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

+ **BAIL APPLN. 3159/2024**

VINAY DUBEY

.....Petitioner

Through: Mr. Ntitin Joshi, Mr. Ritesh Chaudhary, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Priyanka Dalal, APP for the State with SI Deepak Joshi, PS Special Cell

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

20.09.2024

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1. The present bail application has been filed under Section 483 r/w Section 528 of BNSS Act, 2023 seeking grant of interim bail to the appellant in FIR No. 241/2024 registered under Section 22/29 of NDPS ACT 1985 & 27 of Drug and Cosmetics Act, 1940 at PS: SPECIAL CELL.
2. In terms of Order of this Court dated 03.09.2024, the Medical Officer In-charge of Central Jail No. 04, Tihar, New Delhi has sent a detailed medical report of the petitioner dated 16.09.2024 which is as follows:

“As per available records, it is hereby submitted that the inmate patient admitted in Tihar CJ-4 on 23/06/2024, wherein his medical examination was done by the duty doctor. In medical examination inmate patient gave history of HCV for 15 days (on medication for 05 days, no document available), alleged history of Asthma, shortness of breath, migraine, history of substance abuse (smack & alcohol), for which he was advised to review in



OPD/DAC.

Thereafter on 24/06/2024 inmate patient was sent to central jail Hospital, CJ-03 wherein he got admitted under department of Medicine as a provisional case of Bronchial Asthma. Later discharge on 30/06/2024 with stable condition.

Thereafter on 02/07/2024 inmate patient was presented at jail dispensary wherein he gave alleged history of shortness of breath with past history of Bronchial Asthma (no medical records available), alleged history of HCV positive in past (no record available), for which he was thoroughly examined, advised appropriate treatment, certain blood investigations and specialist review accordingly.

Thereafter on 04/07/2024 inmate patient was presented at jail dispensary in emergency with complaint of ?shortness of breath with past history of alcohol abuse with complaint of right sided chest pain for last 5-6 hours, for which after giving primary treatment he was immediately referred to DDU Hospital wherein he was examined by medicine specialist with history of multiple drug abuse and COPD after thorough examination the inmate patient was kept admitted under department of Medicine as a provisionally diagnosed case of atypical chest pain, bradycardia, COPD. While admitted, on 05/07/2024 inmate patient underwent TROP-T-Negative, chest x-ray- within normal limit, ECG- Sinus bradycardia and 2D-Echo suggestive of "Normal Study". Later on 06/07/2024 inmate patient was discharged from DDU hospital as a final Diagnosis of Sinus bradycardia (asymptomatic), HCV positive. The treating doctor advised certain oral medication at the time of Discharge and also advised to review with department of Gastroenterology and Cardiology accordingly.

Thereafter return to CJ-04 i.e. on 06/07/2024 inmate patient was kept admitted at Ml room CJ-04 Dispensary for round the clock monitoring and care. Later on 13/07/2024 inmate patient discharged from Ml room CJ-04 Dispensary with stable condition.



Thereafter while admitted, on 09/07/2024 inmate patient was sent to department of Cardiology at Safdarjung Hospital as a diagnosed case of HCV positive with epigastric discomfort, on examination ECG- within normal limit, for which he was advised appropriate treatment, certain blood investigations and further advised to review with department of Gastroenterology in view of HCV positive.

Thereafter while admitted on, 10/07/2024 inmate patient was reviewed by jail visiting Medicine SR as a follow-up case of COPD/HCV positive with complaint of pain right side of chest, history of drug abuse, for which he was thoroughly examined, advised appropriate treatment accordingly.

Thereafter on 13/07/2024 inmate patient was sent to department of Gastroenterology at GBPH in view of HCV positive status with complaint of pain abdomen for 10 days, shortness of breath for 02 years, pain over right upper abdomen continuous pain, mild to moderate pain not requiring any analgesic, pain increases on exertion, ?asthmatic Disorder, shortness of breath increased since last 02 days, no complaint of jaundice, no complaint of blood in vomiting/dark colored stool/ no complaint of altered mentation, for which he was thoroughly examined, advised appropriate treatment, certain investigations and further advised to review with department of pulmonology in view of history of asthma and shortness of breath.

