



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3247 OF 2022

Mohammad Nawab Mohammad Islam Malik
@ Nawab Malik

..Applicant

v/s.

The Directorate of Enforcement & Anr.

..Respondents

Mr. Amit Desai, Senior Advocate with Mr. Taraq Sayed, Mr. Gopala Krishna Shenoy, Mr. Rohan Dakshini, Mr. Kushal Mor, Ms. Pooja Kothari, Ms. Janaki Garde, Ms. Deepa Shetty and Mr. Tejas Popat i/b. M/s. Rashmikant and Partners for the Applicant.

Mr. Anil Singh, Addl. Solicitor General a/w. Aditya Thakkar, Shriram Shirsat a/w. Mr. Ashish Chavan a/w. Mr. Pranav Thakur, Mr. Shekhar Mane, Mr. Zishan Qureshi for the Enforcement Directorate.

Mr. S.V.Gavand, APP for the State.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 13th JULY, 2023.**

P.C.

. The Applicant, who is arrayed as an accused in PMLA Special Case No. 460 of 2022 (arising out of ECIR No. ECIR/MBZO-1/10/22) pending before the Hon'ble Special Court PMLA, for offences punishable under Section 3 and 4 of Prevention of Money Laundering Act, 2002 (PMLA), seeks medical bail under the

proviso to Section 45(1) of the PMLA.

2. The said ECIR was registered on the basis of the FIR No. RC-01/2022/NIA/MUM, registered by NIA against Dawood Ibrahim Kaskar @ Dawood Ibrahim. The Applicant was arrested on 23.02.2022. The investigation proceeded and upon conclusion, chargesheet came to be filed. The Applicant filed an application for bail before the learned Special Judge and also sought temporary bail on medical grounds. The Applicant did not pursue the relief of temporary bail. However, considering the nature of the ailment, learned Special Judge by order dated 13.05.2022 allowed the Applicant to take treatment at Criti Care Asia Hospital at his own costs. Accordingly, the Applicant was admitted in Criti Care Asia Hospital on 17.5.2022 and he continues to take treatment in the said hospital till date. By order dated 30.11.2022, learned Special Judge, PMLA, dismissed the application for regular bail. Hence the present application under Section 439 of Cr.P.C. during the pendency of which the Applicant seeks temporary bail on medical grounds.

3. Mr. Amit Desai, learned Sr. Counsel representing the

Applicant submits that though he is ready to argue the bail application on merits as well as on medical grounds, at present, he would confine his arguments to bail on medical grounds.

4. Mr. Amit Desai, learned Sr. Counsel for the Applicant submits that the Applicant is suffering from chronic kidney disease. The parents of the Applicant succumbed to kidney ailment at the age of 70, and his brother too died of the same ailment at the age of 52. The Applicant is 64 years of age, and his left kidney is non-functional. The renal scan (DTPA) report indicates that the functioning of the right kidney has deteriorated and is presently functioning at 60%. He submits that the Applicant is suffering from several comorbidities including Diabeties, Hypertension, thyroid etc. He is also suffering from other ailments like hypothyroidism, gaut, hyperuresemia, fatty liver, haematuria etc. Though the medical condition of the Applicant cannot be reversed, it can be stabilized with proper treatment and if necessary by surgery. He urges that the Applicant requires stress free , clean and hygenic environment to recover and to take decision about his health and to consult a doctor of his choice. Relying upon the decision of the Apex Court in *Satyendra Kumar Antil vs. CBI*,

(2022) 10 SCC 51 he submits that the proviso to Section 45(1) which facilitates grant of bail to a person who is under the age of 16 years, or is a woman or is sick or infirm, has to be considered favourably keeping in mind the object of a welfare legislation, though introduced by way of a proviso.

5. Mr. Desai, learned Sr. Counsel submits that though the Applicant was suffering from kidney disease prior to his arrest, it has accentuated due to his custody. Mr. Desai submits that the right to live with dignity is a facet of Article 21 of the Constitution of India and the Courts have always taken a humane approach, and have been indulgent in granting medical bail. It is urged that any deprivation of adequate medical care would amount to grave and irreparable infraction of the right of the accused.

6. Shri Amit Desai, ld. Senior Counsel has relied upon the decision of the Apex Court in ***Aziz Unni Mohd. @ Aju Rolex vs. The State of Maharashtra, Special Leave to Appeal (Cri.) No. 1780 of 2022*** and the decision of the co-ordinate bench of this Court in ***Mohammad Furkan Farouk Shaikh v/s. The State of Maharashtra, Bail Application No. 1720 of 2022***, wherein

medical bail was granted in view of kidney ailment. Reliance is also placed on the decision of the Delhi High Court *in Devaki Nandan Garg vs. Directorate of Enforcement 2022 SCC Online Del 3086*, wherein the Applicant, who was suffering from serious co-morbidities including serious heart condition and a non-functional kidney, with the other working in a compromised position, was granted bail under proviso to Section 45(1) of PMLA. Reliance is also placed on the decision of Delhi High Court in *Amar Singh vs. State 2011 SCC Online Del 4522*, wherein the Applicant was granted medical bail, considering his health condition, particularly renal failure requiring renal transplant.

