

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12425 of 2023

Applicant :- Atul Kumar Singh Alias Atul Rai

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Kaustubh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Malay Prasad, learned counsel assisted by Shri Kaustubh Singh, Ms. Saloni Mathur, Ms. Tanya Makker and Shri Dileep Kumar Srivastava, learned counsels for the applicant as well as Shri V.K. Shahi, learned Additional Advocate General assisted by Shri Anurag Verma for the State and perused the record.

2. This bail application has been moved by the accused-applicant- **Atul Kumar Singh Alias Atul Rai** for grant of bail in Case Crime No. 309 of 2021, under Sections 120-B, 167, 195-A, 218, 306, 504 and 506 I.P.C. Police Station Hazratganj, District Lucknow, during trial.

3. This Court on 25.01.2024 has heard learned counsel for the parties only on the limited issue of grant of short term bail to the applicant in the background of his medical condition.

4. The first bail application of the applicant was rejected on merits by means of the order dated 07.06.2022 and second bail application was rejected by this Court vide order dated 14.03.2023. The applicant, thereafter appears to have approached Hon'ble Supreme Court by filing Special Leave to Appeal (Criminal) No. 4819 of 2023 against the order dated 14.03.2023 whereby his second bail application was rejected. However, the applicant himself got the S.L.P. dismissed as withdrawn by means of order dated 13.10.2023.

5. Learned counsel for the applicant while drawing the attention of this Court towards his bail application as well supplementary affidavit dated 02.11.2023 submits that applicant is languishing jail in this case since

29.10.2021, however he was in jail in another case since 2019 and it was on 27.07.2019, he was diagnosed as suffering from *chronic supportive otitis media with mastoitis* at B.H.U. Institute of Medical Sciences and surgical procedure was advised and it was also diagnosed that applicant has started having low back pain for which he was referred to neurology department and his treatment was started under the supervision of professor Vijay Nath Mishra.

6. It is further submitted that applicant was again referred to the department of neuro surgery for expert opinion for cervical compression and also for chronic pain management on 07.08.2019 and after repeated requests the applicant was brought before the Swaroop Rani Nehru Hospital, Prayagraj for follow up on 09.03.2021 and was diagnosed with large perforation in ear and was referred to AIIMS, New Delhi for further management and treatment by Dr. Siyaram Singh.

7. It is further submitted that on 26.06.2021 the applicant was brought before the orthopedics department, S.R.N. Hospital, Prayagraj and the accused was diagnosed with coccydynia (Tail Bone Pain).

8. It is also submitted that after repeated requests it was under the orders passed by the Court of Special Judge, M.P./M.L.A. Court No.6, Varanasi, the applicant was admitted at S.R.N. Hospital, Prayagraj and was operated on 31.08.2021 and was discharged on 05.09.2022. However, on 08.09.2022 when he arrived in the Court of A.C.J.M., Varanasi, he got fainted and, thereafter, he was advised complete bed rest.

9. It is further submitted that on 10.07.2023 applicant complained of *tinnitus, vertigo, headache* and *memory loss* and was examined again in S.R.N. Hospital, Prayagraj and he was advised to keep an attendant for avoiding damp and also that he should be kept in a well-ventilated room.

10. It is further submitted that on 13.07.2023 when the accused was brought for the follow-up regarding memory loss, headache and low back pain, he was also diagnosed with extensive blood pressure and Hemorrhoidal Bleeds and was also advised surgery. On 18.07.2023 on

the complaint of chest pain, 2D Echo was advised and on 27.07.2023 when he was examined of complaint of headache, low back pain, tremors of hand, he was advised several tests which includes ***CECT Abdomen (Thorax + Neck + Brain)*** for ***Phaeochromocytoma (? Malignant)***.

11. It is further submitted that on 03.08.2023 in the report of the test conducted on thorax, it was found that ***few small soft tissue density nodules in Right lung parenchyma were noticed*** and he was advised ***MIBG Scan and DOTATAE PET Scan*** and was referred to AIIMS, New Delhi on urgent basis.

12. It is vehemently submitted that on 10.08.2023 the Chief Medical Officer, Prayagraj wrote to the Medical Superintendent, Central Jail Naini, Prayagraj that the treatment of the accused-applicant is not available in any Government Hospital in the State and so he was referred to AIIMS, New Delhi. On 21.09.2023 Deputy Medical Superintendent, Banaras Hindu University wrote a letter to the Medical Superintendent, Central Jail Naini, Prayagraj recommending PET Scan, as there is no facility of PET Scan at BHU.