Thereafter on 16/07/2024 inmate patient was sent to department of Pulmonology at Safdarjung hospital for the complaint of right sided chest pain, shortness of breath for 3-4 months with known case of COPD, for which he was thoroughly examined, on examination vitals stable, advised appropriate treatment accordingly.

Thereafter on 26/07/2024 inmate patient was again sent to department of Cardiology at Safdarjung Hospital as a case of HCV positive, on examination ECG within normal limit, for which the treating doctor advised that no follow-up currently required from cardiology side, advised to follow-up from



Gastroenterology department accordingly.

In view of the court order inmate patient was called before undersigned on 08/08/2024 wherein he gave complaint of ?bronchial Asthma (non-compliance to advised medications), itching with red blistering over left leg and left shoulder, for which he was advised appropriate treatment and specialist review accordingly.

Further on 10/08/2024 patient was sent to department of Pulmonary Medicine at Safdarjung Hospital as a follow-up case of COPD/HCV Positive with complaint of shortness of breath, LOW, LOA present, right side chest pain, for which he was thoroughly examined, advised appropriate treatment, certain investigations including USG Thorax look for right pleural effusion and USG abdomen & pelvis in view (frightabdominal pain and review accordingly.

On 19/08/2024 inmate patient was presented at jail dispensary in emergency with complaint of berating difficulty with known case of COPD with HCV-Positive, for which he was advised appropriate treatment and kept admitted at Ml room CJ-04 Dispensary for round the clock monitoring and care.

Thereafter while admitted, on 20/08/2024 inmate patient was reviewed by jail visiting psychiatry SR for the complaint of decrease sleep, body pain with known case of HCV+ with COPD, for which he was treated accordingly.

Thereafter while admitted, on 20/08/2024 patient was sent to DDU Hospital in emergency with complaint of difficulty in breathing with known case of COPD, fever with chills, wherein he was first examined by SR, accident and emergency and later referred to Medicine emergency wherein he gave complaint of fever with chill, shortness of breath with known case of COPD with Hepatitis-c, for which after thorough examination the treating doctor made an impression of 7URT1 with COPD, advised appropriate treatment and sent back to CJ-04.

On same day i.e. on 20/08/2024 inmate patient was again sent to



DDU Hospital in emergency with complaint of shortness of breath with known case of COPD (SP02-8S% on room air), wherein he was first examined by SR, accident and emergency and later referred to Medicine emergency wherein he gave complaint of shortness of breath, cough with sputum, generalized body ache with known case of COPD, on examination per abdomen- soft and non tender, blood pressure found 110/80mmHg, SP02-95% on room air, advised appropriate treatment including MDI inhalers and refer to LRS Hospital for review and management.

Further the inmate patient reported to National Institute of Tuberculosis and Respiratory Disease centre wherein he gave complaint of shortness of breath with known case of COPD, left, advised nebulization and same was done, on examination SP02-95% on room air, advised MDI inhaler and sent back to CJ-04 with advice of take medication properly in jail and review SOS basis or after 01 month.

As per the Hon'ble court of Sh. Sudhir Kumar Sirohi, Additional Sessions Judge/Spl. Judge, NDPS, New Delhi District, Patiala House Courts, New Delhi (order dated 09/08/2024) direction the inmate patient was sent to RML Hospital for medical board examination on 21/08/2024 and same was done.

Thereafter while admitted, on 23/08/2024 inmate patient was sent to department of Radiology at Safdarjung Hospital for USG abdomen & pelvis and same was done and is suggestive of - "Hepatomegaly with Grade-I Fatty Liver".

Thereafter while admitted, on 24/08/2024 inmate patient was sent to Central Jail Hospital CJ-03 with complaint of shortness of breath with known case of COPD, wherein he was reviewed by Medicine SR and after thorough examination the inmate patient got admitted under department of Medicine for further review and management.