7. Mr. Anil Singh, learned Addl. Solicitor General, while opposing the plea for medical bail, submits that the health condition of the Applicant is not as precarious as portrayed. Referring to the report submitted by the medical board, he submits that though the left kidney of the Applicant has shrunk, his right kidney is fully functional. He submits that the medical report indicates that this condition as well as the other ailments were existing even before his arrest, despite which the Applicant has led a normal life. Even otherwise, people live a normal life with one kidney.

8. Learned ASG contends that the Applicant is admitted in a super specialty hospital of his choice since 17.5.2022 and is being treated for his ailment. None of the reports indicate that the Applicant is suffering from life threatening disease which cannot be treated in the said hospital or any other specialized hospital. He submits that, in fact, the report of the medical board, reveals that the two doctors have opined that the Applicant does not even require hospitalization, while the third doctor has recommended treatment under hospitalization.

9. Ld. ASG submits that the Applicant is being treated in a hospital of his choice and hence there is no violation of any right. He submits that the Applicant cannot claim medical bail as of right merely because he is admitted in the hospital for pre-existing ailments. Referring to the case of ***Sant Shri Asharam Bapu vs. State of Rajasthan 2015 SCC Online SC 1903***, he submits that the Apex Court refused to consider the prayer for bail though the petitioner was 85 years of age, suffered from several medical ailments. Reliance is also placed on the decision of the Apex Court in ***Pawan @ Tamatar vs. Ram Prakash Pandey (2002) 9SCC 166*** and the decision of learned single Judge of this Court in ***Mahendra***

Manilal Shah vs. Rashmikant Mansukhlal Shah & Anr. (2009)
SCC Online Bom. 2095.

10. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The short point falling for my consideration is whether the Applicant, who is facing trial for the offences under PMLA, is entitled for bail on medical grounds under proviso to Section 45(1) of the PMLA.

11. At the outset it may be mentioned that there can be no straight jacket formula in cases of medical bail. Exercise of discretion under the proviso depends on facts and circumstances of each case, and the thumb rule essentially is the nature of the sickness, health condition as well as availability of specialized and sustained medical treatment to the inmates confined within the four walls of the jail. In the instant case, the medical records reveal that the Applicant is suffering from several ailments, viz. non functioning of left kidney, renal calculus, hematuria (blood in urine), non alcoholic fatty liver, mild chronic colitis (inflammation in the colon), diabetes mellitus (elevated blood glucose level), hypertension (high blood pressure), hypothyroidism, gout, prolapsed intervertebral disc, allergic

asthama, Dyslipidemia (high cholesterol level), mild concentric left ventricular hypertrophy (thickening of the wall of hearts main pumping chamber).

12. It is not in dispute that the aforesaid ailments including non-functioning of left kidney were existing even prior to the arrest of the applicant. The Applicant has led a normal life with all these ailments without any impediment. It is contended that since his arrest, the health of the Applicant has deteriorated and his right kidney is functioning only at 60%. In this regard, a reference has been made to the case summary for the period from 5.9.2022 till 27.11.2022 of Criti Care Asia, multi-speciality hospital and research centre, wherein the Applicant has been admitted for treatment. The case summary of Criti Care Asia refers to DTPA scan report dated 12.9.2022 and states that the Applicant is under constant medical supervision to protect the kidney function in view of poor left kidney function and decreased function of right kidney. In fact, the findings of the DTPA report dated 12.09.2022 read thus:-

“left kidney : it appears small compared to right kidney.

It shows markedly reduced cortical uptake, cortico

calyceal transit time and was out cannot be commented upon. Renogram curve shows no peaking.

Right kidney : sequential one minute images show normal cortical uptake, cortico calyceal transit time is normal. Wash out of the collecting system is normal. Renogram curve shows normal peaking and good descent thereafter.

Delayed image : faint tresser uptake seen in left kidney.

Mild

reduction in tracer uptake of right kidney.

Impression : 1. Left kidney is suggestive of markedly reduced parenchymal function, drainage cannot be commented upon.

