

(2006) 12 GUJ CK 0028

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 14654 of 2006 in Criminal Miscellaneous Application No. 7400 to 14660 of 2006 in Criminal Miscellaneous Application No. 8870 of 2006

Gopalbhai Chaturbhai Amin

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 109, 114, 120B, 188, 34

Citation : (2006) 12 GUJ CK 0028

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : HN Jhala, No. 1, for the Appellant; Mita Panchal, learned APP in Criminal Misc. Application No. 14654/2006, T.S. Nanavati, Special Public Prosecutor in Criminal Misc. Application Nos. 14655 to 14660/2006, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Rule. Mr. T.S. Nanavati, learned Special Public Prosecutor, waives service of notice of rule for the respondent-State of Gujarat. In the facts and circumstances of the case, these applications have been heard today.

2. The applicant i.e. Gopalbhai Chaturbhai Amin has filed the above named seven applications for regular bail/extension of temporary bail u/s 439 of the Cr.P.C. in connection with different F.I.Rs. relating to offences punishable under Sections 465, 467, 468, 406, 409, 466, 114, 420, 471, 423, 109, 188 read with Sections 34 and 120-B of the Indian Penal Code. The numbers of the Criminal Misc. Applications and the corresponding F.I.R.'s are enumerated below:

Cr. M.A. No. 14654/06 C.R. No. I-838/2004 Satellite Police Station

Cr. M.A. No. 14655/06 C.R. No. I-203/2004 Sarkhej Police Station

Cr. M.A. No. 14656/06 C.R. No. I-202/2004 Sarkhej Police Station

Cr. M.A. No. 14657/06 C.R. No. I-145/2004 Sector No.7, Police Station, Gandhinagar

Cr. M.A. No. 14658/06 C.R. No. I-147/2004 Sector No.7 Police Station, Gandhinagar

Cr. M.A. No. 14659/06 C.R. No. I-525/2004 Naranpura Police Station

Cr. M.A. No. 14660/06 C.R. No. I-153/2004 Sector-7 Police Station, Gandhinagar

3. Since the subject matter of all the above mentioned applications is identical, they are being heard and disposed of together by this common judgment.

4. It appears from the record that this case has a long and chequered history and it is necessary to mention the brief background in which the present applications have been filed.

5. Earlier the applicant had preferred Criminal Misc. Application No.7996 of 2006 in Criminal Misc. Application No.7400 of 2006 to Criminal Misc. Application No.8002 of 2006 u/s 439 of the Cr.P.C., which was disposed of vide order dated 31.7.2006 (Coram: Akshay H. Mehta, J.), wherein the applicant was ordered to be released on temporary bail for a period of 15 days from the date of his release with a view to enable him to take treatment from the Doctor of his own choice. It was, however, made clear that during this time the applicant shall get himself admitted in the Hospital of his choice and obtain treatment while staying in the hospital. As soon as he is discharged from the hospital i.e. even before the expiry of the temporary bail period, it was ordered that the applicant shall surrender himself to custody. These directions were given by this Court in the light of the medical records of the applicant, who is a patient of acute diabetes. Thereafter, the applicant moved various criminal Misc. Applications i.e. Criminal Misc. Application No.7400 of 2006, Criminal Misc. Application No.8864 of 2006, Criminal Misc. Application No.8865 of 2006, Criminal Misc. Application No.8866 of 2006, Criminal Misc. Application No.8867 of 2006, Criminal Misc. Application No.8868 of 2006, Criminal Misc. Application No.8869 of 2006, Criminal Misc. Application No.8870 of 2006, Criminal Misc. Application No.7702 of 2006, and Criminal Misc. Application No.7716 of 2006 before this Court, which were disposed of by this Court (Coram : K.S. Jhaveri, J.) vide order dated 14.9.2006 by a common order. The application for regular bail was not pressed by the learned Counsel for the applicant and a prayer was made for the grant of temporary bail on the ground of illness of the applicant i.e. uncontrolled diabetes mellitus, which is a kind of fluctuating diabetes, hypertension and coronary artery disease. After perusing the medical evidence on record, this Court partly allowed the applications filed by the applicant and the applicant was ordered to be released on temporary bail for a period upto 31.12.2006. It was directed that the applicant shall be admitted in Kesar S.A.L. Hospital, situated near Science City at his own expenses on the following terms and conditions:

(i) The jail authority shall release him on temporary bail upon his executing a personal bond in the sum of Rs.3000/- (Rupees three thousand only).

(ii) He shall not try to contact any person through media or any other mode of communication

(iii) The Sola Police Station shall do supervision at every 4 hours between 6.00 a.m. to 10 p.m. everyday.

(iv) The Hospital staff shall not allow any visitor/visitors in the room of the applicant other than his wife.

6. It was made clear by the court that this arrangement is made looking to the illness of the applicant and he is directed to co-operate with the trial, which is pending against him. It was further ordered that the prosecuting agency shall examine the weekly health report of the applicant upto 31.12.2006. The Court, while parting with the case also observed as follows:

Rule is made absolute accordingly. Direct service is permitted. It is clarified that the aforesaid order has been passed considering the peculiar facts and circumstances of the case and hence, the same may not be treated as precedent in future cases.

