

(2024) 02 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : Criminal Appeal (D) No. 74 Of 2022, Criminal Miscellaneous Case No. 2254 Of 2022, 1329 Of 2023, Criminal Civil Petition No. 5 Of 2023

Irfan Shafi Mir

APPELLANT

Vs

National Investigating Agency, Jammu

RESPONDENT

Date of Decision : 28-02-2024

Acts Referred:

Arms Act, 1959 — Section 25(1)(a), 35
Explosive Substances Act, 1908 — Section 4, 5
Unlawful Activities (Prevention) Act, 1967 — Section 17, 18, 18B, 19, 23, 38, 39, 40
National Investigation Agency Act, 2008 — Section 22

Citation : (2024) 02 J&K CK 0039

Hon'ble Judges : Tashi Rabstan, J;Puneet Gupta, J

Bench : Division Bench

Advocate : I.H.Bhat, Vishal Sharma, Monika Kohli

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. The instant appeal filed by the appellant-accused, namely, Irfan Shafi Mir, son of late Sh. Mohd. Shafi Mir, resident of H.No. 44, Diaroo, P/S Keegam, District Shopian, J&K (hereinafter referred to as appellant- accused) is directed against the order dated 06.12.2022 passed by the learned 3rd Additional Sessions Judge, (Special Court constituted under Section 22 of NIA Act), Jammu, (hereinafter referred to as 'trial Court'), whereby the application filed by the appellant-accused for his release on short term bail/parole in case RC No. 01/2020/NIA/JMU under Section 120B/121/121A/122 IPC and Sections 17/18/18B/19/23/38/39/40 UA(P) Act Section 25(1) (a) and 35 of Arms Act and Sections 4 & 5 of Explosive Substances Act on medical grounds has been dismissed.

2. The genesis for calling in question the order impugned is the alleged medical condition of the appellant-accused which is claimed to be deteriorating day by

day while being in custody as the appellant-accused has been advised immediate surgery for both renal culsi and anal tissues for which the concerned Jail is not equipped with medical infrastructure. That right to life being a fundamental right and the respondent by not providing the required treatment is violating his said right and the rejection of the bail by the trial Court amounts to denial of fundamental right to life to the appellant-accused, particularly, when he is suffering from a life consuming disease.

3. The grounds taken by the appellant-accused in the present appeal inter alia includes his willingness to undertake not to make any inducement, threat or promise to any person acquainted with the facts of the case directly or indirectly, so as to dissuade him from disclosing such facts to the Court or any law enforcing authority. That the appellant-accused is son of the soil and has no golden wings to flee and shall participate in the trial and make himself available on each and every hearing of the case. That there is no likelihood of the appellant-accused to abscond or tamper with the prosecution evidence so on so forth.

4. Mr. Vishal Sharma, learned counsel for respondent-NIA has filed objections contending therein that the trial Court has rightly rejected the bail application of the appellant-accused by passing a detailed and reasoned order and the jail authorities have been extending all the medical facilities and treatment to the appellant-accused as advised by the Doctors in the Government Hospital that too under the supervision of the jail authorities. That the trial Court has already framed charges against the appellant-accused for the commission of offences punishable under Sections 120B/121/121A/122 IPC and Sections 17/18/18B/19/23/38/39/40 UA(P) Act, 1967 Section 25(1) (a) and 35 of Arms Act and Sections 4/5 of Explosive Substances Act and in case the appellant-accused is released on bail, there is every likelihood of his influencing and threatening the witnesses and destroying valuable evidence besides fleeing to Pakistan to avoid the trial. Thus, learned counsel for the respondent-NIA prays for dismissal of the appeal being meritless.

5. Heard learned counsel for the parties and perused the record.

6. During the pendency of the present appeal, this Court vide order dated 15.03.2023 directed the Superintendent District Jail, Kishtwar to immediately shift the appellant-accused to Central Jail, Kot Bhalwal, Jammu so that all the medical facilities are immediately provided to the appellant-accused at Govt. Medical College and Associated Hospitals, Jammu. However, learned counsel for the appellant-accused on 26.07.2023 drew the attention of this Court to the fact that the appellant-accused has been shifted to Central Jail, Agra, Uttar Pradesh instead of shifting him to Central Jail, Kot Bhalwal, Jammu which is in clear disregard to the Court order. In this regard, learned DSGI was directed to file status report indicating therein whether the required medical facilities were being provided to the appellant-accused or not. The status report has been filed by Mr. Sharma, learned DSGI perusal whereof shows that the appellant-accused was

examined on 11.04.2023, 28.06.2023, 25.07.2023 and 06.11.2023 by different Doctors who have prescribed medicines for high blood pressure and other dental related problems. It has been further clarified that because of the treatment given to the appellant-accused, all his parameters are under control.

7. In addition, Mrs. Monika Kohli, learned Senior AAG, who is representing, respondents-contemnors in Crl CP No.05/2023 was also directed to file affidavit regarding the reasons for shifting the appellant-accused to Central Jail, Agra, UP to which she filed statement of facts on 09.01.2024 stating therein that the appellant-accused was found involved in aiding and abetting terrorism and secessionism in varying degrees from within the jail premises, thus, his shifting was recommended by the Intelligence Agencies to a Jail outside the UT of J&K. So considering the interest of national security, the appellant-accused was shifted to Central Jail, Agra, UP from Central Jail, Kot Bhalwal, Jammu. It has been specifically pleaded in the statement of facts that order of this Court dated 15.03.2023 was duly complied and the appellant-accused was shifted on 05.04.2023 from District Jail, Kishtwar to Central Jail, Kot Bhalwal, Jammu to ensure treatment at GMC, Jammu and subsequently on 07.04.2023, the appellant-accused was shifted to Central Jail, Agra, UP, in view of recommendation of the Intelligence Agencies, and Agra being a big city certainly has better medical facilities. Thus, there is no willful disobedience of order dated 15.03.2023 passed by this Court.

