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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1524 OF 2024

Amar Sadhuram Mulchandani ...Applicant

Versus

Directorate of Enforcement and anr. ...Respondents

WITH

INTERIM APPLICATION NO. 2581 OF 2024

WITH

INTERIM APPLICATION (ST) NO. 14286 OF 2024

Mr. Karan Kadam, a/w S. S. Bedekar and Pankaj Thakur, i/b Sarfaraj Shaikh, for the Applicant.
Mr. H. S. Venegaonkar, a/w Aayush Kedia, for ED – Respondent No.1.
Mr. A. A. Naik, APP for the State/Respondent No.2.
Ms. Minal Chandnani, for the Intervener.

CORAM: N. J. JAMADAR, J.
DATED: 9th AUGUST, 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. This bail application is being disposed of by this order in continuation of the order dated 30th July, 2024.

3. The applicant had preferred BA/184/2024 for bail on medical ground. By an order dated 11th March, 2024, this Court was persuaded to reject the prayer for bail by ascribing elaborate reasons. This Court observed in paragraphs 42 and 46 of the said order as under:

> "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. Perused the case summary dated 26th April, 2024. Copies of case summary be made available to the learned Counsel for the applicant, the learned APP and the learned Counsel appearing for respondent No.1.
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> .....
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> 46. In the totality of the circumstances, it appears that what the applicant immediately requires is 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 advise 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. Being aggrieved, the applicant preferred Special Leave to Appeal (Cri) No.4246 of 2024. By an order dated 22nd March, 2024, the Supreme Court declined to interfere with the aforesaid order and dismissed the SLP. Liberty was however reserved for the applicant to file fresh application for bail in case the applicant's health condition deteriorated.

5. Availing the aforesaid liberty, the applicant has preferred this application. In the order dated 30th July, 2024, this Court had noted the circumstances in which the applicant was permitted to have treatment at Lilavati Hospital, Mumbai, at his own expenses, and the medical reports submitted by Lilavati Hospital, periodically, recording the state of health of the applicant. This Court, *inter alia,* noted that inspite of the treatment of the applicant at Lilavati Hospital for over three months, the last report submitted by Lilavati Hospital assessed the condition of health of the applicant, more or less, similar to that as obtained on 26th April, 2024. The Court, therefore, considered it appropriate to shift the applicant to Sir. J. J. Group of Hospitals, so that a team of experts at Sir. J. J. Group of Hospitals evaluates the applicant's medical condition and submits a report to the Court. The observations in paragraphs 31 to 34 deserve extraction:

> "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.
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> 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.
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> 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."

6. Pursuant to the aforesaid order dated 30th July, 2024, the applicant came to be admitted at Sir. J. J. Group of Hospitals. A four member committee of experts headed by Dr. Kamlesh Jagyasi, Professor and Head of the Neurology Department, was constituted. The committee of experts has evaluated the health condition of the applicant and submitted a report.

7. Since the Court would be guided principally by the assessment of the team of experts at Sir. J. J. Group of Hospitals, it may be expedient to extract the report of the committee, in extenso. It reads as under;

> "Patient Mr. Amar Saduram Mulchandani, 66 years old male was admitted in Sir J. J. Hospital ward 4 in Department of Medicine on 04-08-2024 at 12.30 am.

Mr. Amar is a known case of Diabetes Mellitus, Hypertension, Diabetic Neuropathy, Diabetic Nephropathy, Diabetic Retinopathy, Ischemic Heard Disease.

The committee members examined him and went through his available laboratory investigation reports.

Neurology Opinion:

Mr. Amar Saduram Mulchandani has bilateral lower limb weakness, paresthesias because of diabetic neuropathy because of which he needs to take Diabetes medicine regularly, undergo physiotherapy daily. He needs assistance for his activities of daily living.

He does not need hospitalization for his neuropathy and can be managed on OPD basis.

Cardiology Opinion:

Mr. Amar Saduram Mulchandani is knows case of Ischemic Heard Disease. His angioplasty was done in 2012. His Bypass surgery was done in 2021. At present his evaluation shows normal vital parameters. His ECG is suggestive of Left Bundle Branch Block. 2D Echocardiography is suggestive of normal left ventricular systolic function with ejection fraction of 60%. At present Mr. Amar Saduram Mulchandani has no acute cardiac complaint and is kept on medical management for his ischemic hears disease and he is stable on these medications. His medications for his cardiac ailments are:

Tab Ecosprin AV 75/10 – 0 -1 -,

Tab Telma 40 mg. - 1 - 0 - 0

He does not need hospitalization for his cardiac ailments and can be managed on OPD basis.