13. It is also submitted that on 26.10.2023 the accused-applicant was diagnosed with ***hypertensive urgency*** along with the ***Parkinson disease*** and also that the ***lung parenchyma*** need to be ruled out and the patient was referred to AIIMS, New Delhi for further urgent workup of hypertensive urgency and to rule out ***haeochromocytoma/ paraganglioma***.

14. It is further submitted that under the orders of this Court dated 23.11.2023 a report was submitted and a Medical Board was constituted by the Director, SGPGIMS, Lucknow and the report of the Board dated 19.12.2023 was placed before this Court and few soft tissue density in right lung was found and was advised to get a PET Scan for evaluation of any possible malignant tumor and it is also stated therein that applicant is suffering from multiple chronic problems.

15. It is also submitted that thereafter under the orders of this Court dated 08.01.2024 a letter has been written by the Senior Superintendent of Jail, Central Jail Naini, Prayagraj to Assistant Professor of Moti Lal Nehru Medical College, Prayagraj requesting him to grant fitness certificate so that the applicant may be taken to SGPGI, Lucknow for PET Scan. In this regard a report has been submitted by Medical Board constituted at Moti Lal Nehru Medical College, Prayagraj and while noticing various ailments, further evaluation and investigations were directed and he was referred to higher center for further evaluation/investigation and management.

16. It is further submitted that a report has been filed today by the State of date 24.01.2024 whereby it is informed that experts are of the opinion that the applicant may not be advised to travel for further three weeks, which may not be justified as the applicant may be taken through ambulance without any inconvenience to the applicant.

17. It is vehemently submitted that despite repeated requests made by the applicant he has not been subjected to PET Scan and was not taken either to AIIMS New Delhi or to SGPGIMS Lucknow and his condition has become so pitiable that he is not even in a position to stand on his own feet and it is only on account of this the doctors have advised him not to travel and if the applicant would be allowed to remain in prison for few more days, he would die of the ailments of which no proper treatment is being provided to him. Thus, the applicant be released on interim bail for the purpose of getting suitable medical help.

18. Shri V.K. Shahi, learned Additional Advocate General assisted by Sri Anurag Khanna Ld AGA ,vehemently opposes the prayer of interim bail of the applicant on the ground that sufficient treatment is being provided to the applicant and since he is not in a position to travel and thus grant of interim bail would be futile for him, as he would not be in a position to travel.

19. It is also submitted that applicant is an habitual offender and also having criminal history of 25 criminal cases pending against him and his

earlier two bail applications have already been rejected by this Court on merits and he has also withdrawn an SLP which was filed in the Supreme Court against the rejection of his second bail application by a coordinate Bench of this Court.

20. It is also submitted that as applicant is a sitting M.P., it is apprehended that after getting interim bail he will involve himself in political activities and may also participate in political rallies and electronic media debates and may also threaten the witnesses and, therefore, there is no occasion to grant interim bail to the applicant.

21. Having heard learned counsel for the parties, it appears in the interest of justice that though the parties have been heard only with regard to the medical condition of the applicant, however the facts of the case are also required to be stated to understand the stand of the parties in right perspective even to adjudicate the plea of interim bail on account of the medical condition of the applicant.

22. Background facts of this case are to the tune that an F.I.R. was registered against the accused-applicant being FIR No.548 of 2019 under Sections 376, 420, 406, 506 I.P.C. at Police Station Lanka, District Varanasi on a complaint made by the victim, who later on attempted to commit suicide along with her friend within the precincts of the Supreme Court of India on 16.08.2021. They were admitted in very serious and critical conditions in Ram Manohar Lohia Hospital, New Delhi and later on died on 21.08.2021 and 24.08.2021, respectively. On 10.11.2020, the victim appears to have given an application to the Senior Superintendent of Police, Varanasi alleging that co-accused- Amitabh Thakur, an Ex IPS officer was manufacturing false documents/evidence against the victim and her friend to favour present applicant. The victim and her friend- Satyam Prakash Rai, thereafter, on 16.08.2021 attempted to commit suicide outside the Supreme Court and went live on Facebook making serious allegations against the accused-applicant and co-accused- Amitabh Thakur and various other authorities. The Director General of Police constituted a Two Members Committee consisting of Director

