IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1524 OF 2024
WITH
INTERIM APPLICATION NO. 2581 OF 2024

Amar Sadhuram Mulchandani ...Applicant

Versus

Directorate of Enforcement and anr. ...Respondents

Mr. Ravi Kadam, Senior Advocate, a/w Karan Kadam, Sudhanva Bedekar, Sarfaraj Shaikh and Pankaj Thakur, for the Applicant.
Mr. H. S. Venegaonkar, a/w Aayush Kedia, for Respondent No.1 – ED.
Ms. Minal Chandnani, a/w Prashant Kenjale, for the intervener
Mr. A. A. Naik, APP for the State – Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 30th JULY, 2024

ORDER:-

1. The applicant, who is arraigned in ECIR/MBZO-II/ 10/2021 registered with the Directorate of Enforcement, Mumbai Zonal Office, for an offence punishable under Section 4 of the Prevention of Money-Laundering Act, 2002 ('the PMLA'), has preferred this application to enlarge him on bail on medical ground.

2. The applicant had preferred BA/184/2024 for his release on medical ground. By an order dated 11th March,

2024 this Court rejected the prayer for bail, after an elaborate analysis of the provisions contained in Section 45(1), especially the first proviso thereto, which empowers the Court to release the person, who is under 16 years or is a woman or is sick or infirm, on bail.

3. It would be superfluous to advert to the considerations in the said order in detail. Suffice to note the observations in paragraphs 42 and 46 of the said order.

> "42. In the backdrop of the aforesaid assessment by the experts, on both diabetic retinopathy and diabetic neuropathy, it appears that the applicant essentially requires day care procedure and physiotherapy. It does not appear that the applicant requires an immediate surgical or other critical intervention.
>
> ....
>
> 46. In the totality of the circumstances, it appears that what the applicant immediately requires the day care procedure for both the eyes and physiotherapy. A direction for admitting the applicant in Sir J.J. Group of Hospitals for a period of two weeks to facilitate the applicant to have treatment for diabetic retinopathy as well as diabetic neuropathy, especially the physiotherapy, would serve the purpose. It would be open for the Medical Officers at Sir J. J. Group of Hospitals to appropriately advice the Superintendent Prison, as to whether further admission of the applicant as an indoor patient beyond the said period of two weeks would be necessary from the point of view of the treatment which the applicant requires."

4. The aforesaid order was challenged by the applicant in Petition for Special Leave to Appeal (Cri) No.4246/2024. By an order dated 22nd March, 2024, the Supreme Court declined to interfere with the aforesaid order and dismissed

the SLP. However, it was clarified that, in case the petitioner's health condition deteriorates, it would be open to him to file a fresh application for bail.

5. The applicant was admitted in Sir J. J. Group of Hospitals on 26th March, 2024. The applicant has, thereafter, preferred this application seeking bail on medical ground. It was represented by the applicant that he had suffered a mild heart attack warranting further evaluation, like coronary angiography.

6. When the application was first listed before this Court on 8th April, 2024, the applicant pressed for the alternate prayer contained in prayer clause (c) i.e. to permit the applicant to have treatment at a private hospital.

7. By order dated 8th April, 2024, this Court was persuaded to direct that the applicant be sifted to Lilavati Hospital, Mumbai, to have treatment, at his own expenses. Paragraph 6 of the said order reads as under:

> "6. Since the applicant had suffered a heart attack and is admitted in ICCU of Sir. J. J. Group of Hospitals and desires to have treatment at private hospital at his own expenses, having regard to the exigency of the situation and to ensure that the applicant gets a proper treatment to his satisfaction, it may be appropriate to allow the applicant to have treatment at a private hospital. However, the prayer of the applicant to have treatment of Ruby Hall Clinic, Pune, cannot be acceded to as there are well-equipped hospitals in Mumbai."