Nephrology Opinion:

Mr. Amar Saduram Mulchandani has chronic kidney disease stage III-B, GFR 40ml/minute, mostly secondary to long standing diabetes mellitus (Diabetic Nephropathy). This is an irreversible condition which cannot be cured but only be controlled to delay the progression of chronic kidney disease. We have added keto-analogues which may help to control it. He is advised strict glycemic control and follow up in nephrology OPD-28 at J. J. Hospital on Tuesday or Thursday. He is advised to continue Tab Cardace 2.5 mg. 0-0-1, Tab empagliflozin 25 mg. 1-0-0, Tab linagliptin 5 mg. 1-0-0, Tab Diamicron XR 60 mg. 1-1-1, Tab Volibo 0.3 mg. 1-1-1, Tab Silodol-D 0-0-1.

Ophthalmology Opinion:

Mr. Amar Saduram Mulchandani has proliferative diabetic retinopathy in both eyes due to long standing Diabetes Mellitus because of this his vision in right eye is finger counting at 1 metre and in left eye is 6/18. This is same over an year.

> For right eye there is nil active management and for left eye he is advised intravitreal anti-VEGF injection after physician's fitness which is a day care procedure and should continue eye drops Nepafenac in left eye three times a day and Betaxolol eye drops in right eye twice a day.
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> As per the committee the patient does not need hospitalization at present and can follow up in respective specialities at regular intervals on OPD basis. He is advised to take his medicines regularly as advised."

8. In the light of the above report, I have heard Mr. Kadam, the learned Counsel for the applicant, and Mr. Venegaonkar, the learned Special PP, for ED/respondent No.1. I have also perused the material on record including earlier medical reports.

9. Mr. Kadam, the learned Counsel for the applicant, submitted that the latest report of the Committee of experts at Sir. J. J. Group of Hospitals, in a sense, fortifies the earlier medical reports on the aspect of severe infirmity, which the applicant is suffering from. Mr. Kadam urged that the fact that the committee has opined that the applicant does not require hospitalization cannot be the sole determinative factor. The committee has opined in clear and unequivocal terms that the applicant needs assistance for his activities of daily living. This assessment, according to Mr. Kadam, underscores the seriousness of applicant's infirmity. Mr. Kadam laid particular emphasis on neurology opinion. The neurologist has opined that the applicant is required to take diabetes medicine

regularly and undergo physiotherapy daily. The applicant needs assistance for his activities of daily living.

10. Mr. Kadam further urged that when the first application was rejected by this Court the renal ailments, the applicant has been suffering from, were not considered. Since the Nephrologist opined that the applicant is suffering from kidney disease stage III-B GFR 40ml/minute, which is an irreversible condition, according to Mr. Kadam, these twin factors pose a grave risk to the life and health of the applicant, if he is sent back to prison. There is an imminent risk of aggravating cardiac problem as the applicant is a known case of Ischemic Heart Disease. Mr. Kadam placed reliance on the following observations in the judgment in the case of ***Kewal Krishan Kumar vs. Enforcement Directorate***[1]***:***

> "47. Mere old age does not make a person '*infirm*' to fall within section 45(1) proviso. Infirmity is defined as not something that is only relatable to age but must consist of a disability which incapacitates a person to perform ordinary routine activities on a day-to-day basis."

11. Reliance was also placed on an order passed by Delhi High Court in the case of ***Amit Chakraborty vs. State of NCT of Delhi***[2]***,*** wherein the Delhi High Court, noting the fact that the applicant therein was suffering from 59% permanent physical

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1 2023 SCC OnLine Del 1547.

2 2024 SCC OnLine Del 3336.

disability due to post-polio residual paralysis of both lower extremities, directed the release of the applicant therein on bail. It was submitted that indisputably the applicant is suffering from diabetic neuropathy with muscle wasting and weakness causing permanent disability of 60%. Thus, the applicant deserves to be enlarged on bail, submitted Mr. Kadam.

