

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC. APPLICATION (FOR TEMPORARY BAIL) NO. 1 of 2025
In
R/CRIMINAL APPEAL NO. 607 of 2023**

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ASHUMAL @ ASHARAM THAUMAL SINDHI (HARPALANI)
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR SHALIN MEHTA, SR. ADVOCATE WITH MR ASHISH M DAGLI(2203)
for the Applicant
MR BB NAIK, (497) SR ADVOCATE WITH MR EKANT G AHUJA(5323) for
the RESPONDENT No. 1
MR HARDIK DAVE, PUBLIC PROSECUTOR WITH MS CM SHAH, APP for
the RESPONDENT No. 1

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 28/03/2025

IA ORDER
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

- 1.** The applicant – convict seeks temporary bail on the ground of his medical condition during the pendency of the appeal.
- 2.** In the application, it has been stated that, the applicant is convicted by the learned Sessions Judge, Gandhinagar in Sessions Case No. 34 of 2014 by judgment and order dated 31.03.2023. He has been sentenced to undergo life imprisonment for the offence punishable under Section 376(2)(c), 377 of

the Indian Penal Code. Since the date of arrest, he is in jail and almost undergone 10 years and more imprisonment. It is submitted that, earlier the applicant preferred suspension of sentence application before this Court, however, same was rejected for which, the applicant approached the Apex Court by way of filing SLP (Cri.) No. 15945 of 2024, which came up for hearing on 07.01.2025. The Supreme Court pleased to dispose of the application, by considering the case of the applicant for a grant of a temporary bail on the ground of medical / health condition of the applicant and he has been released till 31.03.2025. The Supreme Court reserved liberty in favour of the applicant to approach the High Court for further need on this ground.

- 3.** In the aforesaid facts, the applicant is seeking temporary bail for further 6 months on the medical ground.
- 4.** We have heard Mr. Shalin Mehta, learned Senior Counsel assisted by learned counsel Mr. Ashish Dagli appearing for the applicant, Mr. B.B. Naik, learned Senior Counsel assisted by Mr. Ekant Ahuja, learned advocate for the complainant, Mr. Hardik Dave, learned Public Prosecutor assisted by Ms. C.M. Shah, learned Additional Public Prosecutor for the

respondent State.

- 5.** Mr. Shalin Mehta, learned Senior Counsel submits that the applicant is aged about 86 years and considering his health condition, the Supreme Court granted interim bail on medical ground and while granting bail, the Supreme Court has taken into consideration the precarious condition of the applicant and also taken into account suggestion of life style changes. That after release the applicant on temporary bail, the applicant went to AIMS, Jodhpur for check-up and got treatment under the supervision of team of doctors from various streams and thereafter on 29.01.2025, he was taken to Shelby Multi Specialty Hospital, Ahmedabad and then, he was examined by expert ayurvedic doctors and in the month of February, 19, 2025, he was examined by specialist doctors of M.Y. Hospital, MGM Medical College. He was also examined by department of Panchkarma, Government Dhanvantari Ayurved College and Hospital, Ujjain, M.P. and undergone various treatments as planned by the expert doctors and also he visited on 15.03.2025 for follow-up with next review schedule after 14 days.
- 6.** Mr. Shalin Mehta, learned counsel referring to various medical reports, would urge that, the Apex Court

granted interim bail on the applicant's critical condition, categorizing him as a 'high risk patient' and previously considering his emergency health requirement, he was referred to various hospitals for emergency treatment. Admittedly, the applicant having three blockages of 99%, 90% and 85-80% in his heart and multiple episodes of severe angina pain being suffered, which remained even today, for which, the applicant follows holistic treatment that integrates Allopathy, Ayurveda and Naturopathy. In such circumstances for the ailment of heart, kidney and other ailments, the specialized doctors have emphasized that the applicant requires specialized care, including monitoring, nursing assistance, dilatory supervision and multidisciplinary treatment, which cannot be provided by the jail authority due to limited infrastructure and in absence of essential medical facilities, if the convict remained in the jail, which raises a significant risk to the applicant's life and well-being.

- 7.** Mr. Shalin Mehta, learned Counsel in view of the admitted serious health condition of the applicant, would urge that the applicant still require further treatment as referred in the various medical reports by the different ayurvedic hospitals, the applicant may be allowed to take adequate treatment at the

hospital of his choice, because, it is settled legal position that, the health condition of human being is paramount and right to live a healthy life by the prisoner is one of the fundamental rights guaranteed by the Constitution of India.