8. A report of Lilavati Hospital, Mumbai, dated 17th April, 2024 was submitted before this Court. On 22nd April, 2024, upon perusal of the said report, this Court passed the following order:

> "3. The opinion of the Medical Officer does not equip the Court to determine the prognosis of the disease, the nature of medical and surgical intervention required, the line of treatment and the likely time required for the same. The information on the aforesaid aspects is necessary to equip the Court to decide as to whether the applicant requires continued hospitalization and, if so, whether it is necessary to have the treatment at the private hospital and whether the applicant requires to be enlarged on interim bail on medical ground.
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> 4. It may, therefore, be necessary to call a specific report from the Superintendent/Chief Medical Officer, Lilavati Hospital and Research Centre, Mumbai, giving particulars of the prognosis of the disease, the nature of the medical and surgical intervention required, the line of treatment and the likely time required for the said treatment."

9. On 26th April, 2024 a team of Consultants attached to Lilavati Hospital submitted a report to the Court. The summary of the opinion of the Consultants read as under:

> "1] In view of the medical comments mentioned above, coronary angiography cannot be performed at this juncture because of low eGFR.
>
> 2] We are not competent authority to decide whether the patient requires private hospitalization v/s. Government hospitalization, as we are unaware of the facilities available in other institutes. We leave it to the sound judgment of the Hon'ble Court to take a final call after reviewing our above observations.
>
> 3] The prognosis of the disease is guarded (kindly refer to the points mentioned previously).
>
> 4] Nature of medical and surgical intervention required.
>
> Coronary Angiography.

Medical Management and fallout of Chronic.

Kidney Disease and its cascading effects on other organs which are compromised.

Intra Vitreal Injections.

5] The further line of treatment would depend on the coronary angiography which is mandatory to be performed with closed conjunction with the kidney function.

6] The likely time required cannot be measured/anticipated as every human body reacts differently at different times due to dynamics which can change drastically. Above update is being given after personal consultation and clearance of respective specialists.

Kindly make note of the above and do the needful."

10. Having regard to the aforesaid summary of the assessment by the consultants, by an order dated 7th May, 2024, the applicant was permitted to continue his treatment at Lilavati Hospital, and a request was made to the Superintendent/Chief Medical Officer, Lilavati Hospital, to furnish a fresh report to the Court.

11. The hospitalization of the applicant has since continued and, eventually, on 1st July, 2024 Dr. Shrinivas Kudva, Interventional Cardiologist, has submitted the following medical update:

"Medical update is being submitted to Hon. Court about progress and prognosis of patient.

DIABETES: Patient has variable sugars which needs monitoring with multiple pricks during the day – which is cumbersome, hence patient has been adviced Continuous Glucose Monitoring System (which pairs to android device) for better sugar control.

HEART: Patient has history of angioplasty to RCA and coronary artery bypass surgery in thepast. Shifted to Lilavati Hospital with unstable angina. On evaluation here, his LVEF was found to be 45% (reduced from 55% which was done previously). In order to assess the coronary artery disease burden and critical nature of heart disease, patient needs to undergo a coronary angiography.

But, angiography is not currently possible as eGFR (marker of kidney function) is reduced. If angiography is done now then chances of patient needing lifelong dialysis is high. His heart is currently stable with medical management which is being monitored by medical professionals twice daily.

KIDNEY: With treatment, his latest eGFR is 40mL/min/1.73sqm (normal value is more than 90ml/min/1.73spm). Patient has chronic kidney disease due to diabetic kidney disease. He has proteinuria and has been treated with latest medications to try and protect the kidney.

NEURO : Patient has debilitating diabetic neuropathy with muscle wasting and weakness causing a permanent disability of 60%. He is currently undergoing physiotherapy under supervision and also on nerve tonics. His weakness in right lower limb is more than the left causing him to have imbalance and gait disturbance. Coupled with diabetic autonomic dysfunction, the patient is presyncopal with history of fall on 26th May in the bathroom for which MLC was done. The patient continues to have postural hypotension and needs strict sugar control with regular institutionalized and supervised physiotherapy to prevent fall. He has generalized Diabetic Amyothrophy with Diabetic Neuropathy.