12. In opposition to this, Mr. Venegaonkar, the learned Special PP, urged that all these submissions premised on the diabetic neuropathy with muscle wasting and weakness causing permanent disability were considered by this Court while deciding the first bail application and this Court had recorded a firm opinion that the applicant was not suffering from such sickness or infirmity as to warrant his release on bail. The liberty granted by the Supreme Court was only for renewing the prayer for bail in case the condition of the applicant deteriorated. Therefore, it has to be seen, whether there is deterioration in the health condition of the applicant. Mr. Venegaonkar submitted that the applicant has been effectively under treatment for past four months. In the face of clear and categorical opinion of the committee of experts at Sir J. J. Group of Hospitals that the applicant does not need hospitalization anymore and can follow up in the respective

specialities at regular intervals on OPD basis, the prayer for bail is wholly unsustainable.

13. While deciding the first bail application, as noted above, this Court had elaborately considered the parameters which govern the exercise of discretion under the proviso to Section 45(1) of the PMLA. After adverting to the provisions and the precedents, including the decision in the case of ***Kewal Krishan Kumar*** (supra), this Court had observed as under:

> "29. The legal position as regards the grant of bail in matters where the person is accused of an offence punishable under PMLA is fairly crystalized. Sub section (1) of Section 45 of PMLA contains an interdict against the grant of bail to a person accused of an offence punishable under PMLA, unless the twin test envisaged thereby, namely, opportunity to oppose the prayer for bail and satisfaction of the Court that there are reasonable grounds for believing that the applicant is not guilty of such offence and he is not likely to commit any offence while on bail is recorded. The first proviso however empowers the Court to release the person on bail who is under 16 years or is a woman or is sick or infirm. The limitations in the matter of granting bail under section 45(1) are in addition to the restrictions contained in the Code or any other law.
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> 30. On its plain reading, it is abundantly clear that grant of bail by invoking the first proviso is in the discretion of the Court. However, as is the case with exercise of discretion in any matter, such discretion is required to be exercised in a judicious manner. The Court must pose unto itself the question as to whether the person seeking bail falls within any of the exceptional categories and, if so, whether in the totality of the circumstances, the exercise of discretion would be justifiable.
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> 31. Evidently, the Parliament has used the words, 'sick' or 'infirm' disjunctively. A person may be sick and infirm. A person can be 'infirm' without being 'sick'. However, it is not the every kind of sickness which would justify the grant of bail lest the object behind prescribing stringent conditions in the matter of grant of bail would be frustrated if a person can be released on bail on the ground of sickness dehors the degree of seriousness of the ailment. It is in this context, the

> reports of the experts assist the Court in forming an opinion as to whether the person claiming bail is suffering from such sickness as to warrant his release on bail.
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> 32. Ordinarily, the consideration that the sickness is such that it cannot be adequately or effectively treated in the prison hospital/the medical facility attached to the prison or Government hospital, weighs with the Court. The degree of sickness also bears upon the exercise of the discretion. If it is a life threatening disease, the Court would be well advised to exercise its discretion. Conversely, it cannot be said that the proviso cannot be resorted to in the case of sickness which is not life threatening. Essentially, the question of sickness, or for that matter infirmity, is rooted in the thickets of facts of the given case.
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> 33. Infirmity, in turn, may arise from a variety of causes. Infirmity may not necessarily be on account of sickness. The Parliament has therefore advisedly used the words 'sick' or 'infirm' disjunctively. The provision is required to be construed in such a manner as to advance the guarantee of right to life under Article 21. A prisoner cannot be left in the lurch even when he is suffering from a serious ailment for the only reason that his personal liberty is deprived by operation of law. A prisoner has right to have treatment to preserve his health. A prisoner is entitled to the dignity he deserves. It is the obligation of State to provide requisite treatment to a prisoner so as to preserve and protect his health."

14. On the touchstone of the aforesaid principles, the prayer of the applicant for bail is required to be evaluated, in the light of the report of committee of experts, extracted above. First and foremost, it is necessary to note that the committee has opined in no uncertain terms that the applicant does not need hospitalization, at present. The applicant can have follow up treatment for the ailments he is suffering from, in the respective specialities, at regular intervals, on OPD basis. It is thus clear that, at this stage, the applicant does not require hospitalization and/or institutionalized treatment for any of the ailments he is

suffering from. Secondly, it would be relevant to note that the applicant sought permission for treatment at a private hospital on the ground that he had suffered a mild heart-attack. The committee, especially the cardiologist, has clearly opined that at present the cardiac evaluation of the applicant shows normal vital parameters. 2D Echocardiography is suggestive of normal left ventricular systolic function with ejection fraction of 60%. At present the applicant has no acute cardiac complaints. Thirdly, the Nephrologist has opined that the applicant has chronic kidney disease stage III-B GFR 40ml/minute and the said condition is irreversible, yet, from nephrological point of view what is required is strict glycemic control and medication, as advised. The applicant could follow up on OPD basis. Fourthly, from ophthalmologist's perspective also, the condition of the applicant is not such that it requires immediate intervention. The applicant was advised to have intravitreal anti-VEGL injection, which is a day care procedure. That leaves the aspect of bilateral lower limb weakness, paresthesias on account of diabetic neuropathy.

