

(2023) 01 GAU CK 0001

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 42 Of 2022

Chintan Jain

APPELLANT

Vs

Central Bureau Of Investigation (CBI)

RESPONDENT

Date of Decision : 05-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 21, 39(e), 39(f), 41, 42, 226

Indian Penal Code, 1860 — Section 120B

Prevention of Corruption Act, 1988 — Section 7, 8, 12

Citation : (2023) 01 GAU CK 0001

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : Sa Hussain, M Haloi

Final Decision : Dismissed

Judgement

1. Heard Mr. SA Hussain, learned counsel for the petitioner. Also heard Mr. M. Haloi, learned retainer counsel for the respondent CBI.

2. In this writ petition, under Article 226 of the Constitution of India, the petitioner- Sri Chintan Jain, son of Nayan Chandra Jain, resident of Athak Awas, 115-A, Gandhinagar, West Boring Canal Road, Patna, Bihar has prayed for issuing a Writ of Mandamus, directing the Jail Authority of the Central Jail, Guwahati, to allow him to get admitted in a private hospital of his choice, within the locality of Guwahati at his own cost, for his further treatment, pursuant to his release from the Gauhati Medical College and Hospital (GMCH), on his personal bond.

3. The factual background leading to filing of the present petition is briefly stated as under :-

"The petitioner has been arraigned as an accused in the charge sheet, dated 10.02.2022, under Section 120-B of the IPC, read with Section 7/8/12 of the Prevention of Corruption Act, 1988, filed by the respondent - CBI, which is pending before the Court of learned Special Judge (CBI), Addl. Court No.2,

Guwahati, being Special Case No.2/2022. On 14.12.2021, he was arrested by the respondent, and since then he has been languishing in the jail hajot for more than 350 days. And since the date of his arrest, he has been facing multiple health issues and over the past few months his health condition has been deteriorating. On 29.11.2022, he experienced rectal bleeding, while passing stool along with other critical symptoms for which he was forwarded to the GMCH, by the Jail Authority, Central Jail, Guwahati. After investigation, the Authority got him admitted at the GMCH. On that day, he was not in a position to request the Jail Authority to allow him to get him admitted in a Private Hospital of his choice. Further case of the petitioner is that -he had preferred one bail application, being BA No. 2627/2022 before this court and vide order dated 07.10.2022, this Court was pleased to pass an interim order, directing the Jail Authority that in case of serious illness of the petitioner, the Jail Authority shall take proper care, and if necessary, he may be allowed to get admitted in a Private Hospital, of his choice at his own cost, as he has not been receiving due and proper treatment. But, he is not satisfied with his treatment at GMCH and as such, he may be allowed to take treatment in a Private Hospital of his choice, at the earliest and that the delay in his treatment will cause irreparable loss and injury as well as prejudice to him. His further case is that right to receive proper medical treatment is a Fundamental Right, as guaranteed by Article 21 of the Constitution of India and that he is ready to bear the costs, incidental to his treatment in the Private Hospital of his choice and therefore, it is contended to allow the petition.

4. It is to be noted here that the respondent CBI has not submitted any affidavit-in-opposition here in this case.

5. Mr. S.A. Hussain, learned counsel for the petitioner submits that the petitioner has not been getting proper treatment at GMCH, although he has been admitted there from time to time by the Jail Authority and that the condition of the health of the petitioner is deteriorating day by day and that, in view of the judgment of the Hon'ble Supreme Court, in the case of Gautam Navlakha vs. National Investigation Agency and another, in Special Leave to Appeal (Crl.) No.9216/2022, the right of an under trial prisoner, to seek medical treatment is a Fundamental Right and as such, the petitioner is entitled to undergo medical treatment at a Private Hospital of his choice, and this Court in BA No.2627/2022, vide order dated 07.10.2022, has directed the Jail Authority that in a case of any serious illness of the petitioner, the Jail Authority shall take proper care, and if necessary, he may be allowed to get admitted in a Private Hospital, at his own cost. Therefore, Mr. Hussain, contended to allow the petition directing the Jail Authority to get the petitioner admitted in a Private Hospital of his choice and that the petitioner is ready to bear the cost incidental thereto.