General, U.P. Police Recruitment and Promotional Board and Additional Director General, Women and Child Security Organization, Lucknow. The said Committee submitted its report on 27.08.2021. On the basis of said report, a written complaint was given by Sub Inspector Daya Shankar Dwivedi at Police Station Hazratganj, on the the basis of which the present FIR was registered against the accused-applicant and co-accused. It is alleged that Bharat Singh, father of the accused-applicant gave an application on 03.03.2020 to S.S.P. Varanasi requesting him to get the further investigation done under Section 173(8) Cr.P.C. with regard to FIR No.548 of 2019 (supra) registered against the accused-applicant by the victim.The said application was enquired by the then Circle Officer, Bhelupur, Mr.Amresh Kumar Singh. Mr.Amresh Kumar Singh prepared a report and submitted a report adverse to the interest of victim of that case. The said report was made available to co-accused- Amitabh Thakur and other persons under Right to Information Act and was made public allegedly to defame the victim/prosecutrix. It is also alleged that the victim and her friend were so much harassed and tortured that they became desperate as they perceived that they would not get justice. They had fears about their lives and under these circumstances, they went to Supreme Court and attempted suicide outside the Supreme Court and died during the course of treatment.

23. Criminal history of 25 cases has been alleged against the applicant , however same has been explained in para No.18 & 19 of the bail application in tabular form and with regard to case crime No. 548 of 2019 i.e. rape case lodged by the deceased victim against applicant, it is stated that applicant has been acquitted. The state in its counter affidavit has shown this case pending in the trial Court. A coordinate bench of this Court vide order dated 14.03.2023 passed in bail application 1564 of 2023 while rejecting 2nd bail application of the applicant in this case has stated that applicant has been acquitted in the rape case lodged by the victim and an appeal is stated to have been filed against this order of acquittal. Similar observation has been made by another coordinate bench of this Court in order dated 28.08.2023 passed in bail application

No.32534 of 2023 while granting bail to the applicant pertaining to the Gangster Act after considering his medical condition also. Apart from this it is also an admitted fact that Co-accused -Amitabh Thakur has been granted bail by a coordinate bench of this court vide order dated 14.03.2022 passed in bail application No. 15042 of 2021.

24. This Court is of the view that every person lodged in prison, regardless of the fact that he/she is an accused or convict, possesses an inherent right to life and humane treatment. This includes the right to receive adequate medical care commensurate to his health condition, to rule out unnecessary sufferings. Not providing the medical facilities to the prisoners is to deny them fundamental right to life. Incarceration in prison does not deprive prisoners of their fundamental right to life which includes right to get appropriate health care. Prisoners lodged in jail, may face various health issues, both pre-existing and developed during incarceration. Denying them access to necessary medical care not only deteriorates their health conditions but can lead to irreparable pain and suffering and, in extreme cases, even loss of life. In ***State of Andhra Pradesh v. Challa Ramkrishna Reddy MANU/SC/0368/2000***, it was held as under:-

"22. Right to Life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that Right. A prisoner, be he a convict or under-trial or a detenue, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights including the Right to Life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights."

25. Thus, the restriction placed on the right of a prisoner is with regard to his movement as a result of his involvement in crime. Thus, a person (prisoner) is deprived of his personal liberty in accordance with the procedure established by law which, as pointed out in ***Maneka Gandhi***

vs. Union of India, MANU/SC/0133/1978 : (1978) 1 SCC 248 : 1978 (2) SCR 621 : AIR 1978 SC 597, must be reasonable, fair and just.

26. In *Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi, MANU/SC/0517/1981 : (1981) 1 SCC 608 : AIR 1981 SC 746 : 1981 (2) SCR 516*, the Court held that Right to Life also means the right to live with basic human dignity.

27. Thus, the Fundamental Rights of a person which also include basic human rights will continue to be available to a prisoner also, even in case of his incarceration or even to a convict.

28. One may argue that the status of an accused is relevant for the purpose of considering his plea of bail. Certainly while considering plea of bail on merits this aspect of the matter must be considered by the Courts but it is to be highlighted that the provision of providing necessary medical care to an under trial may not be determined by his/her economic status and irrespective of their financial status, they are entitled to receive basic medical care. No discrimination may be made between prisoners on the basis of their financial status. It is essential to recognize that, in the eyes of the law, every prison inmate is equal and possesses the basic human rights to receive at least basic medical care and attention.

