

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

+ **CRL.M.C. 112/2021**

Date of decision: 05th April, 2021

IN THE MATTER OF:

HIMANSHU DABAS

..... Petitioner

Through Mr. Ashim Vachher, Advocate with
Mr. Sumeet Shokeen, Advocate

versus

STATE, GOVT. OF NCT OF DELHI & ANR Respondents

Through Mr. Kusum Dhalla, APP for State
Mr. Sunil K Mittal, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 439(2) read with Section 482 CrPC has been filed by the petitioner/complainant challenging the bail on medical grounds granted to the respondent No.2 by order dated 05.01.2021 passed by learned Additional Sessions Judge, North West, Rohini Courts, Delhi in FIR No. 452/2017 dated 29.12.2017 registered at Police Station Kanjhawala under Sections 302, 207,201,120B and 34 IPC and Sections 25/27 Arms Act.

2. Even though the respondent No.2 has been asked to surrender as directed by order dated 05.01.2021 and in fact the revision has become infructuous, this Court is constrained to dwell further in the matter due to the sketchy medical reports given by the jail authorities at the time of granting bail.

3. It is found that that the medical reports which are filed by the Jail Superintendants are not clear and the medical terms which are used are not easily decipherable by Judges. The Reports do not bring out the correct picture and sketchy and incomplete reports are given by hospitals/doctors which are being used for grant of bail or extension of bail.

4. Material on record in the case discloses that the respondent No.2 approached the learned Additional Sessions Judge seeking interim bail stating that respondent No.2 is suffering from various ailments and the major problem is of a critical tumour in the chest. It is stated in the application that the condition of the respondent No.2 has become more critical as he is not getting required treatment. It is stated that the respondent No.2 is not in a position to breathe properly and if the tumour is not treated properly, it can lead to cancer which is a worry for the respondent No.2 and his family.

5. Medical Report dated 04.11.2020 of the respondent No.2 was submitted by the Office of the Jail Superintendent. The relevant portions of the Medical Report reads as under:

“The inmate is a known case of right-sided gynaecomastia (swelling of breast tissue) for which he is taking treatment from jail dispensary. The FNAC Test of his right breast tissue was carried out in the pathology laboratory on 04.08.2020 which was suggestive of gynaecomastia. He was last reviewed by Medical Officer on 29.10.2020 as a follow-up case of right-sided gynaecomastia. He gave complaints of swelling in the right peri-alveolar tissue (breast tissue) and rapid growth of breast tissue. On examination, tenderness was present in the right breast swelling. He was provided symptomatic treatment accordingly. The inmate came to jail dispensary on 28.08.2020,

11.09.2020, 18.09.2020, 25.09.2020, 09.10.2020, 15.10.2020, 20.10.2020 and 02.11.2020 with complaints of pain and bleeding per rectum during defecation, mass coming out of anus during defecation requiring to be manually pushed back and constipation. He was reviewed by Medical Officer on duty and jail visiting Senior Resident Surgery from DDU Hospital. On examination, he was found to have grade-III internal hemorrhoids at 3, 7 and 11 O' clock positions. He was diagnosed as a case of Internal Hemorrhoids Grade-III. He was provided symptomatic treatment in the form of oral medicines, ointment for local application, laxative syrup and was advised to take high fibre diet and hot water sitz bath. He was advised referral to DDU Hospital for further work-up for surgery in view of aggravation of symptoms.

At present, the inmate is known case of systemic hypertension, diabetes mellitus type-II, bilateral renal calculi (kidney stones) and right-sided gynaecomastia (swelling of breast tissue). He is suffering from palpitations, headache, left-sided chest pain, easy fatigability, weakness, burning micturition, frequency of urination, pain in bilateral sides of abdomen and swelling in right breast tissue for which he is being provided treatment from jail dispensary. He is known case of internal hemorrhoids grade-III. He is suffering from pain and bleeding per rectum during defecation, mass coming out of anus during defecation requiring to be manually pushed back and constipation. He is being provided symptomatic treatment from jail dispensary but his symptoms are persisting and no improvement is reported. His referral to DDU Hospital for further surgical management cannot be done at present in view of ongoing COVID-19 pandemic, restrictions on inmates' movements to prevent spread of infection in jail, declaration of DDU Hospital as partially dedicated COVID-19 infection

and for developing serious illness from COVID-19 due to presence of co-morbidities of systemic hypertension and diabetes mellitus.”