6. On the other hand, Mr. M. Haloi, learned retainer counsel for the respondent CBI, has vehemently opposed the petition. Referring to a medical report, dated 20.12.2022, submitted by the Superintendent of Central Jail, Guwahati, which was called for by this Court vide order dated 07.12.2022, Mr. Haloi submits that

the petitioner was suffering from vomiting of blood, with nasal blockage and he was diagnosed as Systemic Hypertension with Upper Gastrointestinal Bleeding, with left sided Deviated Nasal Septum with Right inferior turbinate Hypertrophy. He was admitted in the GMCH on 29.11.2022 and discharged from the Hospital on 02.12.2022, and he was referred to various departments of the GMCH at regular intervals for necessary follow up and reviews and presently, he is under medication. Mr. Haloi further submits that the said medical report, does not indicates that he has been suffering from any serious ailment and the type of treatment, required for the petitioner is very much available at the GMCH and as such, there is no question of allowing the petitioner to take treatment in a Private Hospital of his choice and therefore, it is contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case law, referred by Mr. SA Hussain, learned counsel for the petitioner and also gone through the medical report submitted by the Jail Doctor of Central Jail, Guwahati, along with the X-ray and discharge certificate, issued by the GMCH.

8. It is to be mentioned here that the learned counsel for the petitioner has not disputed the medical report submitted by the Jail Doctor of Central Jail, Guwahati. A careful perusal of the medical report reveals that the petitioner was diagnosed with Systemic Hypertension with Upper Gastrointestinal Bleeding and necessary treatment is provided to him and his condition having been improved, he has been discharged from the hospital on 02.12.2022, while he was admitted on 29.11.2022. And presently, he is under medication and further it appears from the report of the Jail Doctor of Central Jail, Guwahati that his vital parameters are within the normal limits. And as such, there is substance in the submissions, so advanced by Mr. M. Haloi, learned retainer counsel for the respondent CBI. It also appears that the petitioner has not been suffering from any major ailment, treatment of which is not available in the GMCH. The submission of Mr. Haloi is not controverted by the learned counsel for the petitioner. In the event of non-availability of the treatment of the disease in the GMCH, in which the petitioner is suffering from, then it would have been a good case for referring him to a Private Hospital of his choice, where such treatment is available. Nevertheless, it is not the case of the petitioner that the treatment required for his treatment, is not available in the GMCH.

9. It is no more res-integra that right to seek medical treatment is a fundamental right as envisaged in Article 21 of the Constitution of India. This is re-iterated by Hon'ble Supreme Court in catena of decisions, including the decision in Gautam Navlakha (supra), so referred by learned counsel for the petitioner, wherein it has been held that right of an under trial prisoner to seek medical treatment is a Fundamental Right. *Bandhua Mukti Morcha vs Union Of India & Others* AIR 1984 SC 802, Hon'ble Supreme Court has held that-

"It is the fundamental right of every one in this country, assured under the

interpretation given to Article 21 by this Court in Francis Mullen's Case, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials."

10. However, to the considered opinion of this court, such right cannot be interpreted and extended to get the present petitioner treated in a Private Hospital of his own choice, while such kind of treatment is very much available in the government Hospitals, like GMCH. It cannot be lost sight of the fact that he is under judicial custody in connection with a case lodged by the CBI. It also cannot be lost sight that an undertrial prisoner's right to life does not diminish even a wee bit, when in jail as an accused for an offence and such a person's health concerned have to be taken care of by the State. The right to dignity of an accused does not dry out with the Judges' ink, rather, it subsists beyond the prison gates and operates until his last breath.

11. However, when necessary treatment is being provided to the petitioner in GMCH, by the Jail Authority and the type treatment, required for the petitioner is available in GMCH, and while health conditioned of the petitioner is improved after taking such treatment at GMCH, it cannot be said that the fundamental right of the petitioner is impaired. Under the facts and circumstances discussed herein above, we afraid, the petitioner has succeeded in establishing a case for issuing a writ of mandamus.

12. In the result, I find no merit in this petition and accordingly, the same stands dismissed. However, it is provided that the Jail Authority shall take all necessary steps to provide necessary treatment to the petitioner at the GMCH or in any other Govt. Hospital as and when required. The parties have to bear their own cost.