

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No.220-B/2017

Raja Muhammad Rizwan
versus
The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.05.2017	Mr. Qausain Faisal Mufti, and Raja Ikram Ameen Minhas, Advocates for the petitioner. Ms Hadia Aziz, State Counsel. Raja Rizwan Abbasi, and Sohail Akhtar, Advocates for respondent No.2/complainant. Zulfiqar Ahmad SI with record.

Through this criminal miscellaneous, the petitioner has applied for bail after arrest in case FIR No.182 dated 31.03.2014 under sections 420, 468, 471, 470, 408, 467/34 PPC, registered at Police Station Sabzi Mandi, District Islamabad.

2. Brief facts of instant case are that the petitioner being Ex-General Manager of M/s Attabak Pharmaceutical Industries, Islamabad alongwith other co-accused committed criminal breach of trust, while serving as General Manager during the period when complainant Dr. Israr Shah was disabled in a terrorist attack on 17.07.2007 in F-8 Islamabad bomb blast. It has further been contended in FIR that Dr. Israr Shah during his medical treatment in the hospital, appointed the petitioner as care taker of his business, but he has

defrauded the complainant and loss of Rs.250.00 million has been caused, which has been confirmed through audit. Hence, this FIR.

3. Learned counsel for the petitioner contends that this is his second bail application before this Court with fresh ground i.e medical ground only. He further contends that petitioner is suffering from Hepatitis-B with very high ALT and petitioner cannot be treated in the jail premises. It has further been contended by learned counsel for the petitioner that Hepatitis-B has been increased in jail premises, where its normal treatment is not available. He has relied upon case law reported as 2009 SCMR 425, Sardar Amjad Ali Khan..vs... The State, 2006 SCMR 1225 Peer Mukaram-ul-Haq...vs... National Accountability Bureau (NAB) through Chairman and others, 2000 SCMR 212 Abbas...vs...The State, 2000 SCMR 107 Mian Manzoor Ahmad Watto ... vs ...The State, 1998 SCMR 1065 Zakhim Khan Masood...vs...The State, PLD 1995 SC 58 Malik Muhammad Yousafullah Khan..vs ... The State and another, 2014 PCr.LJ 102 Rana Muhammad Tahseen...vs...The State and another, 2012 YLR 2275 (Lahore) Muhammad Amin...vs...The State and another, 2010 PCr.LJ 264 (Karachi) Gul Muhammad.. vs...The State, 2009 PCr.LJ 1153 (Lahore) Muhamma Aslam....vs...The State and 2009 PCr.LJ 239 (Karachi) Abdul Rehman alias Achar No.Onari... vs....The State.

4. Conversely, learned State Counsel and learned counsel for complainant have opposed instant bail petition on the ground that treatment is very much available in jail hospital and Hepatitis-B is not a contagious and hazardous disease and petitioner can perform his day to day functions.

5. I have heard the arguments and perused the record as well as case law submitted by learned counsel for the petitioner.

6. From the perusal of record, it has been observed that petitioner was charge in case FIR No.182 dated 31.03.2014 under sections 420, 468, 471, 470, 408, 467/34 PPC, registered at Police Station Sabzi Mandi, District Islamabad for criminal breach of trust in capacity of General Manager of M/s Attabak Pharmaceutical Industries, Islamabad, owned by respondent No.2/complainant. It has further been observed that respondent No.2/complainant was injured in terrorist attack on 17.07.2007 in F-8 Islamabad bomb blast and lost his two legs, whereas during his medical treatment in hospital, he appointed the petitioner as Incharge of his entire business. The complainant lodged complaint that he has suffered lost of Rs.250 million caused by the petitioner and other co-accused during his absence due to medical treatment.

It has further been observed from record that previous bail petition No. 445-B/2016 filed by the petitioner was dismissed by this Court vide order dated 25.07.2016, and said order was assailed by the petitioner before apex Court through criminal petition No.945/2016 which was withdrawn on 18.10.2016 after arguing the case at some length. Petitioner has filed instant petition on the ground that ailment of Hepatitis-B with very high ALT, whereas this Court vide order dated 25.04.2017 issued direction to the Medical Officer, Central Jail, Adyala, Rawalpindi to submit report in writing on the basis of available record and test report of the petitioner. In compliance of said order, Medical Officer Central Jail, Adyala, Rawalpindi submitted report dated 08.05.2017 alongwith report of department of pathology, DHQ Hospital, Rawalpindi. Report of Medical Officer Central Jail, Adyala, Rawalpindi is reproduced here-in below:

" It is stated that under trial prisoner Raja Muhammad Rizwan S/O Raja Muhammad Khan aged about 40 years is suffering from Hepatitis "B" virus.

