

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**LD-VC-APPA NO.742/2020 IN CRIMINAL APPEAL NO. 137/2017**

Gokalkonda Naga Saibaba

Vs.

The State of Maharashtra, through PSO, Aheri, District Gadchiroli

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*Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.*

*Court's or Judge's Orders*

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Shri N.B.Rathod, Advocate, for applicant/appellant.

Shri P.Sathianathan, Special Public Prosecutor, for non  
applicant/respondent.

**CORAM : A.S.CHANDURKAR and AMIT B. BORKAR, JJ.**

**DATE : July 28, 2020.**

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The applicant who is accused no.6 in Sessions Case Nos. 13 of 2014 and 130 of 2015 stands convicted for the offence punishable under section 13 and 18 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120 B of the Indian Penal Code. By the judgment dated 07.03.2017 he has been sentenced to suffer imprisonment for life. This conviction is under challenge in Criminal Appeal No. 137/2017. An earlier application filed by the present applicant under Section 389 of the Code of Criminal Procedure, 1973 (for short, 'the Code') has been rejected by this Court on 25.03.2019. The applicant has not chosen to challenge that order.

By the present application also filed under Section 389 of the Code, the applicant has prayed for his release on temporary bail.

3. Shri N.B.Rathod, learned counsel for the applicant submitted that though the earlier application preferred by the applicant under Section 389 of the Code was rejected, the present application has been filed seeking temporary bail mainly on two grounds. Firstly, on account of spread of COVID-19 pandemic, it is submitted that as there is a grave likelihood of the applicant being infected, he ought to be released on temporary bail for a period of forty five days. Secondly, it is submitted that the medical condition of the applicant has further deteriorated after 25.03.2019 and on that count also the applicant deserves to be enlarged on temporary bail. In addition, it is urged that the health of the applicant's mother is also a cause of concern and the applicant's presence with her is necessary.

4. It is urged on behalf of the applicant that the applicant suffers from various ailments which can be termed as comorbidities. Earlier the applicant was being looked after by two attendants provided by the Jail Authorities. However after the spread of aforesaid pandemic no attendants are being now provided to the applicant. Due to initiation of lockdown the applicant is unable to receive various medicines which otherwise were being supplied by his family members and well-wishers. It is the specific stand taken by the applicant that only on two occasions he was taken to the hospital which was on 16.06.2020 and 24.06.2020. In the light of the fact that staff in the jail as well as some of its inmates had tested positive for COVID-19, there was every likelihood of the applicant being infected. It is thus urged that considering the medical condition of the applicant and in view of spread of the pandemic, the applicant deserves to be enlarged on temporary bail for a period of forty five days. In addition, it is submitted that this Court may impose stringent conditions while granting bail to the applicant.

5. The application is opposed by Shri P.Sathianathan, learned Special Public Prosecutor for the State. He submits that in the light of the earlier order dated 25.03.2019 passed by this Court rejecting the application for suspension of sentence, the present application itself is not tenable. That order not having been challenged, it was not now open to seek a fresh consideration of the grounds which were available for being urged and considered by this Court. Without prejudice to the aforesaid, it is submitted that all care and due precaution is being taken by the Jail Authorities in the light of the spread of COVID-19. Referring to the reply filed by the Chief Medical Officer, Nagpur Central Prison, it is submitted that the applicant has been placed in a high security cell in a separate wing. The COVID-19 test of the applicant was undertaken and the same was negative. There was no contact between inmates of the wing in which the applicant was kept with the inmates of other wings. Only the staff that had tested negative was kept on duty. It is further submitted that all preventive and curative measures to prevent spread of the infection was being taken in the prison. He also submitted that two attendants were made available to the applicant for 24 hours and grievance made in that regard was not tenable. Similarly, the Medical Officer was always available and at hand. As the applicant was permanent resident of Delhi where the aforesaid infection was also prevalent, no useful purpose would be served by granting temporary bail to the applicant. It is reiterated that the medical grounds sought to be urged by the applicant were grounds which were available when the earlier application for suspension of sentence was considered by this Court and hence those grounds could not be reiterated. It is thus submitted that the application is liable to be rejected.

6. We have heard learned counsel for the parties at length and we have given due consideration to the material placed

on record. It is undisputed that the earlier application preferred by the applicant under Section 389 of the Code based on his medical condition was considered and rejected by this Court *vide* its order dated 25.03.2019. This order has not been challenged and it still holds the field. Hence though the learned counsel for the applicant sought to support present application by entering into the merits of the order of conviction passed by the Sessions Court, we are not in a position to go into the same. Reiteration of the same grounds cannot be permitted afresh.

7. As regards the ground urged by the applicant that he deserves to be granted temporary bail due to spread of COVID-19 pandemic, we find from the reply filed by Chief Medical Officer, Nagpur Central Prison that all requisite precautions are being taken to stop its spread in the jail. The applicant has been kept in a separate high security cell and inmates of the wing where the Cell is located are not permitted to interact with the inmates of other wings. It is also found that the applicant was tested and his report of COVID-19 test was negative. It is the specific stand of the Jail Authorities that only the staff who have tested negative are kept on duty. The steps taken towards prevention of infection have been highlighted in the aforesaid reply and we do not find any reason to doubt the aforesaid steps as taken. In fact, there is no material on record to disbelieve the aforesaid statements made by the Chief Medical Officer, Nagpur Central Prison. Though the applicant suffers from various ailments, in the light of the fact that he has been kept in a separate high security cell and there is no contact/communication between the inmates of the wing in which he is kept with the inmates of the other wings, we do not find any ground made out to release the applicant on temporary bail due to outbreak of the pandemic. While arriving at this conclusion, we have kept in mind the nature of accusations against the applicant, his conviction by the Sessions Court and rejection of his

application for suspension of sentence by this Court.

8. As regards worsening medical condition of the applicant as sought to be urged by him, we find that in the application moved by the applicant except for narrating the ailments said to be suffered by him, there are no further details given. It has not been pointed out in the application that after 25.03.2019 when the application under Section 389 of the Code was rejected, the applicant has further contracted ailments as alleged. In any event, we find from the reply filed by the Chief Medical Officer, Central Prison Nagpur that appropriate medical aid is being provided to the applicant. The treatment being rendered and the applicant's examination by experts is also evident on record.

9. In that view of the matter we do not find any merit in the present application. It is accordingly rejected.

Shri Rathod, learned counsel for the applicant submits that pursuant to the orders passed by this Court on 25.05.2020 in Criminal Writ Petition No. 272/2020, the applicant has moved a fresh application for grant of parole on 16.06.2020. The Jail Authorities shall consider that application expeditiously on its own merits.

Order accordingly.

This order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

**JUDGE**

**JUDGE**