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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21.03.2024
Pronounced on: 01.04.2024

+ **BAIL APPLN. 1023/2024**

ASHOK KUMAR

..... Petitioner

Through: Mr. Mukesh Kalia, Advocate.

versus

THE STATE N.C.T OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for State
with SI Pardeep Kumar, P.S.
Rajouri Garden.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J****CRL.M.A. 8975/2024 (exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 1023/2024

3. The instant application under Section 439 and 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking grant of interim bail for a period of two months in case FIR bearing No.1525/2014, registered at Police Station Rajouri Garden, Delhi for the offences punishable under Sections 326A/392 of Indian Penal Code, 1860 ('IPC').



4. Briefly stated, facts of the present case are that the complainant was attacked near Chawla Jewellers in the main market of Rajouri Garden, Delhi on 23.12.14 while traveling to ESI Hospital in Basai Dardapur, Delhi, where the complainant used to work as a Senior Resident Doctor. It was alleged by the complainant that two unidentified persons on a motorcycle had approached him from behind, and had snatched his bag, which was placed on her scooty. It was further alleged by the complainant that one of the persons threw a chemical-like substance on her face, causing burns on my right eye, face, and right hand. The complainant had immediately raised an alarm, but the accused persons had fled from the spot. On the basis of the statement of victim, inspection of the spot and MLC of the victim, the present FIR was registered under Sections 394/326A/34 of IPC. During the course of investigation, the present applicant/accused who is allegedly the main conspirator in the present case was arrested on 25.12.2014. The present applicant/applicant is before this Court seeking interim bail on medical ground.

5. Learned counsel for applicant argues that the accused was arrested in the present case on 25.12.2014 and has been released on interim bail on multiple occasions and that he has never misused the liberty of bail so granted. It is further argued that the applicant herein is suffering from a serious disease of hernia and is also suffering from unbearable pain of abdomen and abdominal bleeding. It is also stated that the present medical situation of the applicant is alarming and he is being taken to Deen Dayal Upadhyay Hospital, Hari Nagar, Delhi where the medical treatment is not satisfactory. It is argued that the



accused wants to be treated at a private hospital at his own expenses and for the said purpose, he be granted bail. It is also stated that eye witnesses as well as the complainant have already been examined. Therefore, there is no likelihood of the petitioner interfering with the evidence.

6. Learned APP for the State, on the other hand, argues that the allegations against the present applicant/accused are serious and grave in nature. It is argued that the required medical facility is available in Deen Dayal Upadhyay Hospital, Hari Nagar, Delhi which is a jail referred hospital, and accused/applicant has been getting treated in the said hospital. Thus, the present bail application which has preferred on medical grounds be dismissed.

7. This Court has heard arguments addressed by learned counsel for the applicant and learned APP for the State and has perused the material on record.

8. The allegations against the present applicant/accused are that he was the main conspirator who had planned to throw acid on the victim, who had rejected the love proposal of the present applicant/accused. The complainant was a Senior Resident Doctor who was attacked by two unidentified individuals on a motorcycle, who first snatched her bag and then threw a chemical-like substance on her face, resulting in burns on her right eye, face, and right hand.

9. At this, the applicant/accused is before this Court seeking interim bail for a period of two months on medical ground, as he is suffering from hernia, and is not getting satisfactory treatment at the Deen Dayal Upadhyay Hospital, Hari Nagar, Delhi, where he is currently



undergoing medical treatment.

10. A perusal of the medical history of the applicant/accused reveals that the present applicant/accused is suffering from small umbilical hernia for which surgery is advised by his treating doctor at Deen Dayal Upadhyay Hospital, Hari Nagar, Delhi. This Court has also perused the medical status report filed on record before the learned Sessions Court which reveals that the required medical facility is available at Deen Dayal Upadhyay Hospital, and the surgery which has been advised to the applicant/accused can be done at the said hospital. It has further been stated in the medical status report that the Hernia surgery which has been advised to the present applicant/accused can usually be done routinely unless it becomes removeable when emergency surgery may be needed, and it usually takes seven days post the surgery for the stitched to be removed.

11. The petitioner himself states in the petition that he has been undergoing medical treatment for his disease of hernia, at DDU Hospital, Hari Nagar, which is a jail referral hospital. It is the case of the petitioner that the treatment he is receiving at DDU Hospital is not satisfactory, and he wishes to be admitted to a private hospital for his treatment.