2. Right kidney is suggestive of normal parenchymal function with normal drainage.”.

13. The DTPA report does not indicate that the right kidney has deteriorated or that it is functioning only at 60%. In fact, none of the medical reports indicate that functioning of the right kidney is reduced to 60%. The DTPA report shows the glomerular filtration rate (GFR ml/min) of left kidney as 8, and that of the right kidney

as 62 with total GFR of 70. It is possibly on the basis of the GFR reading of the right kidney that the applicant presumes that the functioning of the right kidney is only 60%. Suffice it to say that the presumption of the applicant is not based on and is not supported by medical records. On the contrary, the report dated 30.11.2022 submitted by Dr. Sharad Kole, of Criti Care hospital makes reference to the same DTPA report dated 12.9.2022 and states that the DTPA scan shows a poorly functioning left kidney. The report of Dr. Kole does not indicate that the functioning of the right kidney is decreased or that it is functioning only at 60%. The report further states that a detail urine examination was conducted for malignancy and tuberculosis of urinary system in view of continued haematuria and that the results are negative. The report further states that pet scan was also done on 28.11.2022, and that it showed a benign cyst in the left kidney, and that there was no evidence of malignancy. As noted above, the left kidney of the applicant was non functional even prior to his arrest. The report submitted by Dr. Kole does not indicate that the applicant is suffering from any critical ailment or that his right kidney is functioning in a compromised manner. On the contrary, the report states that the Applicant does not need further hospitalization.

14. The records also indicate that this Court had directed the Superintendent of JJMC & Sir J.J.Hospital to constitute a medical board to examine the Applicant. Accordingly, a medical board was constituted and the Applicant was examined by the medical board headed by Dr. Mohd. Ayub Siddiqui, Head of Department of Urology, and the two members Dr. Geeta Sheth, Head of Department- Nephrology, and Dr. Vidya S. Nagar, Head of Department- Medicine.

15. The report dated 3.2.2023 submitted by the medical board reveals that the Applicant has a small left kidney with few benign cysts and a solitary functioning right kidney. This report also does not indicate that the right kidney of the Applicant has deteriorated or that it is functioning only at 60%. In fact, two of the members have opined that the Applicant does not even require hospitalization and that he could follow up on OPD basis. Dr. Ayub Siddiqui merely opined that the Applicant should be treated under hospitalization. The difference in opinion was only in respect of mode of treatment i.e. whether the treatment should be on OPD basis or as an in patient. The report otherwise does not indicate that the Applicant is suffering from any such chronic illness, which

justifies grant of medical bail.

16. At this stage it would be relevant to refer to the decision in ***Mahendra Manilal Shah (supra)***, wherein learned Single Judge of this Court while considering the issue of medical bail under proviso to Section 437 (1) Cr.P.C. which is *pari materia* to the proviso under Section 45(1) of PMLA Act, referred to the judgment of the Apex Court in *Pawan @ Tamatar (supra)* as well as judgments of the other high courts, and observed that mere admission of an accused to a hospital for medical treatment does not entitle an accused to obtain bail under the proviso to Section 437(1) of Cr.P.C. It is held that the said proviso cannot be resorted to in all cases of sickness, and that the Court must assess the nature of sickness and whether the sickness can be treated whilst in custody or in government hospitals. The Court should also be satisfied that a case is made out by the respondent accused by himself or through the doctors attending to him that the treatment required to be administered, considering the nature of ailment, cannot be adequately or efficiently administered in the hospital in which he is admitted or that he needs a better equipped or a specialty hospital. This court has observed that if orders are passed without inquiry as

to the nature of sickness, it would open flood gates for such applications to be made in serious non-bailable cases, only on the pretext of the accused being on medical treatment.

17. There can be no dispute that the right to health is recognized as an important facet of Article 21. It is a right available to every person including an under trial prisoner or convict. In fact, failure of the State to provide proper medical aid to the prisoners, who are largely dependent on the jail authorities, would be in violation of right guaranteed under Article 21 of the Constitution. In the instant case, the Applicant was arrested on 23.02.2022. The Applicant has several pre-existing ailments. He was admitted in J.J. Hospital from 25.2.2022 to 28.2.2022 and on subsequent dates. He is admitted and is being treated in Criti Care Asia, a multi specialty hospital of his choice, since 17.05.2022. The Applicant is provided adequate, effective and specialized medical assistance, and his health condition is being monitored by the doctors specialized in the field. Hence, his right to health or right to life is not curtailed or infringed in any manner.

18. Under the circumstances, and in the absence of compelling

reasons warranting grant of interim bail on medical grounds, I am not inclined to exercise discretion in granting bail to the Applicant under proviso to Section 45(1) of the PMLA. Hence the plea for temporary bail on medical grounds is dismissed.

(ANUJA PRABHUDESSAI, J.)