



ORDER BELOW EXH. 193 IN SPL.C.(MCOCA) No. 84/2022.
(State Vs. Narayan & ors.)

1. The accused No. 1 Narayan Tukaram Irbatanwad has filed this application for grant of bail on medical ground.
2. The accused No. 1 is facing trial for offence under Sec. 302, 120-B r/w. 34 of I.P.C. and Sec. 3(1)(i), 3(2), 3(3) and 3(4) of the M.C.O.C. Act along with other accused. The regular bail application filed by accused No. 1 has been rejected on merits by this Court as well as by Hon'ble Bombay High Court, Bench at Aurangabad.
3. The Hon'ble Bombay High Court, Bench at Aurangabad by order dated 28.08.2023 while rejecting the bail application of accused No. 1 on merits has given liberty to accused No. 1 to file separate application for bail on medical grounds (if any) by observing that 'so far as the medical ground raised on behalf of the applicant-accused that may be dealt with independently, if the separate application is filed along with relevant record to substantiate requirement of medical treatment beyond the jail.'
4. Read the application and the reply filed by learned PP. at Exh. 194. Heard learned counsel for accused No.1 and learned PP. Perused the documents produced on record by accused No.1 and the medical papers submitted by jail authority.

5. Learned counsel for accused No. 1 has submitted that on 01.06.2022 when police came to arrest accused No. 1, police officer Mohite fired bullet on accused and the said bullet entered in the upper side of waist of accused No.1. Because of that bullet, uterus and large intestine of accused No. 1 burst. So, he was not able to toilet, therefore, colostomy kit was attached by the doctor by doing surgery to the stomach of accused No.1 to do toilet. After 15 days, he was transferred to the jail and no one was present to take care of accused. While doing stomach surgery, the stitches were given, after few days that stitches were opened due to lack of medical care. So again after one month, one big operation was done to give proper stitches to the accused and to heal that stitches. After 15 days he was transferred to jail with advise of daily dressing of the stitches and surgery wounds. But, the advise was not followed. After 1½ months again one big surgery was done to remove colostomy kit and the stitches. Due to consecutive three major operations the accused No. 1 suffered tremendous blood loss and weakness and he has serious infection to his right scrotum and the scrotum become swollen and he was having tremendous pains and not able to walk. After checkup doctor found that there was puss collected in the scrotum. To heal the same, one major surgery was done to remove the puss from the scrotum and thereafter the accused was transferred to jail with advise to give diabetic diet/ home food, diabetic control and regular BSL monitoring and complete bed rest, regular cleaning and dressing of the surgical wound. But in the jail, no such treatment was provided. Therefore, the accused had again infection and he had boil (केस्टूड) on his right shoulder. Because

of that, he has huge pain in his shoulder and he is not able to sleep. Then, again he undergone surgery to remove the boil and at present, he is admitted in Vilasrao Deshmukh GMC Hospital. Because of operation, while dressing the surgical wound, huge amount of blood is oozing during treatment and because of diabetic the surgical wounds are not healing early. The wound is increasing day by day. There are four operations towards front portion and the accused No. 1 is not able to sleep on his back due to the wound. The photographs of the condition of the wound are produced on record. The accused No. 1 is having numbness in his legs and heavy weakness. His sugar level is always high and he is not able to walk. If this situation of accused No. 1 continued, then there is no possibility of his survival. Accused No. 1 is unable to walk, so it is impossible to abscond. The accused No. 1 wanted to take proper medical treatment in private hospital. Various times he was admitted in Civil Hospital, Latur. He is unable to walk and attend natural call and urine. There is strong possibility of infection in the abdominal part of accused No.1, which is risky to his life. He is suffering from B.P, diabetes and lungs infection. He is ready to furnish the surety and obey the orders of the Court during the period of medical bail. In the Civil Hospital, no proper treatment is being given to accused No.1. The wound is being treated by means of blade without anesthesia. Therefore, learned counsel for accused No. 1 prayed for grant of bail on medical ground for certain period for the medical treatment of

accused No. 1 in the private hospital beyond the jail. In support of his contention, he placed reliance on the decision in – **Kali Dass s/o Shri Tek Ram Vs. State of Himachal Pradesh [(2021)08 SHI CK 0156]**, wherein the Himachal Pradesh High Court has granted interim bail to the prisoner for medical treatment. Reliance is placed on decision in **Darshan @ Darshu s/o Shival Ingaih Vs. State of Karnataka [Criminal Petition No. 2674 of 2023 , dated 26th Day of May, 2023]**, wherein the Hon'ble Karnataka High Court observed that looking to the medical condition of the prisoner granted bail to the prisoner on medical grounds. Reliance is also placed on the decision in **Puran Chand Vs. State of H.P [(2021) 07 SHI CK 0232]**.

