden of this additional cancer and its treatment, his prognosis is rather unfavourable. He is likely to remain completely dependent on acute medical services and supportive care for the rest of his life.”

14. Mr. Kantawala, learned Counsel for the applicant has invited my attention to the provisions of Section 212 (6) (ii) of the Companies Act, 2013 laying down twin conditions in addition to the regular conditions under Code of Criminal Procedure, 1973 for grant of bail which, according to him, are not applicable in the present case as the said embargo excludes persons who are sick or

infirm. The relevant portion of the provisions of the Companies Act, 2013 dealing with Bail for offences under the Companies Act, 2013 is reproduced below;

“212 (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) 1 [offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail;

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs”.

15. Mr. Kantawala would also place reliance on a few decisions in which the facts are more or less identical. There is no dispute that in view of sub clause (ii) of Section 212 of the Companies Act, 2013,

this Court is empowered to grant bail to a person who is under the age of sixteen years or is a woman or is sick or infirm.

16. Mr. Kantawala would also place reliance on a decision in the case of **Lalit Goyal Vs. Directorate of Enforcement and another**¹. In this case, the Punjab and Haryana High Court held thus;

“After hearing learned counsel for the parties and going through the medical record of the petitioner, which is based on a report of Medical Board comprising of seven doctors, constituted by Civil Surgeon, Ambala, I find that case of the petitioner would be covered under proviso to Section 45(i) of PMLA as he is a sick person requiring urgent medical treatment, especially in view of the fact that while in custody for a period of about 03 months, he was repeatedly advised medical care, as noticed in earlier part of this order.

Accordingly, this petition is allowed and the order dated 24.02.2022 passed by this Court, granting interim bail to the petitioner, is hereby made absolute”.

The said judgment was challenged before the Hon’ble Supreme Court by way of Special Leave Petition². The Supreme Court has observed thus;

1 2022 SCC Online P & H 4187

2 Special Leave Petition (Crl.) Diary No (s) 12164/2022

“2. Having heard Mr. Jayant Bhushan, senior counsel appearing on behalf of the petitioner and Mr. Mukul Rohatgi, senior counsel appearing on behalf of the first respondent, we seen no reason to entertain the Special Leave Petition on the merits of the order granting bail on medical grounds. However, Mr. Mukul Rohatgi has stated that the first respondent will physically mark his presence once a week before the Investigating Officer of the Enforcement Directorate either at Gurugram or at Delhi, as the case may be. The direction for the marking of the presence through video conferencing shall accordingly stand modified with the aforesaid direction.

3. Subject to the aforesaid, the Special Leave Petition is dismissed.

4. Pending application, if any, stands disposed of”.

17. Mr. Kantawala has further pressed into service an order of this Court in case of **Dr. P V Varavara Rao Vs. National Investigation Agency**³ Relevant paragraph is extracted below;

“31(d) It was submitted that the Taloja Central Prison hospital did not have any facility to deal with the health issues regularly being faced by the under trial. It was stated on affidavit before this court that there were no doctors at the Taloja Central Prison hospital and that there were only three ayurvedic practitioners to look

3 2021 SCC Online Bom. 230

after the inmates who were suffering from health issues. It was specifically stated that mandatory requirements under the Maharashtra Prison Hospital (Amendment) Rules 2015, framed under the Prisons Act, 1894, were not followed in the Taloja Central Prison hospital. It was specifically submitted that there were no staff nurses, no pharmacists, no compounders, no nursing assistance, no lab technicians and no medical specialists at all, to attend to the inmates at the Taloja Central Prison hospital. On this basis, it was submitted that if the undertrial was not granted bail on medical conditions and he was to be sent back to Taloja Central Prison hospital, the life of the undertrial would certainly be endangered. On this basis, it was reiterated that continued incarceration of the under trial was wholly incompatible with his health condition and that, therefore, the appeal as well as the writ petitions deserved to be allowed”.

After hearing the aforementioned submissions, the Hon’ble Bombay High Court held;-

75. In view of the aforesaid material and sequence of events, we have come to the conclusion that sending the undertrial back to Taloja Central Prison would certainly endanger his life. In fact, continued custody of the undertrial at the Taloja Central Prison is wholly incompatible with his health condition, because the hospital at the Taloja Central Prison is not adequately equipped to take care of the undertrial, given his advanced age and various health conditions”.