- 8.** In such circumstances referred to above, Mr. Shalin Mehta, Senior Counsel prays that the case is made out for exercising discretion in granting a temporary bail for six months on medical ground and the application may be allowed by imposing appropriate condition as the condition imposed by the Supreme Court while releasing the applicant has been adhere to and there is no breach of any condition made by the applicant herein.
- 9.** Opposing the contentions, Mr. Hardik Dave, learned Public Prosecutor has contended that the State is sensitive towards the health of the prisoner in general and so far as medical condition of the applicant is concerned, there is nothing on record to show that due to the ailments as referred in the papers, there is urgent or emergent need arise for admission and/or treatment in the hospital of the choice of the applicant. The jail authority will take care, as and when situation arise for treatment or admission of the applicant in the hospital. The

applicant is on medication and his body vital seems to be normal and in that situation, in absence of any compelling circumstances, the applicant has no absolute right to get treatment from the hospital of his choice.

- 10.** Mr. Bharat Naik, learned Senior counsel referring to the treatment case papers, submits that, the body vital of the applicant, including blood pressure are absolutely normal and nothing opined by the expert doctors that, the special treatment is necessary. In such circumstances, he submits that when there is no need for treatment in the hospital of the choice of the applicant, the prayer may not be entertained.
- 11.** Before advertng to the rival submissions, it is relevant to refer the observation of the Supreme Court, which reads as under:

“Learned senior counsel appearing for the petitioner submits that the condition of the petitioner is precarious. The petitioner is stated to be around 86 years of age, suffering from age related ailments and has suffered two heart attacks which are not in dispute. He has been taken in and out of the prison repeatedly on more different occasions for medical treatment. than 13 It is further submitted that even the High Court had granted parole after taking into consideration the medical condition of the

petitioner. The affidavit filed by the State would also establish that treatment has been given to the petitioner for heart ailment.

Learned Solicitor General appearing for the respondent submits that though the ailment is not in dispute and so also the age, treatment can be extended in the prison itself, which the petitioner is reluctant to undertake. In any case, considering the facts and circumstances of the case, adequate security will have to be provided to the petitioner. It is further submitted that, on merit, the petitioner does not have a case.

As stated, we are not inclined to go into the merits of the case. The medical condition of the petitioner is not in dispute. It is the concern of the State and this Court to take into consideration the health condition of the petitioner – convict. In such view of the matter, we have no hesitation in holding that the petitioner does require interim bail on medical ground. The appeal is also of the year 2023. There is also some suggestion of lifestyle changes.

We have also taken note of the medical records pertaining to the petitioner and the fact that he was given periodical treatment outside the prison.

Hence, we deem it fit to grant bail to the petitioner on medical ground till 31st March, 2025.”

12. In the case at hand, the applicant aged about 86 has

been put in the category of 'high risk patient'. In the year of 2024, the he was admitted in AIMS, Jodhpur and was diagnosed to have Ischemic heart disease, hypertension, hypothyroidism, anemia with GI bleed and he was admitted in ICU and Medical Board Committee consisting of 8 doctors advised for coronary artery bye-pass heart surgery and he has been assessed and put as 'high risk patient'. Thereafter, he had been referred for more than 15 times at various hospitals including Ayurvedic Hospitals and stayed as indoor patient. The applicant after 14.01.2025 was examined by AIMS, Jodhpur, Shelby Hospital, Ahmedabad, Ayurvedic doctors of Ahmedabad, MY Hospital, Indore and Dhanvantari Government College, Ujjain for the cardiac assessment, nephrologic assessment, neurological assessment and was advised for different treatment, prescribed medications, and till date, the applicant is taking treatment and on medications and the plan of naturopathy treatment is still not completed. The medical reports attached herein have been cross-checked by the State and their authenticity have not been doubted by the State. In such circumstances, at this stage, we satisfied that, the applicant being a high risk patient and having regard to the serious ailment, requires specialized care, continuous monitoring by nursing assistance, dietary supervision

and multi disciplinary treatment, which does not available in the prison. In these context, we may profitably refer on this aspect the observation made by Delhi High Court in the case of **Vijay Agrawal Vs. Directorate of Enforcement, (2022 SCC on-line Delhi 4494)**, the Single Judge of Delhi High Court observed that, howsoever, serious offence may be, the health condition of a human being is paramount. The health concerned of a person in custody, has to be taken care by the State and keenly watched by the judiciary. Every person has a right to get himself adequately and effectively medically treated, as Article 21 of the Constitution of India says that, right to live a healthy life is also one of the facets of fundamental rights. It is further observed that if the sufficient treatment is available in the jail, then preferably the same should be provided to the prisoners, however, this court believes that the person in the custody suffering from serious ailment should be given an opportunity to have the adequate and effective treatment. The discretion for granting interim bail may not be exercised only at a stage when the person is breathing last or in the position that, he may not survive.

