

STATE OF U.P.

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v.

GAYATRI PRASAD PRAJAPATI

(Criminal Appeal No. 686 of 2020)

OCTOBER 15, 2020

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**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M. R. SHAH, JJ.]**

Bail: Interim bail granted on medical grounds – Respondent was a former minister and accused for offence u/ss.376D/376/511/504/506 r/w s.3/4 of POCSO Act – His bail was rejected – He was admitted for treatment in hospital (K.G.M.U.) and remained admitted from 3.5.2019 to 17.1.2020 – On 9.3.2020, he was again admitted in K.G.M.U. – On 4.6.2020, he was shifted to super specialty hospital (S.G.P.G.I.M.S.) – Medical Board evaluated the condition of respondent and submitted report – On 29.6.2020, respondent was again shifted back to K.G.M.U. – On 3.9.2020, High Court by impugned order allowed the interim bail on medical grounds for a period of two months – Appeal by the State – Held: It is clear that on 3.5.2019, respondent was admitted in K.G.M.U. and was discharged after more than seven months – He was advised taking of tablets, follow up review in Urology OPD and was discharged on his stable condition – The report of Medical Board constituted under the orders of High Court was that there was no major disparity in the treatment of patient from both the hospitals and considering the medical reports, he can continue treatment at jail hospital – Before the High Court, an affidavit was filed by the State bringing on record medical treatment report of S.G.P.G.I.M.S. which stated that the super specialty hospital offer unmatchable and unsurpassable medical expertise in numerous field and patients from far off places come to S.G.P.G.I.M.S. for availing specialised medical treatment – The report of the S.G.P.G.I.M.S., as well as report of the medical board which were brought in the notice of the High Court, were neither considered nor referred to by the High Court in the impugned order – When the respondent was being given treatment in S.G.P.G.I.M.S. as recommended by K.G.M.U., there did not appear to be any shortcomings in the medical treatment offered to

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- A *respondent, which could have been the basis for grant of interim bail on medical ground – There was no satisfaction recorded by High Court that treatment offered to respondent was not adequate and he required any further treatment by any particular medical institute for which it was necessary to release the respondent on interim bail on medical grounds – Further, as per condition mentioned in interim order, the High Court contemplated that respondent shall ordinarily reside at a place of residence, as assured, far from the place of residence of the prosecutrix and her immediate family, thus, the contemplation was that respondent shall reside at his residence – High Court, without considering the entire materials on record, passed the impugned order which is unsustainable.*
- B *mentioned in interim order, the High Court contemplated that respondent shall ordinarily reside at a place of residence, as assured, far from the place of residence of the prosecutrix and her immediate family, thus, the contemplation was that respondent shall reside at his residence – High Court, without considering the entire materials on record, passed the impugned order which is unsustainable.*
- C *on record, passed the impugned order which is unsustainable.*

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 686 of 2020.

- D From the Judgment and Order dated 03.09.2020 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Bail No. 5743 of 2019.

S.V. Raju, ASG, Dr. Rajeev Dhawan, Sr. Adv., Ms. Garima Prashad, Abhinav Agarwal, Ms. Sairica S. Raju, A. Venkatesh, Guntur Pramod Kumar, Ms. Rukhmini Bobde, Aviral Kapoor, Ms. Riya Dhingra, Avinash, Vishal Prasad, Advs. for the appearing parties.

- E The Order of the Court was passed by

ASHOK BHUSHAN, J.

1. Leave granted.

- F 2. This appeal has been filed questioning the order dated 03.09.2020 passed by Allahabad High Court, Lucknow Bench, Lucknow, by which the respondent has been granted interim bail on medical grounds for a period of two months while directing listing of the regular Bail Application No. 5743 of 2019 in the week commencing from 28.09.2020 for hearing.

- G 3. Brief facts of the case necessary to decide this appeal are:-

3.1 The respondent, a former minister in the State of U.P. is an accused in case Crime No.29 of 2017 under Sections 376(D)/376/511/ 504/506 of I.P.C. read with Sections 3/4 of POCSO Act, Police Station Gautam Palli, District Lucknow.

