

IN THE COURT OF SPECIAL DESIGNATED JUDGE FOR CONDUCTING THE SPEEDY TRIAL OF SERIAL BOMB BLAST CASES, AT AHMEDABAD.

SESSIONS CASE NO.38 OF 2009 AND OTHERS.

Order below Exh.1252:-

1. Accused No.1 and 16 have filed this application stating that accused have been arrested in 2008 and Sessions Case No.38/2009 is pending against them and since then, they are being tried as under trial prisoners. It is the say of the accused that, the Government has imposed the provision of Section:268 of the Criminal Procedure Code and has directed not to remove accused persons from the jail premises. Therefore, trial has been conducted at the Court in the Jail or through Video Conference.
2. It is the say of both the accused that, they are suffering from cardiac problem (heart problem) since long. They have consulted the doctors on duty at Jail, and as per the advice given by the doctors of Jail, both the

accused were referred to Civil Hospital for further treatment. On inquiry, it is found that, because of non-revocation of the order under Section:268 of the Code of Criminal Procedure, the accused are not sent for the treatment at Civil Hospital. Therefore, this application is preferred wherein, prayer is asked to direct the Jail Authority to obtain revocation order from the Government for necessary medical purpose. Second relief is asked that OPD book regarding treatment be given to both the accused.

3. After receipt of this application, report of the Jail Authority was called for and accordingly, Jail Authority has given report regarding three accused. However, we are not concerned with the report of accused Mohammadlai Moharamali, who is suffering from dental problem.
4. So far report regarding Abbas Ummer Sameja i.e. accused No.16 is concerned, it is reported that, the said accused is suffering from high blood pressure, and for this purpose, Physician posted at the Jail has examined him regularly. He has also prescribed drugs which are being provided to the accused by the Jail Administration. It is further stated in the report that, on 05/09/2013, cardiology camp was arranged at

the Jail premises for the check-up of accused suffering from this disease and also for hypertension. It was opined in that camp that, the accused be examined by an expert doctor of cardiology at U.N.Mehta Institute of Cardiology and the accused was required to refer to the said hospital.

5. Likewise, as per the report regarding accused No.1 - Zahid Qutubiddin Shaikh, it is also reported by the Jail Authority that, he is also suffering from high blood pressure and he is being regularly examined by the Physician posted at the Jail and the accused is being provided the drugs prescribed by the said Physician. However, in the camp arranged by the Jail Authority on 05/09/2013, this accused was also referred to U.N.Mehta Institute of Cardiology and was advised to consult an expert doctor in the field of cardiology.
6. So far both the accused are concerned, Jail Authority has moved to Government for revocation of order passed under Section:268 of the Criminal Procedure Code repeatedly. However, the Government has not passed any order for revoking imposition of the provisions of Section:268 of the Criminal Procedure Code, so far these two accused are concerned for the purpose of their treatment.

7. Jail Authority has also attached their letters written to Additional Director General of Police. However, it seems that, no reply has been given regarding the letters written by Jail Authority for revoking imposition of restriction of removing the accused for the purpose of treatment.
8. I have heard Learned Advocate appearing on behalf of accused. I have also heard Ld. Special Public Prosecutor.
9. From the above facts, it is clear that, accused No.1 and 16 are suffering from high blood pressure. It was also found by the Physician and during the cardiology camp arranged within the Jail premises on 05/09/2013 that, both the accused required further treatment by an expert doctor for the purpose of this disease and both the accused were referred to U.N.Mehta Institute of Cardiology. Thus, one thing is sure that, both the accused are suffering from high blood pressure and during the cardiology camp arranged within the Jail premises, it was found necessary to refer both the accused for further treatment of cardiology problem. It is true that the Government has imposed restriction of removing both the accused from the Jail premises under the provision of Section:268 of the Criminal Procedure Code.

Moreover, Jail Authority has also written letters to the concerned authority for revocation of this provision so that, Jail Authority can send both the accused for treatment of cardiac problem.

10. It is equally true that this case is a very serious case and looking to the seriousness of the case, Government has imposed this provision. But, that does not mean that, simply because this provision has been imposed by the Government under Section:268 of the Criminal Procedure Code, the accused should not be treated. On the contrary, it is the duty of the Government and the Jail Authority that, in case of need both the accused should be given appropriate treatment to the accused regarding disease they are suffering. The State is welfare State and therefore, under the guise of provision of Section:268 of the Criminal Procedure Code, treatment cannot be avoided. Moreover, the problem suffered by both the accused seems to be serious one i.e. cardiac problem, because during the Cardiology Camp arranged within the Jail premises, doctors of this camp have opined that, both the accused should be referred to give for treatment of their cardiac problem and this problem should be treated by an expert doctor in this field.

11. Hence, this Court feels it proper for issuing direction to the Jail Authority that, Jail Authority should immediately move to Government to revoke the provision of Section:268 of the Criminal Procedure Code only for the purpose of treating both the accused for their cardiac problem. Thus, for these two accused, general revocation of the provision of Section:268 of the Criminal Procedure Code can be made by the Government as and when there is need to send both the accused for the treatment of their cardiac problem and not otherwise. Meaning thereby that, this revocation can be made only for the purpose of treatment to both the accused and for a limited period i.e. for the period which has been thought fit by the concerned doctor.
12. However, second relief asked is to direct the Jail Authority to supply the copy of OPD Book to the concerned accused. I do not agree with this relief, because the accused are in the custody and they do not have any material for the storage of this OPD Book. Therefore, this Court thinks it fit that, instead of giving OPD Book to the accused, photo-copy of this OPD Book can be given by the Jail Authority to this Court, so that in case of need, the same can be given to the accused and the

original may be retained with the Institution treating the accused or by the Jail Authority. Thus, this application is partly allowed.

Yadi be sent to the concerned authority.

Date: 31/01/2014.

(K. K. BHATT)
Designated Judge,
Special Court for conducting
Speedy Trial of Serial Bomb-
Blast Cases, Ahmedabad.
Unique ID Code No. GJ-00046

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