29. At the outset, it is necessary to recall that this Court has heard learned counsel for the parties on the limited question of necessity of release of applicant on interim bail on account of his medical condition and the merits of the case has not been touched upon by learned counsel for the parties, as the limited issue before this Court is, whether applicant may be adequately treated while lodged in jail or his liberty is required to be restored as according to learned counsel for the applicant, he is not being provided adequate treatment while lodged in prison.

30. The applicant in para nos. 36, 37 and 38 of the affidavit enclosed with the bail application has described his medical condition as under:-

“36. That the accused applicant has been diagnosed with having the symptoms of cancer in lungs. It is very sorry state of affairs that a young

man of the age of about 40 years carrying bright political carrier in the Indian Politics has developed cancerous disease hence in order to get better treatment for the cancer, the accused applicant requires to be released on bail.

37. That the accused applicant has applied for the bail under the Gangsters Act before the Hon'ble Court in Criminal Misc Bail Application No.32534 of 2023 and during the pendency of the bail application the Hon'ble Court has called for the medical report of the accused applicant wherein the Medical Superintendent, Central Jail, Naini, Prayagraj has submitted through his report dated 09.08.2023 about the medical conditions of the accused applicant which is elaborated as under;

' The applicant was found suffering from 'Ear discharge, vertigo and headache with chronic suppurative otitis media with mastoiditis and was advised for operation''.

-As per the report of department of neurology, the applicant is suffering from 'left CSOM with Mastoiditis L.B.P, vertigo and Decreased Vision Left Eye, Cervical Compression'.

-On 29.07.2021 the applicant was sent to Sir Sunderlal Hospital. B.H.U, Varanasi, and the specialist has referred for severe Tail Bone pain and Degenerative changes + Cervical+ Lumbar Vertebra Spine and was referred for Piles/ Haemorrhoids'.

- On 16.09.2021, the applicant was referred for Bleeding PR associated with Lower Abdominal pain'.

-On 18.05.2022, the applicant was advised for 'Therapy Resistant Coccydynia' by higher centre and for sending him to SGPGI, Lucknow and after that, he was referred for 'Neuromedicine', AIIMS, Delhi.

-As per report dated 13.07.2023, applicant was suffering from Headache, Memory loss, low back pain and also having 24 hours urinary VMA.

-By report dated 13.07.2023 it was shown that applicant was suffering from 'Haemorrhoidal Bleed' and 'Coccydynia' and he was referred for surgery.

-On 27.07.2023, it was shown that applicant is having 'tremors of hands and palpitation and phaeochromocytoma'.

-As per report dated 30.06.2023, applicant was having 'phaeochromocytoma/paranganglioma' and he was referred to AIIMS, New Delhi on urgent basis for treatment.

-Similarly on 30.06.2021, the applicant was advised for 'MRI Screening of whole spine' and to avoid prolong sitting / travel with ambulance to hospital.

-By report dated 13.08.2022, it was shown that he was suffering from 'coccydynia with Spondyloarthritis with LBA with PIVD'.

-From 31.08.2022 to 05.09.2022, applicant remained admitted in swaroop rani nehru Hospital, Prayagraj, where he was operated for 'Left Myringoplasty Operation'. It was advised that applicant should not be allowed for travelling because his operation may be failed and he should be on complete bed rest. In another report, it was also mentioned that the patient not managed well within conditions. It was also shown that the applicant is suffering from 'Progressive DOV left eye and watering of left eye'."

38. That the applicant is suffering from Coccydynia with Spondyloarthritis with low backache with PIVD (Prolapsed Intervertebral Disc), high BP, high bleeding, Vertigo and Nausea. As per report dated 03.08.2023, the applicant shown suffering from 'phaeochromocytoma / paranganglioma' and he was referred to AIIMS, New Delhi on urgent basis for treatment."

31. In his supplementary affidavit dated 02.11.2023 applicant further reiterated his medical condition in detail giving date wise prescriptions, diagnosis and the treatment provided as also the further tests advised by experts in order to evaluate his existing ailments pertaining to life threatening diseases and also to rule out malignancy.