18. In case of **Father Stan Swamy Vs. State of Maharashtra**,⁴ the Supreme Court held thus;

“13. Pursuant to the liberty granted by Vacation Court, matter was mentioned by way of filing praecipe and after informing learned advocates appearing for the respective parties, and accordingly the same is taken on board. It is not in dispute that the age of the appellant is 84 years and even according to medical reports/findings recorded by the team of doctors from the J.J. Hospital, the appellant needs further treatment as mentioned in the report. There is no doubt that the J.J. Hospital, Mumbai is equipped with good doctors, medical staff, equipments and medicines. However, due to present pandemic situation and influx of patients in the said hospital, it may not be possible in said hospital to give personal attention to the appellant who is 84 years of age. As already observed the appellant is of 84 years of age and while hearing this appeal on 21st May, 2021, this Court has interacted with the appellant through video conferencing and asked his choice, whether he want to take treatment in the J.J. Hospital or in any other hospital of his choice including Holy Family Hospital. In that view of the matter and in view of the submissions made across the bar by Mr. Mihir Desai, learned Senior Advocate appearing for the appellant and averments in the additional affidavit on behalf of the appellant, we are of the view that the appellant can be given choice of being admitted in Holy Family Hospital at Bandra for treatment for a period of 15 days from the date of his shifting to said hospital.

4 2021 SCC Online Bom 757

14. Accordingly, the respondents and in particular Respondent No. 2, are directed to shift the appellant to Holy Family Hospital at Bandra for treatment immediately, and preferably during the course of day”.

15. As submitted by Mr. Mihir Desai, learned Senior Advocate appearing for the appellant during the course of arguments, the appellant will bear all the expenses for his treatment in the said hospital.

Unfortunately, Father Stan Swamy met with a tragic end as he passed away while undergoing medical treatment in judicial custody.

19. The Hon’ble Supreme Court in case of **Jainam Rathod Vs. State of Haryana and another**⁵ has granted bail to the appellant who was being prosecuted for violation of the provisions of Section 447 of the Companies Act, 2013 as well as various provisions of the Indian Penal Code, 1860, including Sections 406, 417, 418, 420, 467, 468, 471, 474 and 477A. A Special Leave petition preferred by the appellant was dismissed by the Supreme Court on 27th January, 2020 with observations that it was always open for the appellant to move a fresh application for bail. It would be apposite to extract paragraphs 7 to 9 of the said order which read thus;

“7. The appellant is in custody since 28 August 2019. 187 accused are named in the criminal case by the

⁵ Criminal Appeal No.640 of 2022

prosecution. It is stated in the counter affidavit that all except 27 of them have appeared. It is evident that even as regards the balance, proclamation proceedings are intended to be initiated pursuant to the order of the Special judge dated 25 March 2022. The proceedings are now listed before the Special Judge in July 2022.

8. In this backdrop, in the absence of a fair likelihood of the trial being completed within a reasonable period, this Court must be mindful of the need to protect the personal liberty of the accused in the face of a delay in the conclusion of the trial. We are inclined to grant bail on the above ground having regard to the fact that the appellant has been in custody since 28 August 2019. In Nittin Johari (supra), this Court has held:

“24. At this juncture, it must be noted that even as per Section 212 (7) of the Companies Act, the limitation under Section 212 (6) with respect to grant of bail is in addition to those already provided in CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences.”

While the provisions of Section 212 (6) of the Companies Act 2013 must be borne in mind, equally, it is necessary to protect the constitutional right to an expeditious trial in a situation where a large number of accused implicated in a criminal trial would necessarily result in a delay in its conclusion. The role

of the appellant must be distinguished from the role of the main accused.

9. For the above reasons, we allow the appeal and direct that the appellant be released on bail, subject to such terms and conditions as may be imposed by the Special Judge in connection with Complaint No 3 of 2019.

(emphasis supplied)

20. The Hon'ble Supreme Court has also noted its judgment in the case of **Serious Fraud Investigation Office V. Nittin Johari**⁶ while granting bail to the appellant Jainam. The appellant was released in light of the fact that in the absence of a fair likelihood of the trial being completed within a reasonable period, personal liberty of the appellant is to be protected in case of delay in conclusion of the trial.