6. Learned P.P has opposed the bail application on the ground that the charges levelled against the accused are serious in nature. The earlier bail applications are rejected by this Court as well as by the Hon'ble High Court. The accused No. 1 had ran away from the custody of police. The present accused is the main accused behind the offence. Therefore, if the accused No. 1 is granted bail, he will be absconded. Therefore, learned P.P prayed for rejection of the application. At the same time, learned P.P has admitted the medical condition of accused No. 1 and his admission in Civil Hospital for the treatment of the wound on his back and the concern of the proper medical treatment of accused No.1.

7. I have gone through the record of the case and the medical papers produced by the jail authority and the photographs of the condition of accused No.1 and the wound on his back. It is clarified that considering the merits of the case

and the role of accused No.1, the accused No. 1 is not entitled for bail on merits. The only question is whether the accused No. 1 is entitled for interim bail for certain period on medical ground for his treatment in the private hospital beyond the jail. Admittedly, the applicant has sustained bullet injury and he has undergone various operations. From the medical papers produced by jail authority, it shows that the accused No. 1 was admitted in Civil Hospital on various occasions for his treatment on the bullet wound. He was operated with temporary colostomy kit and while discharging from the hospital he was advised diabetic diet/ home food, diabetes control, regular BSL monitoring, complete bed rest, avoid physical work and regular cleaning and dressing. He is taking treatment since 2022 from the Civil Hospital and GMC, Latur. Now from 29.08.2023 he has been admitted in the Civil Hospital and as per the consent given by jail authority, he has been operated in Civil Hospital for calbuncle over back of cyst. The Medical Officer has advised for referring him to GMC for further treatment and investigation. From the photographs produced on record, prima facie it shows that that the accused No. 1 has a wound on his back and the said wound is increasing day by day due to diabetic condition of accused No.1. The photographs prima facie shows the critical condition of accused due to the wound on his back. According to learned counsel for accused, no proper treatment is being given in the Civil Hospital and if the condition of accused is continued, the accused No. 1 will not be survive. The critical

condition of accused No. 1 can be noticed from the medical papers submitted by jail authority and the photographs of the wound and the condition of accused No.1. Even if, the accused No. 1 is a prisoner, he has right of proper medical treatment in order to survive his life. On behalf of accused No.1, application (Exh. 182) was filed for transferring the accused from Civil Hospital to Vivekanand Hospital, Latur for further treatment. However, since the accused No. 1 is under trial prisoner, it is not possible to keep accused No. 1 in a private hospital with adequate police Bandobast and the authorities of private hospital are also not consenting for the same. The Hon'ble Bombay High Court, Bench at Aurangabad while rejecting the bail application of accused No. 1 granted liberty to accused No. 1 to file separate application for bail on medical ground. Considering the serious condition of the wound on the back of accused No. 1, which is increasing day by day, the possibility of danger to the health of accused No. 1 cannot be ruled out. The accused No. 1 is ready to take treatment from private hospital with his own costs and obey the conditions of the interim bail on medical ground. Therefore, considering the medical papers, the various surgeries undergone by accused No.1, the seriousness of the wound, which is increasing day by day on the back of accused No. 1 and looking to the health condition of accused No. 1, in the interest of justice, the accused No. 1 is entitled for grant of interim bail for a certain period on medical ground for his treatment from private hospital beyond jail strictly on medical ground on certain strengthened conditions. Hence, I proceed to pass the following order.

O R D E R

1. The application is partly allowed.
2. The accused No. 1 Narayan Tukaram Irbatanwad, the prisoner is granted interim bail on medical ground only, for his treatment from private hospital beyond jail for the period of 40 days from the date of actual release from jail on executing PR. Bond of Rs. 1,00,000/- and one or more sureties of like amount.
3. It is clarified that the bail is granted only for medical treatment looking to the serious medical condition of accused No.1 only for the period of 40 days. The accused No. 1 shall not take disadvantage of the liberty granted to him and he shall surrender before the Court after completion of 40 days.
4. The accused No. 1 shall not contact any of the witness and shall not tamper the prosecution witnesses and prosecution evidence in any way.
5. The accused No. 1 shall give information in respect of the hospital in which he is being admitted for his medical treatment and shall report about the progress of his medical treatment on every week.
6. The accused No. 1 shall produce documentary proof about his permanent and temporary address.

7. The accused No. 1 shall not indulge himself in any other offence and shall not delay the trial of this case.

8. The accused No.1 shall not leave the jurisdiction of the Court without prior permission of the Court. The accused No. 1 shall report about his admission in the hospital to the concerned police station.

9. If, the accused No. 1 violated any of the conditions, the interim bail granted to accused No.1 will be cancelled.

10. After completion of period of interim bail of 40 days, the accused No. 1 shall surrender before Court, failing which, the interim bail will be automatically cancelled.

(R.B. Rote)

Date : 18.09.2023.

Additional Sessions Judge, Latur.