32. The State in its counter affidavit dated 23.11.2023 has replied in para nos. 20, 50, 51 and 52 as under:-

"20. That in reply to the contents of paragraph No. 1 of the affidavit filed in support of the instant bail application, hereinafter referred to as affidavit for the sake of brevity, it is submitted that from a comprehensive reading of the medical reports of the applicant, it is evident that although he has been referred to the AIIMS, New Delhi, for medical treatment, the reports do not indicate any definite opinion regarding urgent and immediate medical emergency.

50. That the contents of paragraph No. 36 of the affidavit insofar as the same pertain to certain medical reports of the applicant brought on record, the same do not call for a specific rebuttal from the answering respondent.

51. That the contents of paragraph No. 37 of the affidavit insofar as the same relate to medical report dated 09.08.2023, the same being a matter of record do not call for a specific rebuttal from the answering respondent.

52. That in reply to the contents of paragraph No. 38 of the affidavit, in submitted that the diseases mentioned in the first four lines of the p under reply, cannot be said to be such serious so as to justify enlargement of the applicant on bail. For the ailments described in first four lines of the para under reply the applicant, is being g adequate medical assistance in the Jail Hospital itself."

33. Thus, the above noted pleadings would reveal that the State has not disputed the medical condition of the applicant, as stated in para nos. 36, 37 and 38 of the bail application and in supplementary affidavit dated

02.11.2023 filed by the applicant along with the medical reports enclosed therewith.

34. This Court vide order dated 23.11.2023 keeping in view the deteriorated medical condition of the applicant had directed Director, SGPGI, Lucknow to submit a report regarding medical condition of the applicant and also whether necessary facility of his treatment is available in SGPGI. The said report was directed to be submitted within three weeks and it was also directed that if applicant's presence before the doctor is advised, the applicant shall be produced before the doctor concerned in judicial custody for the purpose of his proper treatment.

35. In compliance of the aforesaid order State has filed supplementary affidavit dated 20.12.2023 enclosing therewith the letter of Director, SGPGI, Lucknow dated 19.12.2023 along with the report of Medical Board constituted under the orders of this Court.

The relevant part of this Report is reproduced as under:-

"His recent consultation: (dated 13.07.23, 27.7.2023, 26.10.2023 at Sir Sunderlal Hospital, Banaras Hindu University and on 10.07.2023, 18.07.2023 and 30.08.2023 at SRN Hospital Pryagraj) have been for the complaints of headache, memory loss, tremors in hands, palpitations, tinnitus, vertigo and atypical chest pain. His Neurological examination performed at BHU shows normal higher mental functions and normal neurological examination except for positive straight leg raising test (SLR, reverse SLR) that can be related to his old problem of degenerative lumbar spine. A cranial CT scan was normal. However, he had high blood pressure recordings documented on more than one occasion. The evaluation for secondary causes of high blood pressure has shown normal renal functions, normal renal Doppler and normal contrast enhanced CT scan (CECT) of abdomen. He was suspected for pheochromocytoma (neuroendocrine tumor that may produce hypertensive emergencies) due to high levels of urinary vanillylmandelic acid (VMA) His CECT thorax did show few soft tissue density in right

lung parenchyma. He was advised to get a PET scan for evaluation of any possible malignant tumor.

Medical board is of the opinion that Shri Atul Rai requires further evaluation of secondary causes of hypertension in view of high urinary VMA levels, hypertension and right lung nodules (soft tissue densities). He is suffering from multiple chronic problems for which he has been advised conservative treatment."

This report clearly suggest that apart from suffering from other medical illness the applicant is also suffering from suspected ***Phaeochromocytoma***, a tumor which may produce hypertensive emergencies due to high level of urinary ***vanillylamndelic*** (Acid) (VMA) and CECT Thorax and CECT Thorax reveals some soft tissue density in right lung parenchyma and he was advised to get PET Scan for evaluation of any possible malignant tumor. It is categorically observed by the Board that applicant is suffering from multiple chronic problems.