EYES: Patients right eye vision has been reduced to only finger counting. At this stage surgery to right eye cannot be done for fear of retinal detachment and complete loss of vision. He also has reduced vision in left eye (6/18) for which Intra Vitreal Eylea injections are needed every 30-45 days. He will need 3-5 more such intravitreal injections.

Reduced vision in right eye – reduced to finger counting. Operation of right eye cannot be done now due to risk of retinal detachment. Left eye has reduced vision – 6/18

vision. Needs 3 -5 injeections to be given inside the left eye for recovery.

LUNGS: Has moderate Reduction in diffusion capacity and needs monitoring to prevent worsening of lung function.

PSYCHATRIC EVALUATION: Patient has many thoughts of anxiety and depression and needs supervision of mental status.

Once stablilized, he will need gall bladder surgery to be done to remove his gall stones.

Prognosis is guarded.

Patient is at high risk for interventional procedures.

His kidney disease needs stabilization prior to procedure.

The above medical conclusion has been prepared after discussion with concerned specialists."

12. I have heard Mr. Ravi Kadam, the learned Senior Counsel for the applicant and Mr. Venegaonkar, the learned Special PP for respondent No.1. Perused the material on record, especially the medical reports.

13. At the outset, Mr. Venegaonkar, the learned Special PP, submitted that the applicant did not approach this Court with clean hands. The applicant had not suffered heart attack, as was submitted on behalf of the applicant. Attention of the Court was invited to a communication dated 10th April, 2024 addressed by the Cardiology Department of Sir J.J. Group of Hospitals to the effect that the applicant was evaluated in ICCU of Department of Cardiology, Sir J.J. Group of Hospitals. The applicant was stable from cardiac

point of view. Investigation revealed stable cardiac conditions. Patient was stable throughout course in ICCU and there was no chest pain. As patient did not need any active cardiac management, patient was transferred back to Neurology ward, where he was initially admitted.

14. Mr. Kadam joined issue by canvassing a submission that the medical record maintained at Sir J.J. Group of Hospital indicates that the applicant was suffering from chest pain. He was shifted to Cardiology Department from the Neurology Department. The applicant was given to understand that he had suffered a mild heart attack. Therefore, on the basis of subsequent report by the Cardiology Department, it cannot be urged that the applicant had falsely claimed that he had suffered a heart attack.

15. The material on record indicates that on 6th April, 2024 a communication was addressed by the Cardiology Department to the Superintendent, Arthur Road Prison to the effect that the applicant was a case of ACS: NSTEMI and was admitted in ICCU and that Coronary Angiography was planned and, therefore, for the said procedure approximate charges of Rs.10,000/- be remitted. NSTEMI means a Non-

ST-elevation myocardial infarction, a type of heart attack that usually happens when heart's need for oxygen cannot be met.

16. It is also relevant to note that the report submitted by the team of consultants at the Lilavati Hospital on 26th April, 2024 records that the applicant was admitted on 9th April, 2024 with complaints of breathlessness, palpitations and chest pain – the applicant had a heart attack at Sir JJ Hospital (NCTEMI).

17. In the backdrop of the aforesaid material, the ground sought to be urged by Mr. Venegaonkar need not be delved into any further.

18. Mr. Kadam submitted that the medical reports submitted by Lilavati Hospital would indicate that, when this Court had passed the order of rejection on 11th March, 2024, there was no proper evaluation of the medical condition and, therefore, this Court came to the conclusion that what applicant required was a day-care procedure and physio-therapy. If the series of reports submitted by Lilavati Hospital are considered, it becomes abundantly clear that the applicant is both sick and infirm. An endeavour was made by Mr. Kadam to draw home the point that despite treatment for over three months, there has not been any substantial

improvement in the condition of the applicant. Emphasis was laid on the fact that eGFR marker was less than half that of the normal range throughout. The latest medical report indicates that eGFR is 40mL/min/1.73sqm. as against the normal value of 90mL/min/1.73sqm. In such circumstances, coronary angiography, which is a must to evaluate the cardiac condition of the applicant, is associated with an imminent risk of sudden kidney shutdown. Vision of the applicant has diminished further. The applicant requires assistance even to perform his daily routine. Such a debilitating condition is a manifestation of infirmity.