- 13.** In view of the aforementioned discussions and having regard to the peculiar facts and circumstances of the

present case, the case is made out for release the applicant on temporary / interim bail for a period of 3 months i.e. from 01.04.2025 to 30.06.2025 on the same conditions imposed by the Supreme Court i.e. the applicant shall not meet his followers in a group and there shall be 3 security personnel in the form of police officials to be present in the vicinity of the applicant and the police officials will not interfere with the medical treatment, his meeting with any individual and in a normal or lawful conduct. We may clarify that we have considered the case of the applicant for a limited period of 3 months, which does not automatically entitled the applicant to ask a further extension and in future, if any application of this kind will be filed, then, it shall be decided on its own merits and observations made hereinabove is confine to grant interim bail for a limited period on medical ground.

14. Accordingly, present application is disposed of in aforesaid terms. **Direct service permitted.**

Dissenting view

Per : Sandeep N. Bhatt, J.

1. With due respect, I beg to differ from the opinion expressed by my esteemed brother Judge, and pen down my own

opinion with reasons for my dissent.

2. The applicant has preferred this application under Section 430 of the Bharatiya Nagrik Suraksha Sanhita, 2023, for temporary bail, pending appeal, for a period of six months and to extend the bail/temporary bail granted to the applicant, which is in operation till 31st March, 2025, till pending hearing and final disposal of the application. The applicant is a convict for life imprisonment for the offence under Sections 376 of the Indian Penal Code.

3. It is noted that the applicant is granted temporary bail by the Hon'ble Apex Court vide order dated 07.01.2025 recorded on Special Leave to Appeal (Crl.) No.15945 of 2024, which is arising from the judgment and order dated 29.08.2024 passed in Criminal Misc. Application (for suspension of sentence) No.1 of 2023 in Criminal Appeal No.607 of 2023 by the Coordinate Bench of this Court, rejecting the same. The order of the Hon'ble Apex Court reads as under :

“We had already made it very clear by our earlier order dated 13.12.2024 that we are not inclined to consider the plea on merits, but only on medical ground.

Learned senior counsel appearing for the petitioner submits that the condition of the

petitioner is precarious. The petitioner is stated to be around 86 years of age, suffering from age related ailments and has suffered two heart attacks which are not in dispute. He has been taken in and out of the prison repeatedly on more than 13 different occasions for medical treatment. It is further submitted that even the High Court had granted parole after taking into consideration the medical condition of the petitioner. The affidavit filed by the State would also establish that treatment has been given to the petitioner for heart ailment.

Learned Solicitor General appearing for the respondent submits that though the ailment is not in dispute and so also the age, treatment can be extended in the prison itself, which the petitioner is reluctant to undertake. In any case, considering the facts and circumstances of the case, adequate security will have to be provided to the petitioner. It is further submitted that, on merit, the petitioner does not have a case.

As stated, we are not inclined to go into the merits of the case. The medical condition of the petitioner is not in dispute. It is the concern of the State and this Court to take into

consideration the health condition of the petitioner-convict. In such view of the matter, we have no hesitation in holding that the petitioner does require interim bail on medical ground. The appeal is also of the year 2023. There is also some suggestion of lifestyle changes.

We have also taken note of the medical records pertaining to the petitioner and the fact that he was given periodical treatment outside the prison.

Hence, we deem it fit to grant bail to the petitioner on medical ground till 31st March, 2025.

This order is passed, subject to the condition that the petitioner shall not meet his followers in a group.

There shall be three security personnel in the form of police officers to be present in the vicinity of the petitioner. We make it clear that the police personnel will not interfere with the petitioner's medical treatment, his meeting with any individual and in a normal or lawful

conduct.

We further make it clear that the observations made in the impugned judgment on merits will not have any bearing on any future proceedings, including the criminal appeal which is pending before the High Court.

Liberty is also given to the petitioner to approach the High Court for any further need on this ground.

The Special Leave Petition stands disposed of accordingly.

Pending application(s), if any, shall also stand disposed of.”

4. From above, it transpires that the applicant has challenged the order dated 29.08.2024 passed by the Coordinate Bench of this Court rejecting the application of the applicant for suspension of sentence, however, the Hon'ble Apex Court has specifically opined that the said application is not considered on merits. The Hon'ble Apex Court has granted temporary bail to the applicant on medical ground till 31st March, 2025. Further, the Hon'ble Apex Court has granted liberty to the applicant to approach this Court for any further need on this ground.