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- 3.2 The first information report was registered against the respondent after an order was passed by this Court on 17.02.2017 in a Writ Petition (Crl.) No. 160 of 2016 filed by the complainant. The respondent was granted bail by the Additional District and Sessions Judge, Lucknow vide order dated 25.04.2017, which bail was cancelled before the respondent could be released from the jail by the High Court vide its order dated 26.05.2017 on an application filed by the State of U.P. A
- 3.3 Another Bail Application No.10101 of 2017 filed by the respondent was again rejected by the High Court by order dated 14.12.2017. C
- 3.4 The respondent was admitted for treatment in King George Medical University, Lucknow (hereinafter referred to as "K.G.M.U.") on 03.05.2019. The respondent moved a Bail Application No.5743 of 2019 before the High Court. An application C.M. Case No. 99240 of 2019 was filed by the respondent on 19.08.2019 seeking interim bail on medical grounds for a period of six months. The respondent remained admitted in K.G.M.U. from 03.05.2019 to 17.01.2020 when he was discharged. The High Court passed an order on 05.03.2020 while hearing the bail application as well as short term bail application providing that applicant be sent to the Department of Urology of K.G.M.U., Lucknow, where he should be examined/admitted as per opinion of doctor concerned. However, the admission/treatment of the applicant-accused shall be under the supervision of police authorities/team to be constituted by the concerned authority. D E F
- 3.5 The High Court further directed that applicant-accused may be examined by a medical board to be constituted by the Vice-Chancellor, K.G.M.U., Lucknow and the said report may be placed before the Court. G
- 3.6 On 09.03.2020, the respondent was again admitted in K.G.M.U. The respondent was shifted on 04.06.2020 to the Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow (hereinafter referred to as "S.G.P.G.I.M.S.") for specialised treatment, S.G.P.G.I.M.S. H

- A being multi super-speciality (a tertiary medical care super-speciality hospital). The medical board evaluated the respondent and submitted the report on 10.06.2020. An affidavit was also filed before the High Court regarding the medical reports prepared by S.G.P.G.I.M.S. and K.G.M.U.
- B On 29.06.2020, the respondent was again shifted back to K.G.M.U. The High Court by impugned order dated 03.09.2020 allowed the interim bail application of the applicant on medical grounds.
- 3.7 The State of U.P. aggrieved by the order dated 03.09.2020 has come up in this appeal.
- C 4. We have heard Shri S.V. Raju, learned Additional Solicitor General for the appellant. Dr. Rajeev Dhawan, learned senior counsel has appeared for the respondent.
- D 5. Learned ASG for the appellant submits that the respondent was given due treatment in the K.G.M.U. as well as in the super-speciality hospital (S.G.P.G.I.M.S.). Relevant reports including the report of medical board was placed before the High Court reflecting on the medical condition of the applicant and the treatment being given. The High Court while passing the impugned order did not refer to reports of the medical board, which was submitted pursuant to the order of the High Court and
- E reliance was placed on the report of Senior Superintendent of District Jail as well as on the medical opinion of Department of Urology of K.G.M.U. dated 17.01.2020. The subsequent materials, which were on the record including the report of medical board had not been adverted to or considered while passing the impugned order. The appellant's
- F medical condition being under control due to treatment given in aforesaid medical institutions, there was no occasion to release the respondent on interim bail. The respondent has been, for the most of the period in last one year, in the hospital alone. He submits that under one of the conditions of interim bail [paragraph 27 (ii)], the respondent shall ordinarily reside at a place of residence, which indicates that the respondent is to ordinarily
- G reside at his residence and not for any medical emergency. Shri Raju has also referred to Clinical Summary dated 09.09.2020 of Department of Urology, K.G. Medical University, Lucknow, which has been brought on record by the respondent himself as well as letter dated 05.10.2020 of the Department of Urology, K.G. Medical University, which indicate
- H that the respondent has been advised to take tablets and it is also

mentioned that he can take treatment from any super-speciality hospital in the country. By subsequent letter dated 05.10.2020, he has been asked to go to S.G.P.G.I.M.S., Lucknow, Neurology Department for NCV testing. Shri Raju submits that the State is providing full medical facilities and treatment to the respondent and the High Court has erred in granting interim bail on medical ground without adverting to the medical reports submitted by the K.G.M.U. and S.G.P.G.I.M.S.

