

JUDGMENT SHEET  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

**WP No.1261-P/2015**

Date of hearing: 04.06.2015

Petitioner (s) : \_\_\_\_\_

Respondent (s) : \_\_\_\_\_

**JUDGMENT**

**ASSADULLAH KHAN CHAMMKANI, J.-** Petitioner

*Pir Muhammad Azam*, whose earlier prayer for bail has been turned down by this Court vide order/judgment dated 03.02.2015 in W.P. No.3500-P/2014, through this further constitutional petition, seeks the relief of bail on fresh ground/ medical ground.

2. Learned counsel for the petitioner at the very outset, while referring to order of this Court in Cr.Misc.BA No.362-P/2015 decided on 24.04.2015, contended that plea of the petitioner qua his sickness has already been admitted by this Court, consequent whereupon, he has been granted

bail on sole medical ground in case FIR No.4 dated 18.03.2014 registered under sections 409/419/420/468/471 PPC and S.5 (2) Prevention of Corruption Act at Police Station Anti Corruption, Peshawar, therefore, petitioner is also entitled to concession of bail on the same ground in the instant case.

3. The learned ADPG when confronted with the bail granting order of the petitioner in Cr.Misc.BA No.362-P/2015 decided on 24.04.2015, he conceded release of the petitioner by this court on medical ground in the above case. He, however, opposed bail to the petitioner in the instant case and contended that best and proper environment will be provided to the petitioner inside the jail keeping in view the requirement of his disease while the petitioner will not be able to get all such facilities in his house or outside the case.

4. It appears from the record that one of us i.e. Justice Assadullah Khan Chammakani, while dealing

with Cr.Misc.BA No.362-P/2015, of the petitioner, enlarged him on bail on the sole medical ground by observing as under:-

“It appears from the record that during pendency of the instant petition, Director General Health Services, Khyber Pakhtunkhwa was directed by this Court to constitute a Standing Medical Board for examination of the petitioner, opinion whereof has been received, which reads as under:-

**“The Standing Medical Board is of the opinion that he has history of chronic airway obstruction disease. He has frequent hospital admissions and needs permanent treatment including oxygen. He is actually ill and presently has severe dyspnoea. He needs urgent treatment preferably in intensive care unit (ICU) in tertiary care hospital”.**

The opinion of the Standing Medical Board is unambiguous which clearly speaks about severity of the disease of the petitioner, needs of urgent treatment, that too, in intensive care unit (ICU). Now the crucial point for determination would be as to

whether such medical facilities are available inside the jail to meet the treatment requirements of the petitioner. There is a detail report furnished by Senior Medical Officer Central Prison Peshawar dated 27.02.2015, addressed to the Superintendent Central Prison Peshawar, which speaks about serious ailment of the petitioner, requirement of specialized treatment to him and lack of facilities inside the jail to meet the specialized treatment of the petitioner. For convenience the same is reproduced below:-

**“It is submitted that the above named accused who is suffering from (COPD) was treated in jail Hospital Peshawar for long time. Meanwhile, he was referred so many times to LRH to get expert opinion of the physician/pulmonologist on dated 22.01.2015. He was admitted by the pulmonologist in his ward in LRH and discharged on 23.02.2015 with diagnosis of COPD (Chronic Obstructive pulmonary Disease) on the same day due to respiratory distress. He was admitted by Jail medical Officer and he is still in jail hospital admitted because he needs frequent nabilization and 02 inhalation.**

**Now in the current scenario he was advised ECG (which is enclosed along with for information and ready reference which shows)**

- 1. Sinus tachycardia**
- 2. RT artial enlargement**
- 3. RT ventricle Hypertrophy**

**This patient needs nabulization and 02 inhalation from time to time. The chronic chest problem affected his heart which is evident from the ECG.**

**For this purpose in my opinion as there is no specialized treatment and investigation available in Jail hospital, therefore, to avoid inconvenience of frequent hospitalization and discharging if the Honourable Court considers best the accused shall be recommended for Standing Medical Board”.**

In light of the opinion of the Standing Medical Board and report furnished by Senior Medical Officer Central Prison Peshawar, it can be safely concluded that petitioner is suffering from severe dyspnoea and he needs urgent treatment preferably in intensive care unit and the facilities to meet the urgent specialized treatment of the petitioner are lacking inside the jail premises.

Proviso Ist to section 497 Cr.P.C. deals with bail to any person under the age of sixteen years or any woman or any sick or infirm person accused, which reads as under:-

**“ S.497 (1).. Proviso First:- Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or inform person accused of such an offence be released on bail”**

Correct criteria for grant of bail to an accused on medical , in a non-bailable offences, has been laid down by the apex Court in

case titled, **“Mian Manzoor Ahamed Watto Vs the State”** (2000 SCMR 107), in these words:-

**“Correct criteria for grant of bail to an accused in a non-bailable case on medical ground would be that the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the jail premises and that some specialized treatment is need and his continued detention in jail is likely to affect his capacity or is hazardous to his life”.**

Guidance in this regard may also be derived from case titled, **“Haji Mir Aftab Vs the State”** (1979 SCMR 320). As regard gravity of the offence, where the Court is satisfied of the sickness of the accused and such disease cannot be properly treated in custody, then gravity of the disease would outshine the gravity of the offence. The apex court in case titled, **“Peer Mukaram ul Haq Vs National Accountability Bureau (NAB) through Chairman and others** (2006 SCMR 1225), held that sick or infirm person may be released on bail even if there are reasonable grounds for believing that he has been guilty of an offence punishable with death or life imprisonment because where a statute itself lays down certain principles for doing some acts they may be taken as a guideline for doing something of the same nature which is in the discretion of the

Court. In case titled, “The State Vs Haji Kabeer Khan” (PLD 2005 Supreme Court 364) it has been held by the apex Court that **“Courts are not required to quality or quantify the nature of disease and once a case is made out under the recognized principle laid down by the Supreme Court in this behalf, bail is to be granted on medical ground leaving prosecution at liberty to move the Court for cancellation of bail, if health of accused has improved during pendency of proceedings, because on the ground of sickness or infirmity, on exceptional term, law has offered an opportunity to an accused to enjoy the concession of bail subject to satisfying the Court about the nature of his ailment as well as on the ground of non-getting of proper treatment in jail, but no sooner the accused has improved his health, the prosecution can come forward with the request for withdrawal of the concession of bail.”**

In view of the law on the subject and deriving wisdom from the judgment of the august apex Court, I am inclined to exercise the discretion of bail on sole ground of infirmity/sickness of the petitioner. Resultantly, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.3,00,000/- with two sureties each in the like amount to the satisfaction the learned

Trial Court. The sureties must be local, reliable and men of means”.

5. Nothing is on the record to show any new development, such as recovery of the petitioner from his disease or proper arrangements inside the Jail to meet the requirements of treatment of the petitioner inside the Jail, therefore, situation being the same, this petition is also allowed and accused/petitioner is admitted to bail in the instant case, provided he furnishes bail bonds in the sum of Rs.one Million with two sureties each in the like amount to the satisfaction of the Judge Accountability Court-III, Peshawar.

6. These are reasons of our short order of even date.

**Announced.**  
04.06.2015

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