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

+ **BAIL APPLN. 3158/2024**

RAKESH @ TINKU

.....Petitioner

Through: Mr. Avi kalra, Mr. Prateek Lakra and
Mr. Devesh Chauhan, Advocates

versus

STATE (NCT OF DELHI) THROUGH SHORespondent

Through: Mr. Raghuinder Verma, APP for
State

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% **08.11.2024**

1. The instant bail application under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." hereinafter) read with Section 482 of the Cr.P.C [now Sections 482 and 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, ("BNSS" hereinafter)] has been filed on behalf of the petitioner/applicant seeking the following reliefs:

- "a) To grant the Applicant on interim bail for a period of 45 days in the FIR No. 269 of 2022 P.S. Hari Nagar u/s 308/302/307/506/323/147/148/149 IPC on medical grounds.*
b) Pass such other Order or Orders which this Hon'ble Court may deem fit and proper in the interest of justice."

2. Learned counsel appearing on behalf of the applicant submitted that the instant bail application has been preferred as the learned Additional Sessions Judge ("ASJ" hereinafter) vide order dated 21st August, 2024 ("impugned order" hereinafter), wrongly dismissed the interim bail application filed by the applicant on the aforesaid medical ground.

3. It is submitted that the learned ASJ failed to appreciate that as per the



contents of the medical records of the applicant, which has been annexed with the instant application, the applicant is suffering from right ear discharge with decreased hearing for which he was advised to undergo operation for the treatment of his right ear.

4. It is submitted that the applicant herein has been enlarged on interim bail on various instances due to his history of perforated tympanic membrane. It is submitted that *vide* order dated 17th May, 2024 passed by the Co-ordinate Bench of this Court, the applicant was granted interim bail during which he underwent a surgical procedure called tympanoplasty on 29th May, 2024, which was further extended by the Vacation Bench of this Court *vide* order dated 3rd June, 2024.

5. It is submitted that after the verification of the documents appended with the application, the Jail Authority has no dispute regarding the surgery of the right ear as required.

6. Therefore, in view of the foregoing submissions and the ailing condition of the applicant, it is prayed that this Court may allow the instant application and the applicant may be released on interim bail for a period of 45 days.

7. *Per contra*, Mr. Raghuinder Verma, learned APP for State vehemently opposed the instant application and submitted that the applicant has been charged under a heinous crime registered under Section 302 of the Indian Penal Code, 1973 (“IPC” hereinafter). It is further submitted that the applicant has already been granted the aforesaid relief and thus, the instant application is nothing but a gross misuse of process of law.

8. It is submitted that the applicant was released on interim bail by the Co-ordinate Bench of this Court *vide* order dated 17th May, 2024 for a



period of 10 days on the aforesaid ground, which was subsequently extended for a period of 15 days by the Vacation Bench of this Court *vide* order dated 3rd June, 2024 and the present application has been moved on 29th August, 2024, i.e., just after one and a half month of the expiry of the said relief on 18th June, 2024.

9. Learned APP for the State placed reliance upon the medical report dated 3rd October, 2024 of the Jail Superintendant and submitted that as per the same, the condition of the applicant has been found to be stable as all the necessary medications that has been prescribed to him are being provided to him from the jail dispensary itself. The relevant portion of the same is reproduced hereinbelow:

“...Inmate/patient is having right ear discharge with decreased hearing for which he was undergoing regular treatment from ENT Department, Dr. BSA Hospital. He has a history of left ear surgery outside.

Inmate/patient was referred to ENT Specialist Dr. Rohit Rajput, at D-2/99, Janak Puri, New Delhi-110058 (NEWBORN, CHILD, VACCINATION & ENT CENTRE) as per Hon'ble High Court of Delhi order dated 10.09.2024 but the same specialist ENT doctor refused to examine the inmate/patient and the reason was not mentioned why he was not able to examine the inmate/patient. Since then he is regularly taking symptomatic medication from CJ-10, Dispensary as he is not willing for any kind of surgery done in Govt. Hospital (he said verbally).

At present, the general medical condition of aforesaid inmate/patient is stable and all the prescribed medicines are provided to him from jail dispensary.”

10. It is submitted that in view of the above observation made by the Doctor, the applicant does not require any surgical treatment for his right ear



and in case a situation arises in future wherein the said surgery is warranted, the applicant will be operated in a good Government hospital with great care.

11. Therefore, in view of the foregoing submissions and the fact that the applicant's condition is stable, it is submitted that no case is made out on behalf of the petitioner and thus, it is prayed that the instant application may be dismissed and the reliefs be denied as prayed for.

12. Heard learned counsel for the parties and perused the material available on record.

13. It is not in dispute that the applicant was released on interim bail for tympanoplasty surgery *vide* order dated 17th May, 2024 passed by the Co-ordinate Bench of this Court which was subsequently extended by the Vacation Bench of this Court *vide* order dated 3rd June, 2024. Thereafter, the applicant surrendered on 18th June, 2024 and only after one and half month, i.e., on 29th August, 2024, he again filed the instant application seeking interim bail on the same ground.

14. At this stage, it is pertinent to note that the principle *qua* releasing an accused on interim bail is clear as it has been held time and again that an accused shall not be granted the relief of interim bail for an indefinite period. Moreover, the Co-ordinate Bench of this Court in ***Sameer Mahandru v. Enforcement Directorate***, 2023 SCC OnLine Del 6680, categorically held that the applicant therein was not suffering from any life threatening disease or medical condition and thus, the applicant was denied the relief of interim bail.

15. Keeping in view the aforesaid law as well as the facts and submissions of the present case, it is noted that the applicant has been



released on interim bail twice and has already undergone the required surgical procedure of tympanoplasty on 29th May, 2024. Moreover, upon perusal of the aforesaid document, i.e., the medical status report of the applicant, which has been appended with the instant application, it is crystal clear that the applicant is getting sufficient medical assistance for the treatment of his right ear as the prescribed medicines are made available to him from the jail dispensary.

16. Therefore, in view of the above facts and circumstances as well as the fact that the applicant herein has been charged with an offence punishable under Section 302 of the IPC and after perusing the medical records as submitted by the Jail Authority, this Court is not inclined to grant interim bail at this stage.

17. Accordingly, the instant application is dismissed along with the pending applications, if any.

CHANDRA DHARI SINGH, J

NOVEMBER 8, 2024

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Click here to check corrigendum, if any