15. The thrust of the submission of Mr. Kadam was that the committee of experts has also opined that the applicant needs assistance for his daily routine activities. If the applicant

requires assistance for his routine activities, it can hardly be denied that the applicant is infirm, submitted Mr. Kadam.

16. The aforesaid submission deserves appreciation in the totality of the circumstances. It is necessary to note, while rejecting the first application, this Court had directed that the applicant be admitted as an indoor patient in Sir J. J. Group of Hospitals for the period of two weeks and the applicant be provided extensive physiotherapy, as advised, during the said period. The instant application came to be filed while the applicant was admitted as an indoor patient at Sir J. J. Group of Hospitals pursuant to the aforesaid order. Subsequently, pursuant to order dated 8th April, 2024, the applicant came to be admitted at Lilavati Hospital, Mumbai. In the report dated 26th April, 2024 the team of experts at Lilavati Hospital had opined that the applicant would require supervised therapy for two to three months, at least. The applicant remained as an indoor patient at Lilavati Hospital for over three months. The applicant must have had the requisite sessions of physiotherapy at the Lilavati Hospital, during the said period.

17. The assessment that the applicant requires regular physiotherapy cannot be questioned. However, the prayer for bail on the count that the applicant requires assistance for his

daily routine activities cannot be considered, discounting the extensive period for which the applicant has been provided treatment, as an indoor patient, at the Lilavati Hospital and Sir J. J. Group of Hospitals. In the light of the condition of health of the applicant on other parameters, namely, cardiac, nephrology and ophthalmology, the applicant seems to be relatively stable. What the applicant now requires is diabetes management and physiotherapy.

18. Thus, the assessment that the applicant requires assistance for his daily activities cannot be appreciated in isolation. An appropriate direction to the Superintendent, Central Prison, Mumbai, to provide the requisite assistance, whenever necessary, would meet the exigency of the situation. The concern expressed on behalf of the applicant that on account of logistical issues it may not be practicable to take the applicant to Sir J. J. Group of Hospitals for treatment regularly can also be addressed by issuing appropriate directions.

19. The requirement of assistance either in the form of physical aids like wheelchair or walker, or human support, cannot be construed to be such an infirmity as to warrant the release on bail by invoking the proviso to Section 45(1) of the PMLA. To put in another words, there is not much qualitative

difference in the condition of health of the applicant today and as it obtained when the first application was rejected. On the contrary, an inference may be justifiable that the health condition of the applicant has improved with treatment as an indoor patient for almost four months.

20. I am, therefore, not inclined to release the applicant on bail on medical ground. However, I deem it appropriate to issue certain directions to ensure proper assistance and treatment to the applicant.

21. Hence, the following order.

: O R D E R :

(i) Application stands rejected.

(ii) The applicant be re-lodged in the Central Prison, Mumbai.

(iii) The Superintendent, Central Prison, Mumbai, is directed to lodge the applicant at a suitable place in the prison and arrange for a wheelchair and/or a walking aid to the applicant.

(iv) The Superintendent, Central Prison, Mumbai, shall also provide an attendant to assist the applicant to carry out his daily pursuits, whenever required.

(v) The Superintendent, Central Prison, Mumbai, shall take the applicant to Sir J. J. Group of Hospitals, Mumbai, for

physiotherapy and other treatment on Monday, 12th August, 2024 and thereafter as may be advised by the Doctors at Sir J. J. Group of Hospitals.

(vi) Respondent No.1 – ED shall make necessary arrangement for the necessary escort to take the applicant to Sir J. J. Group of Hospitals, Mumbai, as and when advised by the Doctors at Sir J. J. Group of Hospitals.

(vii) The Medical Officer at Central Prison, Mumbai, shall also provide the requisite medical treatment and assistance to the applicant and may advise that the applicant be shifted to the Sir J. J. Group of Hospitals, Mumbai, if the situation so warrants.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail under the proviso to Section 45(1) of the PMLA.

(ix) Bail Application No.1524/2024 stands disposed.

(x) In view of disposal of bail application, interim application(s), if any, also stand(s) disposed.

[N. J. JAMADAR, J.]