A perusal of the aforesaid Medical Report shows that the respondent No.2 is having gynecomastia (enlargement of breast tissue) and piles.

6. A second Medical Report dated 23.11.2020, of the respondent No.2 was submitted by the Office of the Jail Superintendent. The relevant portions of the Medical Reports reads as under:

“The inmate is a known case of systemic hypertension, diabetes mellitus type-II and bilateral renal calculi. His blood investigations were carried out in jail dispensary on 19.10.2020 which showed uncontrolled diabetes mellitus [Random Blood Sugar 231 mg/dl (normal less than 170 mg/dl), HbA1c 10.40% (normal 4.8 to 5.9)]. He was last reviewed in casualty of jail hospital by Medical Officer and Senior Resident Medicine on 21.11.2020 as a follow-up case of Diabetes Mellitus Type-II, Systemic Hypertension and Bilateral renal Calculi. He gave complaints of pain in bilateral sides of abdomen, burning micturition, decreased appetite and weight loss. On examination, his blood pressure was 145/95 mmHg, pulse rate was 108/min and Random Blood Sugar was 433 mg/dl. He was given insulin injection in the casualty of jail hospital and was advised to continue treatment in the form of oral medicines and insulin injections. The copies of his investigation reports dated 19.11.2020 and OPD Card dated 21.11.2020 are enclosed herewith for your kind perusal, please.

The inmate is a known case of right-sided gynecomastia (swelling of breast tissue) for which he is taking treatment from jail dispensary. The FNAC (Fine Needle Aspiration Cytology) Test of his right breast tissue was again carried out in the

pathology laboratory of jail hospital on 18.11.2020 and it was suggestive of gynaecomastia. He was last reviewed by Medical Officer on 21.11.2020 as a follow-up case of right-sided gynaecomastia. he gave complaints of pain and swelling in right peri-alveolar tissue (breast tissue) and rapid growth of breast tissue. On examination, tenderness was present in the right breast swelling. He was provided symptomatic treatment accordingly and was advised referral to DDU Hospital for further work-up for surgery. The copy of FNAC Report of the inmate dated 18.11.2020 is enclosed herewith for your kind perusal, please.

The inmate is a known case of Internal Hemorrhoids and he was reviewed in jail dispensary by doctor on duty and jail visiting Senior Resident Surgery from DDU hospital from time to time. The Senior Resident Surgery has mentioned on his OPD Card dated 07.08.2020 that, "Complaint of bleeding PR (Per Rectum) with protrusion of mass per anus. Proctoscopy: internal Hemorrhoids at 3,7 and 11 O'clock position. Diagnosis: Grade Three Internal Hemorrhoids Plan: Hemorrhoidopexy/Hemorrhoidectomy." Thus, he has been advised the surgery of hemorrhoidectomy by Senior Resident Surgery. He was last reviewed in jail dispensary by Medical Officer on 17.11.2020 wherein he gave complaints of pain and bleeding per rectum during defecation, mass coming out of anus during defecation requiring to be manually pushed back and constipation. He was provided symptomatic treatment in the form of oral medicines, ointment for local application, laxative syrup and was advised to take high fibre diet and hot water sitz bath. The copies of the OPD Card of the inmate dated 07.08.2020 and 17.11.2020 are enclosed herewith for your kind perusal, please."

This Report also in simple terms shows that the respondent No.2 has got enlargement of male breasts and piles apart from diabetes and blood pressure.