5. Accordingly, when the applicant has filed present application for temporary bail, this Court has to consider subsequent event after the order passed by the Hon'ble Apex Court by considering the aspect about the word 'need'.

6. As noted above, the applicant is granted temporary bail by the Hon'ble Apex Court vide order dated 07.01.2025. As a matter of record that the applicant has visited many Allopathic as well as Ayurvedic doctors during 28.1.2025 till 19.2.2025, but he visited those doctors only once and though advised, he has not taken any follow-up treatment from the concerned doctors. This fact is not disputed by the applicant. The same is supported by the learned Public Prosecutor by placing on record the various statements of the concerned doctors where the applicant has approached after his bail.

7. Further, the applicant is enjoying his temporary bail for last ten weeks. He has not taken follow-up treatment from any of the concerned doctors as advised by them during this period of bail. The Hon'ble Apex Court, while considering the order passed by this Court in the application for suspension of sentence, thought it fit to only grant temporary bail on medical ground. It transpires from the record that applicant has not availed any allopathic treatment, though opinions are sought from the doctors. It seems that the applicant is trying to continue with bail granted for temporary period without any justifiable cause. The meaning of the word 'temporary' as per Black's dictionary is as under:

“Temporary – Lasting for a time only; existing or continuing for a limited (usu.short) time; transitory.”

Therefore, the earlier bail granted for temporary period only on medical ground, cannot be extended repeatedly without justifiable cause to do so.

8. Today, learned advocate for the applicant has tendered the copy of the OPD case papers of the applicant, which shows that the applicant is taking Panchkarma treatment from the Government Dhanwantari Ayurveda College & Hospital, Ujjain (M.P.). The same is taken on record. Learned PP Mr.Dave has tendered copy of the report of the Assistant Commissioner of Police, SIT/

9. It is very surprising from the case papers produced by the applicant on record that though it is claimed that Ayurvedic treatment was going on, but from these papers, it transpires that the applicant has approached the Government Dhanwantari Ayurveda College & Hospital, Ujjain (M.P.) for his ailment on 01.03.2025, though he is released on temporary bail vide order dated 07.01.2025. The details of the case papers as well as advise suggested by the concerned ayurvedic doctor, as placed on record by the applicant himself, are as under :

"शासकीय स्वशासी धन्वन्तरि आयुर्वेद महाविद्यालयीन चिकित्सालय चिमनगंज पुलिस स्टेशन के पास, आगर रोड, उज्जैन म. प्र.
(ISO-9001:2015 Certified)
OPD-CARD

Date: 01/03/2025

IPD:

Registration Fee: Free

OPD No.: 4582
Mishra

Gender: Male

Doctor: Vd. Nripendra

Asso. Professor Deptt. Of

Panchkarma Govt.

Dhanwantari Ayurveda College & Hospital,
UJJAIN (M.P.)Pt. Name: ASHARAM THAUMAL HARPLANI Address:
Department:

Age: 85Y/M/D

Diagnosis:

C/O:

कटिप्रदेश में वेदना

अनिद्रा

दौर्बल्य

क्षुधा।

अगमर्द

अरति

K/C/O:

DM

HTN

Hypothyroidism

CAD

RTA

AI

GI Bleeding

Prostatitis

(BPH)

कटिबस्ति - महाविषगर्भ तेल - 2 weeks

सर्वांग अभ्यंग स्वेदन - महानारायण तेल Leech

Therapy

शिरोधारा - मेध्य रसायन + जटामांसी

यापनाबस्ति - आस्थापन पुष्करमूल अर्जुन त्यक

फलत्रिकादी क्र्याथ -

- क्षीरपाक

निर्देशानुसार

Advised for:

रोगी को शांत और खुले तनावमुक्त

वातावरण में रखें निरंतर

चिकित्सक की देखरेख एवं चिकित्सा में रखें।"

10. It is fruitful to refer to the decision in the case of *Faraz Khan V/s State of GNCT of Delhi* reported in MANU/DE/3134/2023, wherein the Delhi High Court has held as under:

"1. The present petition has been filed under Section 439 Cr.P.C. seeking interim bail for a period of 60 days on medical ground in case FIR No. 514/2021 under Sections 21/25/29 NDPS Act Police Station Moti Nagar.