21. This Court in the case of **Sant Lal Aggarwal Vs. Serious Fraud Investigation Office**,⁷ granted bail to an individual who was facing prosecution under Section 447 of the Companies Act, 2013 and was in custody for eighteen months. It was observed that the applicant was 63 years old and was suffering from various health ailments which required constant medical attention. It was one of

6. (2019) 9 Supreme Court Cases 165

7. Criminal Bail Application No.785 of 2023

the considerations while granting bail. Relevant paragraph is quoted below for advantage;

“14. The applicant is 63 years of age. It is thus seen that the applicant needs constant medical treatment. No doubt the same is available and provided to the applicant at Sir J. J. Hospital and in prison hospital. However, I have no hesitation in opining that the applicant needs constant medical attention considering his age and ailment. The age and medical condition of the applicant is one of the circumstance which I have taken into consideration for enlarging the applicant on bail”.

22. In a recent decision of the Supreme Court in case of **Satyendra Kumar Jain Vs. Directorate of Enforcement**,⁸ Supreme Court granted bail to the accused on medical ground. It was observed that the citizen has a right to take treatment of his choice, at his own expenses, in a private hospital.

23. It is a matter of record that at the time of granting interim bail to the applicant on medical grounds, Bail Application No.2487 of 2022 was not finally disposed of. Operative part of the order says that the application was partly allowed. Thereafter, various Interim Applications were moved before the Co-ordinate Benches of this Court in which the learned Special Public Prosecutor appeared,

⁸ 2023 Supreme Court Cases Online SC 686

however, he did not raise the point which has been raised now at the time of entertaining the present application that unless the applicant first surrenders and moves a fresh application, present application cannot be entertained. It is well-known that the procedure is handmaid of justice. This technicality, in my view, would not come in the way of the applicant seeking confirmation of the interim bail granted on medical grounds by this Court on 30th September, 2022. Be that as it may.

24. It would be apposite to refer to one of the Interim orders passed by this Court (Coram: M.S. Karnik, J.) on 30th November, 2022. It was passed in an Interim Application No.4017 of 2022 in Bail Application No.2487 of 2022. This Court had extended the temporary bail granted to the applicant for further period of two weeks by giving brief summary of the medical certificate. The applicant was to be examined by a Panel of Doctors of J.J. Hospital, Mumbai comprising of Dean, General Physician, Medical Oncologist, Urologist and Gastrointestinal Oncosurgeon. The applicant was directed to appear before the Panel and report of the said Panel on the health condition of the applicant was called for. Thereafter, from time to time, various orders came to be passed by

the Co-ordinate Benches. As such, the application for bail bearing No.2487 of 2022 was not finally disposed of.

25. Having taken into consideration the entire history of the applicant as well as various decisions of the supreme Court and this Court, interim bail granted to the applicant by this Court stands confirmed in view of the following order;

: ORDER :

(a) The application is allowed.

(b) The applicant – Ramesh C. Bawa be enlarged on bail upon executing a P.R bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount to the satisfaction of the Special Court in connection with File No. SFIO/INV/UNIT-V/1003/IL & FS/2018-19 for the offences punishable under Sections 447 of the Companies Act, 2013 and Sections 417, 420 r/w 120-B of the I.P.C.

(c) The applicant shall attend the Special Court scrupulously, unless exempted.

(d) The applicant shall not leave the jurisdiction of the Special court till conclusion of the trial.

(e) The applicant shall surrender his passport before the Special Court within a week from the date of passing of this order.

(f) The applicant shall furnish his latest/ permanent address of residence as well as contact details, forthwith to the Investigating Officer and the Special Court. In case of change of residential address or cell number (contact details), the same shall be forthwith informed to the Investigating Officer as well as the Special Court.

(g) The applicant shall not tamper with the evidence or attempt to influence or contact any of the witnesses or persons concerned with this case.

(h) The applicant shall keep the Investigating Officer and the Special Court informed, in case of his admission in any Hospital with details as regards date of admission and discharge.

(i) In case of breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of bail.

26. The application stands disposed of in the aforesaid terms.

27. In view of disposal of the Bail Application, pending Interim Application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]