Under trial prisoner complained of:

- *Loss of appetite*
- *Body Aches*
- *Fatigue*
- *Gastritis*

All features are suggestive of Hepatitis "B" virus.

Treatment of Hepatitis "B" is not available in jail hospital.

Laboratory investigations carried out from department of pathology, DHQ Hospital, Rawalpindi is herewith attached for kind perusal please."

It has been observed from record and report submitted by the jail authorities that hemoglobin level of the petitioner is 15.3 and all other pathological blood pictures are in normal range, however, it has been observed that column of remarks in the pathology report of petitioner dated 29.04.2017 is blank whereas ALT (SGPT) shows 561 beyond the prescribed normal range.

Above mentioned tests and reports referred by Dr. Umair Anwar Sheikh, Medical Officer, Central Prison Rawalpindi reveal that treatment of Hepatitis-B is not possible in jail.

7. I have perused following case law submitted by learned counsel for the petitioner:-

- i) 2009 SCMR 425, Sardar Amjad Ali Khan..vs... The State, accused was suffering from chronic liver disease (HCV+VE) which could not be treated in jail and petitioner was granted bail,
- ii) In 2006 SCMR 1225 Peer Mukaram-ul-Haq...vs... National Accountability Bureau (NAB) through Chairman and others, petitioner was serving his sentence in prison, who applied for suspension of sentence under section 426 Cr.PC on the ground of ailment with heart and urology issues, whose treatment was not available in jail hospital,

- iii) In 2000 SCMR 212 Abbas...vs...The State, petitioner was granted bail on medical ground on the complaint of hepatitis-C which was declared as viral infection by the medical board,
- iv) In 2000 SCMR 107, Mian Manzoor Ahmad Watto ... vs ...The State, petitioner was granted bail on medical ground with the reason that continued detention of accused in jail was hazardous to his life and specialized treatment needed to him, could not be provided in jail premises,
- v) In 1998 SCMR 1065, Zakhim Khan Masood...vs...The State, the disease of petitioner was declared hazardous to his life because of stress and strain, whereas, petitioner was having heart disease,
- vi) In PLD 1995 SC 58, Malik Muhammad Yousafullah Khan..vs ... The State and another, accused was facing radial nerve injury which could only be treated through surgical intervention,
- vii) In 2014 PCr.LJ 102 Rana Muhammad Tahseen ...vs...The State and another, accused was suffering with hepatitis and diabetes, neuropathic pain which could not be properly taken care of in jail,
- viii) In 2012 YLR 2275 (Lahore) Muhammad Amin...vs...The State and another, accused was suffering from HVC and disease of patient needed proper care and special diet which was not available to petitioner in jail, petitioner was also suffering from hepatitis-C, however, injury attributed in this case to the petitioner was on non-vital part of deceased,

- ix) In 2010 PCr.LJ 264 (Karachi), Gul Muhammad.. vs...The State, petitioner was patient of hepatitis-B carrier,
- x) In 2009 PCr.LJ 1153 (Lahore) Muhammad Aslam....vs...The State accused was patient of hepatitis-C with history of blood in vomits and his condition reflected worsening of disease and he needed investigation and management in hospital which could not be carried out inside jail hospital,
- xi) In 2009 PCr.LJ 239 (Karachi) Abdul Rehman alias Achar No.Onari... vs...The State, petitioner was suffering from chronic liver disease due to hepatitis-C and declared by the medical board as infectious.