7. It is in this background that the instant applications have been filed.

8. The prayer made in these applications is to extend the period of temporary bail granted in favour of the applicant vide order dated 14.9.2006 recorded in Criminal Misc. Application No.7400 of 2006 and other cognate matters upto 30.6.2007 in connection with the offences registered in the various police stations as already mentioned hereinabove and for a direction to the prosecuting agency to complete the trial pending against the applicant before 30.6.2007. Further the applicant has prayed that pending admission/hearing and final disposal of these applications, he should be released on temporary bail.

9. During the course of hearing Mr. H.N. Jhala, learned Counsel for the applicant has stated at the Bar that he is not pressing the prayer for directing the prosecuting agency to complete the trial pending against the applicant before 30.6.2007 or for extension of the direction of this Court issued vide order dated 14.9.2006 in Criminal Misc.Application No.7400 of 2006 and allied matters upto 30.6.2007 but he is only praying that the directions contained in order dated 14.9.2006 may be extended upto 9.1.2007.

10. As stated in the present applications, the applicant is a patient of acute diabetes mellitus and the blood sugar level of the applicant keeps on fluctuating, which means that he can become unconscious or go into a coma at any time when the level of blood sugar drops. It is, therefore, averred that the applicant needs constant medical treatment and supervision and that the direction issued by order dated 14.9.2006 by this Court in Criminal Misc. Application No7400 of 2006 and cognate matters to the effect that the petitioner shall remain in Kesar

S.A.L. Hospital upto 31.12.2006 should be extended and he should be permitted to remain in the said hospital till 9.1.2007. The applicant has annexed various medical reports of tests carried out on the applicant i.e. diabetes charts, serology reports, and reports of diabetes tests of the applicant. The diabetes report annexed at page 70 of the application shows that the last entry was made on 3.11.2006 at 12 noon. There is no certificate of any Doctor of the Kesar S.A.L. Hospital regarding the latest medical status of the applicant.

11. This Court has heard Mr. H.N. Jhala, learned Counsel for the applicant as well as Mr. T.S. Nanavati, learned Special Public Prosecutor for the respondent-State in Criminal Misc. Applications No.14655 of 2006 to 14660 of 2006 and Ms. Mita Panchal, learned Additional Public Prosecutor in Criminal Misc. Application No.14654 of 2006, at length and in great detail. This Court has also carefully gone through the material on record.

12. Mr. H.N. Jhala, learned Counsel for the applicant has forcefully submitted that the directions contained in order dated 14.9.2006 of this Court should be extended upto 9.1.2007 since the applicant will not get the required medical assistance in the jail premises if he is ordered to go back into jail custody after 31.12.2006. It is submitted by the learned Counsel for the applicant that the applicant is required to remain under constant medical supervision since his insulin levels keep on fluctuating and he may go into a diabetic coma. According to the learned Counsel for the applicant, no doctors are available in the jail premises between 4:00 to 5:00 pm and from 5:00 am to 9:30 am and in case of emergency, the applicant apprehends that he will not get immediate necessary treatment. It is further submitted that the barracks of jail are locked from outside at 6:00 pm. In these facts and circumstances, the applicant should not be directed to go back into jail custody after 31.12.2006 and should be allowed to remain in Kesar-S.A.L. Hospital upto 9.1.2007.

13. Mr. T.S. Nanavati, learned Special Public Prosecutor for the respondents has emphatically opposed the prayer made by the applicant. He has submitted that the applicant is facing serious allegations in connection with offences mentioned in the several FIRs filed against him to the effect that he is involved in usurping the Government and private lands in different areas with the aid of forged and fraudulent documents. It is further submitted by Mr. T.S. Nanavati that there is a team of three medical doctors in Sabarmati Central Prison, Ahmedabad. The Medical Officers of Sabarmati Central Prison are available round the clock in case of emergency or otherwise, since they are residing in the jail premises itself and after 8:00 pm upto 8:00 am, specific duty is allotted to atleast one Medical Officer who is on emergency duty and available on call even on public holidays and Sundays. It is further submitted that Sabarmati Central Prison is well and sufficiently equipped to take care of the patients and in case of any further emergency, the applicant can be shifted to the Civil Hospital or given any other specialized medical treatment or aid which may be required. As far as the applicant is concerned, he has always been given the required treatment within