19. Mr. Venegonkar, the learned Special PP, countered the submissions of Mr. Kadam. It was urged that the prayer for bail on medical ground was already rejected by this Court. The Supreme Court granted liberty to the applicant to revive the prayer, if the condition deteriorated. The reports submitted by Lilavati Hospital would indicate that with treatment and medication, the condition of the applicant has improved. In these circumstances, the applicant does not require further hospitalization, much less bail on medical ground. In future, if the applicant requires further medical

treatment, as and when the occasion arises, the applicant can be provided such treatment, urged Mr. Venegaonkar.

20. In a case of the present nature, where an accused is stated to be suffering from multiple ailments and also happens to be above 60 years age, the Court is persuaded to adopt a conservative approach and be guided by the opinion of the experts. Thus, while rejecting the earlier application for bail, to ensure that the applicant has the requisite medical treatment, this Court had directed that the applicant be admitted as an indoor patient in Grant Govt. Medical College and Sir J. J. Group of Hospitals, Mumbai, for treatment of diabetic retinopathy and diabetic neuropathy and other ailments. It was further directed that the applicant be provided intensive physiotherapy. The same consideration of providing necessary medical treatment weighed with the Court when a prayer for treatment at a private hospital was made.

21. The situation which now obtains is that the applicant has been hospitalized for over three months. The latest medical report of the Lilavati Hospital and Research Centre refers to the same level of risk associated with coronary angiography on account of low eGFR. Dr. Srinivas Kudva,

Interventional Cardiologist, has opined that the patient is at high risk for interventional procedure. His kidney disease needs stabilization prior to procedure. Dr. Kudva reiterates angiography is not possible as eGFR (marker of kidney function) is reduced. If angiography is done at present, then chances of patient needing lifelong dialysis is high.

22. In the backdrop of the aforesaid opinion, in conjunction with the assessment regarding neurological and ophthalmological condition of the applicant, Mr. Kadam submitted that the applicant be enlarged on bail.

23. I have given anxious consideration to the submissions and material on record.

24. In the previous order also this Court had expressed an expectation that the medical reports may be such as to equip the Court to form an opinion about the necessity of continued hospitalization and/or grant of bail. Therefore, in the order dated 22nd April, 2024, this Court observed that the medical report dated 17th April, 2024 did not equip the Court to determine the prognosis of the disease, the nature of medical and surgical intervention required, the line of treatment and the likely time required for the same. The Superintendent/ Chief Medical Officer, Lilavati Hospital and

Research Centre was thus requested to furnish a medical report giving particulars of the prognosis of the disease, the nature of the medical and surgical intervention required, the line of treatment and the likely time required for the treatment.

25. In my considered view, the latest report submitted by Dr. Kudva is required to be considered in the light of the case summary submitted by the team of consultants on 26th April, 2024. In the said report dated 26th April, 2024, Dr. Kudva had opined that from the cardiologist's point of view, definitive evaluation was coronary angiography. Coronary angiography was required to be deferred in view of the then eGFR at 44 mL/min/1.73 sqm. The possibility of acute renal shutdown was extremely high, while performing a coronary angiography.

26. The Nephrologist had noted that on 9th April, 2024 eGFR was 38mL/min/1.73 sqm and with the treatment it had improved to 44mL/min/1.73 sqm, on 22nd April, 2024. The Nephrologist had further opined that the complete cure of renal disease to normal may not be possible and patient may need 2-3 months to stabilize.

