

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.98 OF 2025

Rustom Mustafa Shah .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Ms. Asha Joshi a/w. Ms. Roshni Singh, Advocates for Applicant.
 - Mr. Hitendra J. Dedhia, APP for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 28, 2025

P.C.:

1. Heard Ms. Joshi, learned Advocate for Applicant and Mr. Dedhia, learned APP for Respondent.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with C.R. No.357 of 2023 registered with Versova Police Station and later transferred to DCB CID Unit XI under C.R.No.51 of 2023 for offences punishable under Sections 386, 364A, 323, 504, 506(2), 34 and 170 of the Indian Penal Code, 1860(for short '**IPC**').

3. Applicant is a 35 year old auto-rickshaw driver and one of the co-accused persons out of total 6 Accused persons in the crime. He is incarcerated in Mumbai Central Prison.

4. Prosecution case is that 6 Accused persons claimed themselves to be Officers of Anti-Narcotics Cell intercepted and

apprehended the First Informant on the night of 30.06.2023 and drove him in an auto-rickshaw throughout the night and forcibly demanded sum of Rs.50,00,000/- and some of the co-accused persons visited his residence on the following day and forcibly attempted to take signed cheques from him and withdraw an amount of Rs.20,00,000/- from his bank account in which they were unsuccessful. The role of the present Applicant as escribed is that he drove the auto-rickshaw in conspiracy and collusion with the other co-accused persons and was instrumental in carrying out crime.

5. The present Application was moved before the Court on the ground of medical urgency by Ms. Joshi on 19.03.2025. On that date an order was passed by the Court directing the Chief Medical Officer of Mumbai Central Prison to ascertain and confirm the fact pleaded by Applicant that he was suffering from Human Immunodeficiency Viruses (for short '**HIV**') and his past history was that he was taking ART medication since the year 2015.

6. The Chief Medical Officer of Mumbai Central Prison in compliance of the above order filed a detailed prison medical report dated 24.03.2025 confirming the fact that Applicant was confirmed case of HIV and had been taking ART medication since April – 2015. In the said report the Chief Medical Officer of Mumbai Central Prison though informed that current health condition of Applicant is good and

stable on medication but with respect to treatment given stated as follows:-

“Above named prisoner on his arrival to Mumbai Central Prison in July 2023 gave history that he was detected positive for Retroviral Disease (HIV) in April 2015. He was started ART Medications for the same since then. The said prisoner since his entry to Mumbai Central Prison has been under observation and is provided ART Medications regularly and undergoes regular counselling sessions with ICTC Centre Counsellor’s visiting Mumbai Central Prison. The said prisoner is provided Additional High Protein Diet for betterment of his health. Patient’s health condition has been stable and good with no active complaints at present. Copy of ART Book Attached.”

7. Application is listed before me for hearing today. In view of the above report, Application is taken up for hearing. Applicant is incarcerated since 11.07.2023 for the past 1 year 8 months 17 days. Without delineating into the merits of the matter on the basis of the grounds prayed in the Application, case of Applicant is considered for grant of bail on medical grounds since it is ascertained and confirmed that he is suffering from HIV and even while in jail he has been undertaking ART medication on regular basis alongwith specialised high protein diet and regular medical counselling as delineated in the report submitted by Chief Medical Officer of Mumbai Central Prison hereinabove.

8. Ms. Joshi has placed before me an order of the Supreme Court in the case of ***Bhawani Singh Vs. State of Rajasthan***¹. The

¹ Special Leave to Appeal (Crl.) No.2225 of 2022 dated 11.04.2022.

medical report of the Petitioner therein was placed on record which confirmed the fact that Petitioner was suffering from HIV and was immuno compromised and under medications which is also the case in the present Application for grant of bail before me.

9. The Supreme Court considered this aspect as a peculiar circumstance and was of the opinion that due to that reason a case for grant of bail was made out. While passing the order and direction for grant of bail, the Supreme Court also gave certain additional direction in that case. The Supreme Court further observed that Petitioner in that case due to him suffering from HIV was also entitled to be given benefit of Section 34(2) of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (for short '**the said Act**') of the expeditious disposal of his case. For the sake of reference, said Section 34(2) of the said Act is reproduced below and it reads thus:-

"34. ...

...

2 *In any legal proceeding concerning or relating to an HIV-positive person, the court shall take up and dispose of the proceeding on priority basis."*

10. That apart, the Supreme Court also passed a direction giving liberty to the Petitioner therein to pray anonymization of the record to suppress his identity in accordance with law and allowed the Petition.

11. The present case before me is that of Applicant having suffered incarceration but at the same time he is also suffering from HIV.

12. Mr. Dedhia, learned APP has persuaded me to consider the said order dated 02.04.2024 passed by this Court and appended to the Application. This was the Application of Applicant seeking bail wherein the Court considered his role *prima facie*, in the crime in the question.

13. Though Mr. Dedhia, learned APP would persuade me to consider the said order what I find from reading the said order is that though learned Advocate for Applicant had in his submissions stated that Applicant was suffering from HIV and Applicant be enlarged on bail, but the same said submission not been dealt with or adhered to by the Court in its finding and observations.

14. In that view of the matter and having adherence to the aforesaid order of the Supreme Court in the order of the ***Bhawani Singh*** (*supra*) case of Applicant deserves to be considered on the ground of his medical ailment. The Chief Medical Officer of Mumbai Central Prison has *prima facie* ascertained and confirmed the said fact that Applicant is HIV positive and is under observation and provided ART medication regularly, that been undergoing regularly counselling session from ICTC Centre Counsellors who visit Mumbai Central

Prison, that he is provided of additional high protein diet for betterment of his health and he is under medication.

15. The aforesaid confirmation of patient's health condition *prima facie*, shows that patient / Applicant is immuno compromised and therefore in view of he having and been suffering from HIV, I am inclined to consider the Application for grant of bail to Applicant on the medical grounds. Application for bail is allowed on the following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the

Investigating Officer as and when called for;

- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (ix) Applicant shall be at liberty to claim anonymization of record to suppress his identity according to law; and
- (x) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

16. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

17. Bail Application No.98 of 2025 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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