the precincts of jail and has been referred to the Civil Hospital or specialized medical institutions as and when required. In support of these submissions, the applicant has placed on record, the affidavit Dr. S.K. Kotwal, Medical Officer, Sabarmati Central Prison, Ahmedabad, dated 31.8.2006, which was filed in Criminal Misc. Application No.8864 of 2006 to 8870 of 2006. Same is ordered to be taken on record of these applications. It is further submitted by the learned Special Public Prosecutor that there is no certificate of any doctor attached to Kesar S.A.L. hospital where the applicant is at present being treated, to the effect that the health of the applicant has deteriorated and he is not in a fit condition to be discharged on 31.12.2006. It is therefore prayed that the applications of the applicant be rejected. Mr.Nanavati has stated at the Bar that the very same treatment that the applicant is receiving at Kesar S.A.L. Hospital can be administered to the applicant within the jail precincts. In case any medical condition or necessity arises requiring the referral of the applicant to the Civil Hospital, he shall be so referred and shall be provided with the same treatment and medication that he is getting at Kesar S.A.L. Hospital provided that the applicant should carry the prescription of medicines with which he is being treated at Kesar S.A.L. Hospital with him at the time of discharge so that it can be used for his future treatment. The learned Special Public Prosecutor further stated that there are three doctors attached to the jail whose services are available round the clock and the applicant will be given the best available medical treatment, if need arises.

14. This Court has given deep and thoughtful consideration to the arguments addressed by both the parties. From the record, it is evident that this Court (Coram: K.S. Jhaveri, J.) while passing order dated 14.9.2006, has made it very clear that the arrangement of admitting the applicant to Kesar S.A.L. Hospital while releasing him on temporary bail upto 31.12.2006 is made looking to the ill health of the applicant and in the peculiar facts and circumstances of the case and the same may not be treated as a precedent in future cases. Though voluminous medical reports have been attached to the applications which show that the applicant is suffering from diabetes, there is no certificate of any doctor from Kesar S.A.L. Hospital where the applicant is presently admitted to the effect that the condition of the applicant has deteriorated and he cannot be discharged on 31.12.2006 as directed by order dated 14.9.2006. In fact, the last entry in the diabetes chart attached to the application on page 70 is made on 3.11.2006 and there is no further entry thereafter. The applicant has been admitted to Kesar-S.A.L. Hospital pursuant to order dated 14.9.2006. Today, almost three and a half months have elapsed, and there is nothing on record to show that there is any deterioration in the condition of the applicant or that he is likely to face any medical emergency.

15. The medical condition faced by the applicant i.e. diabetes, is a disease which is likely to be faced by him throughout his life, if not cured. It cannot be possible to direct that the applicant should remain admitted to a hospital of his choice for the entire duration of the disease. Although the court is conscious that prisoners

facing medical problems should be given the best possible medical treatment, the facts and circumstances of every case have to be seen and the gravity of the illness has to be taken into consideration. The record shows that the applicant has been provided with medical aid by the authorities of Sabarmati Central Prison as and when necessary. The learned Special Public Prosecutor has categorically stated that the best available medical facilities shall be given to the applicant as and when required. It is also clear from the record that three Medical Officers are available in the precincts of the jail and can be called upon to attend to the applicant in case of any emergency. The disease with which the applicant is suffering, i.e. diabetes, has now become a common one and patients suffering from this disease have to endure it for a long period of time or even for a lifetime. By remaining admitted in hospital, there is no guarantee that the disease will get cured. Merely because the applicant apprehends that he may face a medical emergency due to fall of blood sugar levels and go into a diabetic coma, it cannot be taken to be a reasonable ground or sufficient cause to extend the hospitalization of the applicant as prayed for by him when there is no medical evidence of the doctors treating him in Kesar S.A.L. Hospital to the effect that he is not in a fit condition to be discharged on 31.12.2006, more so when the required medical treatment will be made available to the applicant when required, as stated by the learned Special Public Prosecutor. It is clear to this Court that the attempt of the applicant is to get the period of temporary bail extended from time to time on medical grounds in order to avoid his detention in custody. The applicant is facing grave and serious charges and this Court cannot overlook this ground reality in a case of this nature. All relevant aspects of the matter have to be considered. The humanitarian angle, interest of the individual, and that of society at large have to be balanced and, ultimately, the rule of law must prevail.

16. In this regard, the observations made by this Court (Coram: A.M. Kapadia, J.) in 2001(1) GLR 328 Amrutbhai Bholidas Patel v. State of Gujarat at paragraph 25 are relevant and are reproduced hereinbelow:

...It should not be lost sight that the petitioner is an undertrial prisoner and his liberty and privilege is temporarily curtailed. He cannot have the right to select a particular doctor or particular hospital from whom or from where he should get treatment. In other words, he does not have as much liberty as a free citizen enjoys to canvass the case that he should be treated by a particular doctor of his choice outside Ahmedabad and more particularly treatment which he requires is available in the City of Ahmedabad itself....

These observations are pertinent and relevant to the case in hand.

17. No other point has been raised before this Court today. It is clarified that no observation in this order may be construed as touching upon the merits of the case.

18. In view of the foregoing discussion, this Court is of the considered opinion

that the applications of the applicant are devoid of merits and cannot be accepted. However, in order to see that the applicant gets required medical treatment, it is directed that the Superintendent of Sabarmati Central Prison, Ahmedabad, will ensure that appropriate care and medical attention is given to the applicant and all steps are taken to make medical treatment/aid available to him in case necessity arises.

19. For the foregoing reasons, the applications are rejected subject to above directions. Rule is discharged.