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6. Dr. Rajeev Dhawan, learned senior counsel appearing for the respondent refuting the submission of the learned ASG for the appellant contends that even if the offence alleged against the respondent is a serious offence and respondent may have political linkage but at present we are not looking at the nature of offence. When a person is ill and he is under prison, he requires a humane treatment. An accused cannot be given a different treatment. The respondent was being moved from one hospital to another hospital, which was not by his own choice. He has referred to the report of K.G.M.U., Clinical Summary dated 04.06.2020 wherein it has been mentioned that patient has been referred to S.G.P.G.I.M.S. for further management. Clinical Summary of K.G.M.U. filed at Pages 71-72 of the counter affidavit has been referred to. Annexure A-3 of the Additional Documents filed by the respondent has been referred to in which K.G.M.U. has observed that since NCV testing is not available in K.G.M.U., the patient is being referred to Neurology Department of S.G.P.G.I.M.S., for the same. Dr. Dhawan submits that at present, the respondent is in K.G.M.U. Dr. Dhawan further submits that the respondent be permitted to continue at K.G.M.U. and should not be transferred to jail.

7. We have considered the submissions of the learned counsel for the parties and have perused the records.

8. In the present appeal, our consideration is confined only to the interim bail, which has been granted to the respondent by order dated 03.09.2020. The Bail Application No. 5743 of 2019 being still pending in the High Court, our considerations and observations are only with respect to order granting interim bail and shall have no bearing on the merits of the bail application, which is pending consideration before the High Court.

9. From the facts of the case, as noted above, it is clear that on 03.05.2019, the respondent was admitted in K.G.M.U. and after more than seven months discharged on 17.01.2020. The provisional diagnosis as mentioned in the Clinical Summary is as follows:-

- A "Provisional Diagnosis : UTI with DM with HTN with Bamboo spine with seronegative Spondylorthropathy."
10. The respondent was advised taking of tablets, follow up review in Urology OPD on every Monday and was discharged on stable condition on 17.01.2020. Under the orders of the High Court, the medical board
- B was constituted by Chief Medical Officer. The medical board report dated 10.06.2020 has been brought on record, the medical board report dated 10.06.2020 states:-

"To,

C Chief Medical Officer,
Lucknow, Uttar Pradesh.

Respected Sir,

D With reference to letter number eqo_fpo_vo/2019/6072-5 dated 08/08/2020 and instructions from Director, Dr. RML Institute of Medical Sciences, Lucknow, UP, we were nominated as members of medical board under the chairmanship of C.M.O. Lucknow. After closely going through the medical records of Mr. Gayatri Prajapati aged 54 years, male from district jail hospital, Lucknow and King George's Medical University, Lucknow the following observations were made:-

- E 1. The patient is suffering from type-2 diabetes mellitus, benign prostate enlargement, renal dysfunction, low back pain related to seronegative spondylorthropathy.
2. There is no major disparity in the treatment of the patient from both the hospitals and considering the current reports, patient can continue treatment at jail hospital but in view of renal dysfunction and seronagative spondylorthropathy, consultation from nephrologist and orthopedician is advisable.
- F 3. Patient needs control of blood sugar under supervision of endocrinologist."

G 11. Before the High Court, an affidavit was also filed by the State dated 12.06.2020 bringing on record medical treatment report of S.G.P.G.I.M.S. The affidavit clearly stated that S.G.P.G.I.M.S., Lucknow offers unmatchable and unsurpassable medical expertise in numerous field and patients from far off places come to S.G.P.G.I.M.S., Lucknow for availing specialised medical treatment.