8. Mrs. Kohli, learned Sr. AAG has further submitted that none of the Medical Officer, who has examined the appellant-accused has advised his hospitalization for required intensive care. Moreover, none of the family member of the appellant-accused has projected any grievance with regard to the treatment given to the appellant-accused. In support of her argument, Mrs. Kohli, learned Sr. AAG has referred to an order dated 01.07.2020 passed by Hon'ble Supreme Court of India in SLP(Crl) No.5747-5748/2019 titled Mahender Singh Yadav Vs. High Court of Delhi and others wherein the application filed by the petitioner therein had been rejected by the Hon'ble Supreme Court of India. Paragraph No.3 of the order dated 01.07.2020 reads as under:-

"The petitioner or his family members have no grievance with regard to the treatment given to the petitioner. Mr. R. Basant, learned senior counsel for the petitioner argued that interim bail should be granted to the petitioner to enable him and/or his family to take steps in view of the deteriorating health condition of the petitioner. There is, however, no specific indication and/or suggestion forthcoming from the petitioner and/or his family members as to the steps which they wish to take. There is no offer from the family to shift the petitioner to any other hospital. There is not even a whisper in the petition that any differential treatment is meted to the patient or to his relatives on the ground of incarceration of the petitioner."

9. On the other hand, learned counsel for the appellant-accused has also placed reliance on following judgments:-

1. Satyendar Kumar Jain Vs. Directorate of Enforcement passed in SLP (Crl) No. 6561/2023;

2. P.Varavara Rao Vs. National Investigation Agency passed in Criminal Appeal No.1206 of 2022 (Arising out of SLP(Crl.) No.5913/2022 with Criminal Appeal No.1287 of 2022 (Arising out of SLP(Crl.) No.5931 of 2022)

3. Satender Kumar Antil Vs. Central Bureau of Investigation and others reported in 2022 AIR(SC) 3386

4. Re-Inhuman Conditions in 1382 Prisons reported in 2017 Legal Eage (SC) 843. programme

10. We have gone through the judgments referred to by learned counsel for the appellant-accused. In our opinion, the orders passed in the above referred judgments have no bearing to the facts of the present case.

11. Learned counsel for the appellant-accused has also referred to an order dated 15.05.2023 passed by the co-ordinate Bench of this Court in case titled Laddi Ram Vs. UT of J&K submitting that the said Bench has exercised the discretion in favour of the petitioner-accused on medical grounds. Although, the order passed by the co-ordinate Bench is not binding upon this Court, yet we have examined the same and found that the medical condition of the petitioner-accused in the said case, as projected before the Court in paragraph No.5 of the order, was such which enabled the said Bench to exercise the discretion in his favour whereas no such emergency/urgency is shown in the case at hand. Besides this, in that case there were no inputs from the Intelligence Agencies about the activities of the petitioner-accused that were prejudicial to the national security.

12. Be that as it may, the main contention to challenge the order of the trial Court dated 06.12.2022 is that right to life of the appellant-accused is getting violated as he requires specialized medical treatment. The appellant-accused has nowhere pleaded in his appeal that the medical ailments with which he is suffering cannot be taken care of while he is in custody in Central Jail, Agra, U.P. The only concern raised by the appellant-accused was that the medical facilities required for his treatment were not available in District Jail, Kishtwar. We are afraid that no such contention has been raised with regard to Central Jail, Agra (UP). Rather status of the medical facilities being extended to the appellant-accused at Agra, U.P. that is placed on record by Mr. Vishal Sharma, learned DSGI shows that the appellant-accused was examined on 11.04.2023, 28.06.2023, 25.07.2023 and 06.11.2023 by different Doctors who have prescribed medicines for high blood pressure and other dental related problems. It has been further clarified that because of the treatment given to the appellant-accused, all his parameters are under control. Therefore, the contention of learned counsel for the appellant-accused that the appellant-accused is suffering from life consuming disease is not substantiated from the medical record rather the same get belied from the status report filed by Mr. Vishal Sharma, learned

DSGI.

13. As of now, in our opinion, learned counsel for the appellant-accused has failed to convince this Court that there is any change in circumstances regarding medical conditions of the appellant-accused especially after the passing of the order dated 06.12.2022 by the trial Court, for exercising discretion for grant of short term bail/parole in favour of the appellant-accused. Therefore, this Court is not inclined to allow this appeal.

14. The net result is that the Appeal fails so the same is dismissed along with application(s) being bereft of merit.

15. However, before parting, this Court deems it appropriate to give liberty to the appellant-accused to approach the trial Court in case of any change in circumstances of the treatment being provided to him at Agra and in that case trial Court shall pass appropriate orders for providing medical facilities to the accused as and when needed in a hospital of repute.

In view of the order passed in the main appeal, the contempt proceedings are dropped. Rule, if any, issued is hereby discharged.