7. The respondent No.2 on the basis of these Reports was granted interim bail. This order has been challenged by the petitioner contending that the respondent No.2 had been granted interim bail on 01.11.2018 which he jumped and remained absconding for 461 days till he was re-arrested on 09.07.2020. It is also stated that the respondent No.2 is involved in eight other cases i.e. FIR No. 95/1986 under Sections 452,323,34 IPC, FIR No. 110/1998 under Sections 323,324,34 IPC, FIR No. 01/1999 under Sections 323,341,34 IPC, FIR No. 123/1999 under Sections 149,188,353,332,186,34 IPC, FIR No.149/1999 under Sections 307,34 IPC and 25/27 Arms Act, FIR No. 74/2002 under Sections 323,341,34 IPC, FIR No. 64/2012 under Sections 135 EC Act and FIR No. 41/2014 under Sections 387,506,341,34 IPC and 25/54/59 Arms Act. No doubt, the respondent No.2 has been acquitted in six of them.

8. A perusal of the two reports sent by the Jail Superintendent shows that the respondent No.2 is said to be suffering from the following conditions:

- (a) Hypertension and diabetes both of which had been termed 'uncontrolled' but later reports show that both have been brought under control.
- (b) Right sided gynecomastia which essentially just means male breast enlargement.

9. A study of the report from the jail hospital shows that an FNAC (Fine Needle Aspiration Cytology) has been conducted by the jail hospital and the report comes out as simple gynecomastia and nothing else, which essentially

means that there is no tumour, neither benign nor malignant as alleged by the patient. The petitioner has stated in the application that the respondent No.2 has "a chest tumour, which is making his breathing difficult and which can turn into a cancer" which is apparently wrong and to say the least, misleading. When an FNAC in the jail hospital itself has ruled out any tumour, let alone any malignancy, and it has also ruled out any infection like TB, the medical report set to the same ought to have clarified that there is no tumour or malignancy as that operation was only for mere cosmetic purpose and not a medical emergency. Absence of such a clarification in a medical report does not assist the Court, rather the report conceals vital information from the Court.

10. Also, the mention about the co-existing illness, it is to be brought that conditions like diabetes and hypertension and haemorrhoids are very common among 70-80% of the jail inmates. The term 'uncontrollable' has been used for the hypertension, but at no time was any of the Blood Pressure (BP) recording seems to be so. If so, why were these terms used?

11. Also, the haemorrhoids, hypertension and diabetes all these conditions can be medically treated by the jail hospital. The question that arises is why should bail be granted for these very easily treatable disorders, which can be contained simply by taking oral medicines. If at all, an operation has to be performed, the same ought to have been for the haemorrhoids. There was no occasion for performing surgery for gynecomastia which is a simple case of enlarged male breast tissue. This simple condition has been described as 'a tumour in the chest' causing breathing difficulty. The reality is that the procedure was simply a cosmetic surgery.

12. The Status Reports filed by the jail doctors should be explicit and

explain not just in medical jargon but also in simple language the complex medical terms used. The doctors preparing the Status Reports must clearly give their final impression and opinion as to whether the condition warrants any urgency/emergency. Further, the Status Report must explicitly state if the condition of the patient is likely benign/malignant/infective and state clearly whether surgery is needed for that specific condition or not.

13. In this case, the Medical Report in medical jargon mentions 'gynecomastia' which in common language only means an enlarged male breast tissue. The report rules out malignancy but fails to state so clearly and there is an element of ambiguity in the report which must be avoided in future.

14. The surgery has been conducted by a private doctor, Dr. Preet Singh Chawla, and the medical document filed is seriously lacking in information. The details given in the report are too sketchy and the operative details do not mention anything worthwhile and have failed to explain why the surgery was done in the first place as the previous FNAC mentions only gynecomastia. The sketchy report he gave in writing does not even mention any biopsy done by him and he has merely quoted the FNAC done in the jail hospital.

15. The surgery which was purely for cosmetic purposes was evidently only a ruse to get bail which the respondent No.2 would often use, to secure bail. The respondent No.2 is currently in custody and he has abused the interim bail granted to him. The doctor in his report has not even bothered to mention that he has sent the tissue for biopsy and has merely quoted the report sent by the jail hospital stating that there is no malignancy, no koch's.

16. Even after performing surgery, it mentions 'removal of tumour' when

there has been none and does not even mention any biopsy anywhere and is found only to quote the previous jail FNAC and mentions 'no malignancy, no koch's.