36. On 02.01.2024 supplementary affidavit was filed by the State enclosing therewith the copy of letter dated 30.12.2023 written by Medical Superintendent of Nail Jail to Senior Superintendent of Jail, Central Jail Naini, Prayagraj, in response to a letter written to him by C.M.O., Prayagraj with regard to issuance of a certificate pertaining to the treatment of applicant at AIIMS, New Delhi with regard to the diagnosis of disease ***Phaeochromocytoma)/paraganglioma (? Malignant)*** mentioning that a certificate is required to the effect that the applicant may not be treated at any hospital or medical facility in Uttar Pradesh so that necessary permission may be obtained from Director General of Prisons, Uttar Pradesh for the treatment of applicant at AIIMS, New Delhi. In this letter (of date 30.12.2023) complete list of the ailments of the applicant has been given and it is stated that applicant has been treated at SRN Hospital, Prayagraj for complaint of vertigo/nausea/tinnitus/headache/hand and feet jerk/tremor of hand/memory loss ? Parkinson and that he has been advised complete bed rest

and in compliance of order of this Court dated 23.11.2023, it is stated that for sending the applicant to SGPGI, Lucknow for the purpose of PET Scan for evaluation of any malignant tumor Dr. Shivendra Pratap Singh, ENT specialist at Swaroop Rani Nehru/Moti Lal Nehru Medical College, Prayagraj was consulted and his concurrence/fitness was asked by sending a letter and he has informed vide letter dated 30.12.2023 that in pursuance of the medicines given to the applicant for treatment of vertigo, applicant is advised not to travel.

37. It is also stated in this letter of Medical Superintendent, Central Jail Naini, Prayagraj that as per telephonic talk with Principal of MLN Medical College, Prayagraj, the facility of MIBG Scan, DOTATE PET Scan, 24 hours urinary cortisol and serum renin/ALDOSTERON is not available there and in pursuance of the advise given by Dr. Shivendra Pratap Singh, it is not possible to send the applicant to SGPGI, Lucknow and he will be sent to the SGPGI, Lucknow for PET Scan as and when advised. Dr. Shivendra Pratap Singh in his letter dated 30.12.2023 has stated the same advise that applicant could not travel due to medicines being given to him for treatment of vertigo as he may feel vertigo during travel and it is also highlighted that due to vertigo applicant had also sustained injury in his foot, earlier.

38. Thus, the applicant was neither sent to AIIMS, New Delhi nor to the SGPGI, Lucknow under the advise of Dr. Shivendra Pratap Singh to the tune that he is taking medicines for vertigo and, therefore, could not travel.

39. Noticing above reports, this Court on 08.01.2024 after consideration all the previous medical reports of the applicant opined that the PET Scan of the applicant is necessary for evaluation of any possible malignant tumor and directed to get the PET Scan of the applicant done as soon as possible at SGPGI, Lucknow and also to review applicant for other ailments with consequential direction to the Director, SGPGI, Lucknow to submit a comprehensive report in this regard. It was also provided that if applicant is not in a position to travel, in that scenario he

shall be evaluated by a team of doctors constituted by C.M.O. Prayagraj and the case was directed to be listed on 18.01.2024.

40. On 18.01.2024 it is informed by learned Additional Advocate General Shri V.K. Shahi that State be granted time till 24.01.2024 for making attempts to get PET Scan of the applicant done at any suitable medical facility. On this assurance the case was adjourned and directed to be listed on 24.01.2024.

41. On 24.01.2024 the Court was informed that applicant has been medically examined and detailed reports are awaited which would be ready by tomorrow. On this information, the case was directed to be listed on 25.01.2024.

42. On 25.01.2024 a copy of letter of Senior Superintendent of Jail, Central Jail Naini, Prayagraj was placed on record along with its enclosures for perusal of this Court and the same had been taken on record. The report submitted by Senior Superintendent of Naini Prison, Prayagraj is based on the enclosed report of Medical Superintendent of Naini Prison, Prayagraj and it is stated therein that after examination of the applicant by different specialist he has been advised not to travel for three weeks.

43. Thus, there is no doubt that applicant has earlier been advised by experts to get evaluated at AIIMS, New Delhi and also to get MIBG Scan as well as DOTATE PET Scan and other tests at SGPGI, Lucknow. It was way back on 03.08.2023 the applicant was advised to approach AIIMS to evaluate various ailments by Medical College at BHU and in the month of September, 2023 was advised to get PET Scan and various other tests at SGPGI, Lucknow or AIIMS, New Delhi, as the case may be. It is also evident that applicant was not presented in these medical institutions or any other higher facility thereafter for the purpose of conduction these tests. Even after specific order of this Court dated 23.11.2023, at first no document was submitted to the SGPGI, Lucknow in the meeting scheduled on 13.12.2023 and information of the same was sent to the Registrar General of this Court vide communication of

Medical Superintendent and Chairman of Medical Board dated 14.12.2023 and when the next meeting was held on 19.12.2023 only relevant papers of the treatment of the applicant were produced before the Board and the applicant was not produced in person for evaluation of the Board.