27. The Neurologist had opined that on account of severe diabetic neuropathy with diabetic amyotrophy, the applicant had permanent disability of 60% and would need supervised medical therapy for 2-3 months at least.

28. The Ophthalmologist had reported that the applicant had reduced vision in both eyes with right eye vision reduced to finger counting at 3 feet and left eye vision having 6/18 vision. The applicant would need another 3-5 intra vitreal injections to stabilize vision in left eye.

29. The Pulmonologist had opined that the applicant had moderate reduction in diffusion capacity on pulmonary function test and needed to be kept in controlled dust free environment to prevent further deterioration in lung function. The Pulmonologist suggested regular physiotherapy and breathing exercises which could be done on OPD basis and did not require hospitalization.

30. It was further reported that once heart and kidney were stabilized, the applicant will require Cholecystectomy (Gall Bladder removal surgery). It is in the wake of the aforesaid specific opinion of the respective consultants, the summary of the opinion, extracted above, was given.

31. The pivotal question that merits consideration is, with intensive treatment of more than three months, as a indoor patient, whether the condition of the applicant has improved. If the latest report of Dr. Kudva is considered, it appears that the condition of the applicant is, by and large, similar as of the date of the evaluation by the team of consultants and the submission of above referred case summary dated 26th April, 2024.

32. Though the Court does not propose to doubt the evaluation in the latest medical report, yet, the fact that the applicant has been under intensive medical treatment for over three months, cannot be lost sight of. While the Court is sensitive to the prisoner's right to life and health, the hospitalization must be need based.

33. It is necessary to note that in the opinion of Nephrologist and Nureologist submitted on 26th April, 2024, it was clearly opined that the applicant might need 2-3 months to stabilize. The Ophthalmologist had then opined that the applicant would need 3-5 more intra vitreal injections to stabilize vision in left eye. The applicant has been an indoor patient for over three months. The applicant must have had the requisite treatment as advised by the consultants.

34. In the aforesaid view of the matter, to have a better assurance regarding the prognosis of the disease, the severity of the diseases the applicant is suffering from, the nature of the medical and surgical intervention required, the line of treatment and the likely time required for the treatment and even the continued hospitalization of the applicant as an indoor patient, this Court considers it necessary to now direct that the applicant be shifted to Sir J. J. Group of Hospitals so that a team of the experts at Sir J. J. Group of Hospitals evaluates the applicant's medical condition and submits report to the Court. Such report of the experts at Sir J. J. Group of Hospitals would better equip the Court to decide the application.

35. Hence, the following order.

: O R D E R :

(i) The Superintendent, Central Prison, Mumbai is directed to shift the applicant to Sir J. J. Group of Hospitals, Mumbai.

(ii) The Dean, Sir J. J. Group of Hospitals & Grant Govt. Medical College, Mumbai is requested to admit the applicant as an indoor patient in Sir J. J. Group of Hospitals till 7th August, 2024.

(iii) The Dean, Sir J. J. Group of Hospitals & Grant Govt. Medical College, Mumbai is directed to constitute a team of experts to evaluate the condition of the applicant and submit

a report on the point of prognosis of the disease, the level/ degree of the ailments the applicant is suffering from, the nature and surgical intervention required, the line of treatment and the likely time required, and also the necessity of the continued hospitalization.

(iv) During the period of hospitalization at Sir J.J. Group of Hospitals, Mumbai, the applicant be provided necessary treatment.

(v) The applicant may be provided accommodation in the Hospital, in accordance with the standard practice at Sir J. J. Group of Hospitals, Mumbai, if available.

(vi) The Superintendent/ Chief Medical Officer, Lilavati Hospital and Research Centre, Mumbai is requested to share the copies of entire medical record of the applicant with the Dean, Sir J.J. Group of Hospitals.

(vii) The report be submitted to this Court on or before 6th August, 2024.

(viii) The matter be listed before the Court on 7th August, 2024.

(ix) The learned Public Prosecutor to communicate this order to the concerned authorities.

(x) All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]