17. All this leads to a lot of suspicion of a foul play and of ambiguity and can lead to serious doubt as to whether any procedure was at all done in the private hospital in good faith. A serious note is taken of such skimpy, wishy-washy medical documentation and the licence of such doctors should be cancelled if found to be lacking/falsely done.

18. Advantage is being taken of the fact that Judges are not medical experts and are therefore unable to correctly appreciate the nature of the ailments. The accused try to get their bail extended even though they are not suffering from any serious ailments which require them to be released on interim bail.

19. All this reeks of several lacunae at several levels including the medical personnel both at the level of jail hospital and the private doctor's level.

20. It is also seen that after getting treatment outside the jail hospital, reports are being received by certain hospitals which are questionable. In the present case, the respondent No.2 has filed a report by Dr. Preet Singh Chawla of Chawla Nursing Home which as stated earlier is sketchy. At this juncture, it is pertinent to mention that certificates given by Dr. Preet Singh Chawla has been doubted by this Court in order dated 05.12.2019 in BAIL APPLN. 3014/2019. In BAIL APPLN. 12339/2020, a Status Report was filed by the State enclosing material and orders of the various Coordinate Benches of the Court in relation to the medical certificates issued by Dr. Preet Singh Chawla of Chawla Nursing Home.

21. This Court has found that the reports from several private hospitals are very veiled and do not disclose the correct diagnostic terms which can be appreciated by a Judge, who is not from the medical background.

22. Applications on medical grounds are now being made as a ruse to get interim bail and then prolong it for indefinite periods even though it is not required and thereby taking the Courts for a ride.

23. Sketchy, wishy-washy medical documents from any random private doctor with ambiguous, incomplete documentation in illegible handwriting will not be entertained in future, rather viewed seriously with suspicion.

24. The medical reports from the Jail Hospital must clearly state the history, examination findings and the clinical diagnosis, the interpretation of the diagnosis in simpler terms for the Judges to understand the following:

- i. What is the diagnosis?
- ii. Whether it can be simply treated by giving medical treatment in the Jail Hospital.
- iii. If there is any urgency and if it is an emergency then the nature of emergency must be clearly mentioned.

25. In case the patient is referred to a referral hospital then the medical report must state the following:

- i. The diagnosis, its simpler interpretation.
- ii. Whether the disease/ailment is treatable by conservative medical management or is surgical intervention required. If yes, will it be an emergency surgery.
- iii. If any tumour or growth is found is it benign or malign and/or infective.
- iv. If any investigations are to be done, then the nature of the

investigation, when it can be performed and can it be performed in Jail hospital.

26. Post treatment/surgery the medical report must clearly state the result of the surgery and the post-operative care that is required. The report must indicate as to how many days of hospitalization would be required before the patient is sent to the prison.

27. In a case where medical reports are ambiguous and create suspicion in the mind of a Judge then it ought to be sent for scrutiny by a Medical Board consisting of two-three specialists from a government hospital so that they can endorse or refute such document and if it is found that the reports are only made to prolong the period of bail then, such report should be viewed seriously by the Court, which must consider initiating appropriate proceedings.

28. If it is found that an attempt is made to simply prolong/use lame excuse and take the help of such ambiguous medical documents provided by doubtful/questionable private doctors, it would be viewed seriously by the Court and action should be taken against those private doctors. It must be noted that private doctors who submit such sketchy, wishy-washy medical reports are guilty of an offence under Section 192 IPC. Section 192 IPC reads as under:

"192. Fabricating false evidence.—Whoever causes any circumstance to exist or I[makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an

arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".

29. While the present case is fit for the exercise of powers under Section 340 Cr.P.C against the concerned doctors, this Court is refraining from doing so, only because the accused has surrendered and is back in custody. Doctors are advised to be more cautious while giving medical certificates for the purposes of submitting them as evidence before a Court of law.

30. The revision petition is disposed of with these observations, along with the pending applications, if any.

31. A copy of the order be circulated to all the Jail Superintendents to ensure that accurate medical reports are prepared to assist Judges while considering application for bail on medical grounds.

SUBRAMONIUM PRASAD, J.

APRIL 05, 2021

hsk/Rahul