2. Learned counsel for the petitioner submitted that the petitioner is 40 years of age and has a history of serious medical conditions being Cardiovascular Concerns, severe heart conditions, Pancreatitis as well as Arthritis. He further submitted that though the petitioner has been regularly undergoing health checkups at government hospitals like DDU Hospital; G B Pant Institute of Post Graduate Medical Education and Research; V.M.M.C. & Safdarjung Hospital as well as in the Central Jail Hospital, Tihar, but the petitioner is not getting proper medical assistance from these hospitals. He further submitted that the petitioner has been prescribed with certain medications along with the consistent

balanced diet and these are of utmost importance for recovering fully from the above said health ailments and for this purpose, the petitioner is required to be released on interim bail so that he can get the proper care and attention at his home. He further submitted that health of the petitioner is considerably deteriorating and Cardiovascular Concern has aggravated which is affecting his well being within the jail premises.

3. On the other hand, learned APP for the State by arguing on the lines of the medical status report received from the office of Senior Medical Officer, Dispensary, Central Jail, Tihar submitted that the petitioner is being provided with appropriate and proper medical treatment by the concerned jail dispensary. He further submitted that the petitioner has been a regular follow up patient with the jail senior resident medicine who has advised him various medications after due medical inspection.

4. I have perused the medical status report dated 08.04.2023 received under the signature of Medical Officer In-charge, Central Jail No. 03, Tihar. A bare perusal of the same reveals that the petitioner is receiving proper medical care in the jail, and in case, if requires, he is being referred to the hospital outside the jail as well for appropriate treatment. In my opinion, there is no urgency for the petitioner to be released on interim bail on the medical

grounds at this stage in the circumstances where the general medical condition of the petitioner is reported to be stable in the medical status report dated 08.04.2023. The contention of the learned counsel for the petitioner that he is not being properly treated in the above said hospitals is totally baseless.

5. Accordingly, the reasons mentioned in the petition do not make cogent ground to release the petitioner on interim bail.

6. Therefore, the present petition along with pending application, if any, stands dismissed.”

11. In the case of *Kalu Ram V/s State of J & K* decided on 25.8.2020 in Bail Application No.194 of 2019, it is observed by the High Court of Jammu and Kashmir that the Court may refuse interim bail if the applicant has previously failed to fulfill the purpose for which bail was granted. For example, an application for interim bail was dismissed because the applicant had not provided medical treatment to his daughter during a prior interim bail period.

12. At the cost of repetition, it is noted that the Hon'ble Apex Court has granted temporary bail to the applicant on medical ground only and granted liberty to the applicant to approach this Court for any further 'need' on the medical ground. Therefore, if we travel through the OPD case papers, as above,

on which the applicant is heavily relied upon, I do not see any 'need' or valid reason for granting/extending temporary bail to the applicant on the so-called medical ground. Hence, I do not incline to grant this application. It seems that the applicant is only interested to extend the period of liberty granted for temporary period without properly utilizing the time period granted by the Hon'ble Apex Court.

13. This Court is aware that the applicant is aged about 86 years, but we cannot shut our eyes from the fact that the applicant is a convict of the charge under Section 376 of the Indian Penal Code and is undergoing sentence of life imprisonment.

14. Therefore, I am of the opinion that there is no valid reason to use discretion by considering the present application of the applicant to grant temporary bail. Therefore, I respectfully defer from the opinion of my brother Judge.

15. In view of the above, it is fruitful to refer to the relevant provisions of the Gujarat High Court Rules, 1993.

“Rule 186 – Procedure in case of Difference of Opinion between Judges. -

In case of difference of opinion between the Judges composing the Division Bench, the point of difference shall be decided in accordance with the procedure referred to in

Section 98 of the Civil Procedure Code.”

16. Section 392 of the Criminal Procedure Code reads as under:

“Procedure where Judges of Court of Appeal are equally divided.-

When an appeal under this Chapter is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion:

Provided that if one of the Judges constituting the Bench, or, where the appeal is laid before another Judge under this section, that Judge, also requires, the appeal shall be re-heard and decided by a larger Bench of Judges.”

17. This Court has considered the issue the about difference of opinion between the two Judges in the case of Kishor Kanji Patel V/s State of Gujarat and Others reported in 1998 Cri.L.J.4355.

18. Now, the point of difference of opinion amongst us would be as under :

“Whether a period of temporary bail granted to the applicant by the Hon’ble Apex Court from 07.01.2025 to 31.03.2025 is properly utilised by the applicant and accordingly, has he shown any real medical need which requires consideration of

temporary bail for further 60 days, that too for ayurvedic treatment ?”

19. The Registry is directed to do the needful accordingly.

(ILESH J. VORA,J)

(SANDEEP N. BHATT,J)

P.S. JOSHI