8. In all above referred authoritative judgments of Apex Court as well as High Courts, facts and circumstances are different to the case of present petitioner, therefore, same are not applicable in this case. Although it has not been denied by the jail doctor that petitioner is suffering from hepatitis-B but in pathology report remarks have not been given and relevant column is also blank, even it has not been referred by the concerned doctor that the petitioner is suffering with hepatitis-B, who is carrier and can transmit this disease to other prisoners or his health is deteriorating rapidly. It has been observed from leading medical journals of international standard that

hepatitis-B can be transmitted by birth from a chronically infected mother to her child during the birthing process and blood transfusion through a direct contact with infected blood whereas latest research by Kristian Obirikorang (Biomedical Scientist), College of Health Sciences, School of Medical Sciences, Deptt. of Molecular Medicine, KNUST, Kumasi, is as under:

"How is hepatitis B transmitted?"

Birth- HBV can be transmitted from a chronically infected mother to her child during the birthing process. This is one of the most common modes of transmission for Asians. Many pregnant mothers with chronic hepatitis B are unaware of their infection and end up silently passing the virus to the next generation.

Blood- HBV can be transmitted through direct contact with infected blood. This includes:

- Wound-to-wound contact
- Reusing or sharing needles for tattoos, piercing, acupuncture, or injection drugs
- Reusing syringes or medical devices
- Sharing razors or toothbrushes contaminated by blood
- Blood transfusions.

Sex- HBV can be transmitted through unprotected sex with eliminate, the risk of infection. Vaccination remains the most effective way to protect against HBV.

HBV is not transmitted through food or water. It is not spread through:

- Sharing food or water
- Sharing eating utensils or drinking glasses
- Tears, sweat, urine, or stool
- Coughing or sneezing
- Hugging or kissing
- Breastfeeding
- Mosquitoes

How is type B hepatitis treated?

There is no specific medical treatment for acute type B hepatitis. Chronic type B hepatitis can be treated with injections of interferon alpha, when disease activity has been confirmed by a blood sample or a tissue sample from the liver, approximately one third of the patients will benefit from the treatment. Longer course of specific antiviral medicines are currently being given with hopeful results. Lamivudine (Zeffix), an antiviral medicine, is helpful for some patients."

9. In view of above medical perspective, I am of the opinion that the petitioner if suffering from hepatitis-B, at this stage is healthy and his disease cannot be called contiguous, hazardous and even simple treatment is required, which has been given to the patient. I am fortified with the view given by the Apex Court in **2016 SCMR 1536 titled Mian Nazeer Ahmad...versus....State, etc,** which is reproduced herein below:

"یہاں پر اس مسلمہ اصول جو کہ عدالت عظمیٰ کے کئی نظائر پر مبنی ہے کا حوالہ دینا موزوں ہو گا کہ اگر کوئی ملزم ایسے سنگین مرض میں مبتلا ہو جس کا نہ تو قیدوبند میں تسلی بخش علاج ممکن ہو اور نہ ہی جیل میں حوالاتی ملزم کو ہنگامی حالت میں ہنگامی بنیادوں پر ابتدائی طبی امداد فراہم کرنا ممکن ہو، نیز یہ کہ صرف اسی صورت میں حوالاتی ملزم کو ضمانت پر رہائی کا حقدار ٹھہرایا جا سکتا ہے جب اعلیٰ معالجین خصوصی کی قائم کردہ مجلس مکمل تحقیق کے بعد حتمی رائے دے کہ ایسے ملزم کے لیے مزید قیدوبند کی صعوبتیں برداشت کرنا ناممکن اور اسکی زندگی کے لیے خطرناک ثابت ہو سکتی ہیں یا وہ ایسے موذی مرض میں مبتلا ہو جو ساتھی قیدیوں کے لیے وبائی مرض کی شکل اختیار کر کے پورے جیل کے احاطے میں پھیلنے کا خدشہ ہو۔"

In view of above referred principles given by the Apex Court, petitioner is not entitled for any concession of bail, therefore, instant bail petition is hereby dismissed.

10. Before parting with said order, jail authorities are directed to produce the petitioner before the specialist doctor of District Hospital, Rawalpindi for his treatment as required in this case so that his medicine and treatment could be monitored.

11. It is also expected from learned trial court seized with the matter to conclude the trial within a period of 06 months positively in the light of 2011 SCMR 1332 titled Rehmatullah..vs....The State and another.

(MOHSIN AKHTAR KAYANI)
JUDGE

Imran

Approved for reporting.

JUDGE