44. It is hard to believe that a patient has been advised not to undertake journey for diagnosis and evaluation of medical disease like Cancer only on the pretext that he is taking medicines for vertigo, as if the applicant would go to the AIIMS, New Delhi or SGPGI, Lucknow, on his feet. This Court repeatedly asked as to why the applicant could not taken to higher medical facility in an ambulance. However, no satisfactory answer has been given. There is no denial from the side of State with regard to the serious life threatening ailments with which the applicant is suffering and he is also suspected of having cancer.

45. Irrespective of allegations against the applicant, which may be examined in detail when the plea of bail of the applicant would be examined on merits, there cannot be any doubt that applicant is suffering from various life threatening ailments and his ailments has also not been disputed by the State. It is also evident that for more than five months the applicant has not been subjected to various tests, which were advised in the month of August-September, 2023 to rule out malignancy and also to evaluate other life threatening diseases and the explanation given for not providing adequate medicare to the applicant is not acceptable at all, who may believe that due to medication taken by the applicant for vertigo he may not be subjected to travel in an ambulance either to SGPGI, Lucknow or AIIMS, New Delhi. These circumstances are forcing this Court to believe that all is not well with the applicant, so far as his medial condition/ailments are concerned.

46. This Court is of the considered view that howsoever the serious offence may be, health condition of human being is paramount. The custody during the period of trial cannot be termed to be punitive in nature. The health concern of a person in custody has to be taken care of

by the State and is to be keenly watched and evaluated by the judiciary. Every person has a right to get himself adequately and effectively medically treated even if he is an under trial or a convict.

47. Article 21 of the Constitution of India not only gives a fundamental right to live but the right is extended to live with dignity. Right to live a healthy life is also one of the facet of fundamental rights granted by the Constitution of this Country. This Court firmly believes that a person in custody suffering from serious ailments should be given an opportunity to have adequate and effective medical treatment. The discretion for granting the interim bail on medical ground may not be exercised only at a stage when the accused has lost all the hope or is breathing his last or his condition has been deteriorated to such an extent that he may not survive. Rather the medical facility must be provided at a time at which it is needed more, or at an appropriate time.

48. The kind of ailments with which the applicant is suffering from are really life threatening and needs immediate redressal. Therefore, this Court without going into the merits of the case and only on a limited point that the applicant may get suitable evaluation of his disease including various tests advised by different experts, is inclined to grant interim bail to the applicant on medical grounds.

49. It is clarified that this interim bail has been granted to the applicant only on medical grounds and having regard to the peculiar facts and circumstances of this case and will not be taken as a precedent. Thus, in the facts and circumstances of the case and for the reasons mentioned herein-before, **the applicant is admitted to interim bail on medical grounds till 22.03.2024**, subject to the following conditions:-

(i) The applicant shall furnish a personal bond of **Rs. 2 lacs** and **two sureties** of the like amount to the satisfaction of the Trial Court/Special Court concerned.

(ii) The applicant shall get himself examined/treated at the hospital of his choice within the territory of India and shall not leave India without prior permission of the Court and for this purpose shall deposit his

passport with the trial Court/special Court, if the same has already not been deposited, yet.

(iii) The applicant shall not participate in any public rally or public meeting organized for any purpose whatsoever and will not meet co-accused of this case.

(iv) The applicant shall not contact any prosecution witness directly, indirectly or through any social media platform and shall not make any effort to threaten or tamper them nor will involve himself in any criminal activity.

(v) The applicant shall not give any interview to the print media or electronic media.

(vi) The applicant shall not misuse the liberty in any manner.

(vii) The applicant shall inform the S.H.O. of the Police Station Hazratganj in writing of his mobile phone number, which will remain available with him all the time and he will also remain available on this mobile phone number, all the time.

(viii) The applicant or any person well acquainted with the facts, shall file an affidavit before this Court on 19th March, 2024, enclosing therewith all medical reports of the applicant and results of the tests which have been prescribed including MIBG, DOTATE PET Scan, etc.

50. List this bail application on 19th March, 2024 in the first 10 cases of the cause list for disposal.

Order Date :- 29.1.2024

Praveen