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12. The High Court by the impugned order dated 03.09.2020 has directed for release of the respondent on medical grounds, although the order runs in 23 pages but it is the paragraph 27 of the judgment, which gives the reasoning for grant of interim bail. Paragraph 27 is as follows:-

“**27.** Having considered the facts and circumstances of the present case and the applicant’s medical condition, which is confirmed by the medical status report, it shows that the applicant is suffering from disease i.e. UTI with Diabetes mellitus with HTN with Bamboo spine with seronegative Spondylorthropathy; proper treatment is not available in K.G.M.U. Hospital, Lucknow and doctors have advised proper treatment from multiple super specialties, at a tertiary care super specialty hospital; further threat to the applicant’s health in the prevailing times of Covid-19 pandemic is real and imminent; and in view of the assurances extended on behalf of the applicant that he shall not apprehend or influence the prosecutrix and her family members, this Court is persuaded to grant the applicant, Gayatri Prasad Prajapati, interim bail for a period of two months from the date of his release, subject to the following conditions:

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(ii) The applicant shall not leave the country without prior permission of the trial court and shall ordinarily reside at a place of residence, as assured, far from the place of residence of the prosecutrix and her immediate family; and the complete address of such place shall be furnished to the Jail Superintendent at the time of release;

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13. The High Court in its judgment relies on following:-

- (a) Applicant’s medical condition, which is affirmed by medical status report showing that applicant is suffering from disease, i.e., UTI with Diabetes mellitus with HTN with Bamboo spine with seronegative Spondylorthropathy;
- (b) Proper treatment is not available in K.G.M.U., Lucknow;
- (c) Doctors have advised proper treatment from multiple super specialties, at a tertiary care super specialty hospital; and
- (d) Threat to the applicant’s health in the prevailing times of COVID-19 pandemic is real and imminent.

- A 14. The medical condition of the respondent, the treatment given and various reports including the report of medical board were on the record. The S.G.P.G.I.M.S. is a super-speciality hospital where the respondent has been referred for specified purposes and report of S.G.P.G.I.M.S. has also been brought on the record as Annexure P-10
- B alongwith the letter dated 10.06.2020 addressed to Chief Medical Superintendent, S.G.P.G.I.M.S., Lucknow. The medical report of the respondent dated 10.06.2020 in final evaluation states:-
- “Final Evaluation
- Glycemia : better controlled
- C Hypertension : well controlled
- Pulmonary consult: Completed, advised as per notes above
- Urology work-up on-going.
- D 15. The above report of the S.G.P.G.I.M.S., i.e., the super-speciality hospital, which was on the record as well as report of the medical board dated 10.06.2020, which was brought in the notice of the High Court have neither been considered nor referred to by the High Court in the impugned order. When the respondent was being given treatment in the super-speciality hospital, i.e., S.G.P.G.I.M.S. as recommended by K.G.M.U., we fail to see as to what were the shortcomings in the medical treatment offered to respondent, which could have been the basis for grant of interim bail on medical ground. Further, as per condition (ii) mentioned in paragraph 27, the High Court contemplated that respondent shall ordinarily reside at a place of residence, as assured, far from the place of residence of the prosecutrix and her immediate family, thus, the contemplation was that respondent shall reside at his residence. There was no satisfaction recorded by the High Court that treatment offered to respondent was not adequate and he requires any further treatment by any particular medical institute for which it is necessary to release the respondent on interim bail on medical grounds.
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- G 16. Dr. Dhawan submits that every person, who is accused of an offence, even if the offence is a serious offence, requires a humane treatment by the prison authorities. There can be no two views with regard to above. Humane treatment to all including an accused is requirement of law. Furthermore, a prisoner, who is suffering from an ailment, has to be given due treatment and care while in prison.
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17. Learned counsel for both the parties have referred to Clinical Summary dated 09.09.2020 as well as the letter dated 05.10.2020 of K.G.M.U. referring the respondent to S.G.P.G.I.M.S. for NCV testing.

18. Even as on date, due medical care is being taken of the respondent, which is apparent from the additional documents filed as Annexure A-2 and Annexure A-3 alongwith the application dated 10.10.2020. The High Court, without considering the entire materials on record, has passed the impugned order dated 03.09.2020, which is unsustainable.

19. In result, we allow this appeal, set aside the order dated 03.09.2020. We may again make it clear that observations made by us in this order are only for deciding this appeal and shall have no bearing on the merits of the Bail Application No.5743 of 2019, which is still pending before the High Court for consideration.

Devika Gujral

Appeal allowed.