While admitted at CJ-03 the inmate patient was sent to department of Radiology at Safdarjung Hospital on 06/09/2024 for USG Thorax and same was done and is suggestive of- "No



significant abnormality seen".

Further on 10/09/2024 inmate patient was sent back to CJ-04 as a known case of COPD/HCV CO infection with improved symptoms. The treating doctor advised certain oral medications including MDI inhalers for the inmate patient.

At preset inmate patient is a known case of COPD with complaint of shortness of breath, Hepatitis C positive, for which he is receiving treatment from doctor on duty/ jail visiting Medicine SR/ Department of Medicine, DDU Hospital/ Department of Cardiology & Pulmonology at Safdarjung Hospital/ department of Gastroenterology at GBPH from time to time. The inmate patient was kept admitted at Central Jail Hospital C|-03 on different occasions (24/06/2024 to 30/06/2024 & 24/08/2024 to 10/09/2024) as a known case of COPD with complaint of shortness of breath and Hepatitis C positive."

3. The learned counsel for the petitioner submits that the petitioner is suffering from Hepatitis C virus (HCV) infection. The learned counsel submits that the adequate medical facilities are not available in the jail and therefore, the petitioner may be admitted to bail.
4. Learned APP for the State has opposed the bail application on the following two grounds:
 - a) The petitioner was found in the commercial quantity of 780 tablets of prohibited narcotics drugs.
 - b) The petitioner is a known case of drugs abuse and he has also not been taking the prescribed medicines.
5. Learned APP submits that the investigation is still continuing and the charge-sheet is yet to be filed.
6. This Court is of the firm belief that the health is the first and foremost right of any person including the persons who are facing prosecution.



The seriousness of the case is a factor, but medical condition has to be given priority. Every person has a right to get an adequate medical treatment. This Court will not make any comment on the medical facilities available in the jail. The point is that whether in the medical condition of a person, the adequate medical facilities shall be available to the petitioner or not. Every person has a right to get treatment of his own choice for the purpose of proper treatment.

7. I have perused the medical report and taking into account the medical report as submitted by Medical Officer In-charge, Central Jail No. 4, Tihar, New Delhi, this Court is of the opinion that the medical report is clear on point that appellant is suffering from various ailments which require appropriate treatment.
8. In view of the peculiar facts and circumstances, the petitioner is admitted to interim bail for a period of 60 days from the date of his release upon furnishing a personal bond of Rs. 10,000/- with one surety of the like amount to the satisfaction of the concerned learned trial court, subject to the verification of his address and appellant providing his mobile number at the time of furnishing the bail bond, and subject to the following further conditions:
 - a) the appellant shall attend the trial regularly and shall not threat, intimidate or tamper with the prosecutrix / victim, her family and any other prosecution witness;
 - b) the appellant shall remain available only at his verified address, to be provided to the IO and the appellant can only move out of the residence only for the purpose of consultation with the doctor or to



- visit the doctor and shall not leave NCT of Delhi without the permission of the learned Trial Court;
- c) the appellant shall remain available on his mobile number provided in bail bond which he undertakes to keep operational and shall telephonically report/contact to the concerned Investigating Officer on every alternative day at 04 PM;
 - d) the appellant shall not indulge in any criminal activity and shall not communicate with or come in contact with the complainant/victim or any member of the complainant/victim's family in any manner or temper with the evidence of the case;
 - e) the appellant;
 - f) In case of change of residential address and/or mobile number, the appellant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit;
 - g) The appellant shall surrender before the concerned Jail Superintendent on the expiry of grant of interim bail.
9. However, it is made clear that the order passed by this Court is in light of medical condition of the applicant/appellant and is not to be treated as a precedent in other cases.
10. With the above directions, the application is disposed of.
11. A copy of this order be sent to concerned Jail Superintendent for information and compliance.

DINESH KUMAR SHARMA, J

SEPTEMBER 20, 2024

JN/DG..