12. This Court observes that Government hospitals like DDU Hospital are mandated to provide comprehensive medical care, including specialized services, to patients, including those in custody. These facilities are equipped with the necessary infrastructure, medical equipment, and expertise to address a wide range of health issues effectively. Therefore, the mere preference of an accused for a private



hospital over a government facility cannot serve as grounds for granting bail.

13. This Court also notes that it is undeniable that every prisoner, regardless of being an undertrial or a convict, is entitled to receive sufficient and appropriate healthcare. In this regard, this Court deems it fit to refer to the Jail referral Policy, which reads as under:

- A. All the inmate-patients, whether lodged in Tihar or in DJR firstly must be treated at the dispensaries of respective jails and then at Central Jail Hospital before sending to any outside hospital.
- B. If the Senior Medical Officer of dispensary of respective jail finds it must, only in that case the first referral hospital will be Deen Dayal Upadhyaya Hospital for Central Jail Tihar and Baba Saheb Ambedkar Hospital will be first referral hospital for District Jail Rohini, invariably.
- C. Only after the written recommendation of Deen Dayal Hospital or Baba Saheb Ambedkar Hospital, as the case may be, the referral will be made to G.B. Pant, Lok Nayak Jai Prakash Narayan, Maulana Azad Institute of Dental Sciences, Guru Nanak Eye Centre & Safdarjang Hospital keeping in view medical problem of prisoner/patient. These hospitals will fall in the category of IInd referral hospitals.
- D. The IIIrd referral, will only be All India Institute of Medical Sciences for both Central Jail Tihar and District Jail Rohini that too, on the recommendations of IInd referral hospitals mentioned in para (C).
- E. The 2nd referral hospitals for tuberculosis & other pulmonary diseases will be Lala Ram Swaroop, Mehruuli & RBTB, Kingsway Camp.
- F. Inmate suffering from psychiatric disorder may be referred to psychiatry department of Lady Harding Medical College in emergency & for continuous treatment of psychiatric behaviour disorder, inmate can be referred to Institute of Human Behaviour & Allied Science only after recommendations from psychiatric posted in Jail Hospital and at Deen Dayal Upadhyaya Hospital or Baba Saheb Ambedkar Hospital.
- G. Present referrals to the hospitals other than mentioned above will be reviewed at once and all will be rescheduled for Deen Dayal Upadhyaya Hospital/ and Baba Saheb Ambedkar Hospital.
- H. In specific cases, wherein treatment is neither available at Deen Dayal Upadhyaya Hospital nor at IInd referral hospitals, the patients may referred to Specialty Hospitals directly, only after getting consent of Resident Medical Officer.

14. Thus, according to the aforesaid rules, DDU Hospital or Baba Saheb Ambedkar Hospital represents the first layer of Jail referral



Hospitals, which may be referred by the Senior Medical Officer of dispensary of the respective jail. As per the policy, the second layer of hospitals which may be referred on written recommendations of DDU Hospital or Baba Saheb Ambedkar Hospital are G.B. Pant Hospital, Lok Nayak Jai Prakash Narayan Hospital, Maulana Azad Institute of Dental Sciences, Guru Nanak Eye Centre, and Safdarjung Hospital. The third referral Hospital, according to the rules is All India Institute of Medical Sciences, that may be referred by the Second referral hospitals.

15. In the present case, the applicant/accused has been receiving treatment from DDU Hospital, which is first jail referral hospital. In view of the facts of the case and the medical documents placed on record, this Court is of the opinion that the present applicant/accused be admitted to G.B. Pant Hospital, Delhi which is a part of second jail referral hospital for a period of two (02) weeks, while being in custody, on following terms and conditions:

- a) The applicant be admitted at G.B. Pant Hospital, Delhi, for a period of two (02) weeks. However, the applicant shall continue to be in the custody of Jail Superintendent concerned, and the Jail Superintendent shall ensure that appropriate and adequate security is provided/deputed in the Hospital since the accused will continue to remain in judicial custody though under treatment in the Hospital.
- b) The Jail Superintendent concerned shall make arrangements to shift the applicant in an ambulance to the said Hospital.



c) It is also ordered that the entire expenses of medical treatment, hospitalisation, security, and other incidental expenses incurred on the treatment shall be borne by the applicant.

d) The applicant shall not be allowed to use any mobile phone/telephone.

e) The learned counsel for the applicant will be allowed legal interview with the applicant, as per jail manual and rules.

16. Thus, the present application is disposed of in above terms.

17. It is also clarified that nothing expressed hereinabove shall tantamount to expression of opinion on the merits of the case.

18. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 1, 2024/hs