

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(Through Virtual Mode)

Pronounced on : 24.04.2020

EMG-Bail Appl. No.3/2020

Hilal Rather

...Applicant/Petitioner

Through :- Mr. Sunil Sethi, Sr. Advocate
with Mr. Pranav Kohli, Advocate.

v/s

Union of India through CBI, Jammu

...Non-applicant/Respondent

Through :- Ms. Monika Kohli, Advocate.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER

1. The application for grant of bail has been filed on behalf of the accused Hilal Rather on medical grounds in F.I.R bearing No. RC0042020A0002 dated 04.03.2020 under Sections 120-B, 409, 420 and 471 of the Ranbir Penal Code and under Sections 5(1)(d) read with Section 5(2) of the Jammu and Kashmir Prevention of Corruption Act. FIR No. 13/2019 dated 27.06.2019 was lodged with Police Station, Anti-Corruption, Jammu against the accused and later on the case was taken over by the CBI. The challan has since been produced before the Special Judge, Anti-Corruption (CBI Cases), Jammu. It is submitted in the application that due to medical condition of the accused and in view of the directions passed by the Hon'ble Supreme Court in the light of outbreak of COVID-19 the accused is entitled to interim bail. The application also refers to the medical record of the treatment received by the accused in Government Medical College, Jammu and at P.G.I. Chandigarh in pursuance to the directions passed by the High Court in earlier bail application.

2. The objections to the application have been filed by the respondent wherein the application of the accused has been opposed on the ground that the accused has misappropriated the loan amount and utilized the same for his personal use. The investigation in the case is still going on to unearth the larger conspiracy involved in the matter. The accused has been provided adequate treatment at Government Medical College, Jammu and P.G.I. Chandigarh while in Judicial Custody by the Jail Authorities. It is further stated that there is nothing on record to suggest that the condition of Jail is not clean and hygienic or that adequate measures are not taken by the Jail Authorities to prevent the spread of COVID-19. The Special Judge has rejected the interim bail application of the accused vide Order dated 31.03.2020. The condition of the accused is stable and does not require any special treatment as per the record. It is submitted that the Medical Report of P.G.I, Chandigarh appears to be manipulated one and this fact has been observed by the trial Court in its order dated 31.03.2020. The case of the accused does not fall within the directions of the Hon'ble Supreme Court so as to entitle him for bail. The accused can tamper with the evidence if released on bail as he is highly influential is also stated in the objections. Indeed the prayer is for dismissal of the application in hand.
3. Heard learned counsel for the parties and perused the record.
4. During the course of arguments, veracity of page 42 (Annexure-V) of the file which is discharge report from P.G.I. Chandigarh is highlighted by the learned counsel for the respondent. Whereas the learned Senior Counsel for the applicant has submitted that the concerned page of the

report is genuine one, on the other hand, the learned counsel for the C.B.I has submitted that the tampered record has been furnished by the accused and the words 'hygienic and clean condition' occurring on the said page have been inserted. It is submitted on behalf of the accused that the original record is with the C.B.I or Jail Authorities but the so called tampering has not been verified till date. It may be stated herein that the trial court in its order dated 31.03.2020 has doubted the genuineness of the above mentioned words mentioned in the report. The Court is of the view that this aspect need not be finally determined by this court and should be left for the trial court to decide the same. In any case, the presence of the words 'hygienic and clean condition' are there or not in the discharge certificate issued by P.G.I. Chandigarh may not be of much relevance for the purpose of deciding the bail application as the hygiene and cleanliness for a patient is otherwise always indispensable.

5. The learned counsel for the applicant has submitted that the applicant is also suffering from Staphylococcus Aureus (MRSA) which is infectious and is resistant to some commonly used antibiotics as per the literature available on the same. The further submission is that the disease can be life threatening and can spread by contact and, therefore, the further custody of the accused in the Jail is not desirable. The literature of the 'MRSA' has been filed with the application. 'Staphylococcus Aureus' is frequently found in the upper respiratory tract and on the skin. The learned counsel has also referred to the report given by the Medical Board vide dated 04.03.2020 with respect

to the accused. In the report, one of the observations is that in view of the persistent fever and urinary symptoms, the patient needs antibiotics, alpha-blockers and observation. It is also stated in the report that presently the general condition is stable but he continues to have intermittent fever, he also has complained of dysuria and poor flow. The precise submission made by the counsel for the accused is that in view of the medical reports on the file and the fact that the accused may contract severe ailment while in Jail, there is every reason to grant bail to the accused. The learned counsel for the CBI has argued that the condition of the accused is stable as per the reports and there is nothing on the record to suggest that the medical condition of the accused can worsen while in Jail due to the Jail conditions.

6. So far as the Medical Reports on the file are concerned, the same cannot be said to be alarming for the accused. The Medical Report dated 04.03.2020 issued by the Board speaks of the accused being referred to P.G.I. Chandigarh/A.I.I.M.S for further evaluation and treatment, if the fever does not respond. However, the general condition of the accused is stated to be stable and the pathological test including the LFT and RFT are stated to be normal. Even the discharge certificate dated 21.03.2020 issued by the P.G.I. Chandigarh reveals the condition of the accused as stable and the accused to be attended by operating surgeon at Jammu. It is but natural that the medical condition of the accused was satisfactory and stable and that is why the accused was discharged by the P.G.I. Chandigarh. Had the condition of the accused been not satisfactory, he would not have been discharged

from the hospital. The apprehension raised by learned counsel for the accused that the accused may contract infection or even can infect other inmates of the jail due to the prevailing conditions is not borne out from the record. The court finds no material on record which substantiates the argument of the counsel for the accused. The apprehension of the accused is misplaced as of now. The Jail authorities must be otherwise taking all the measures to keep the jail in hygienic conditions keeping in view the onslaught of COVID-19. The bail cannot be granted on mere assumption that the conditions in the Jail are unhygienic and that the accused will suffer for that reason.

7. The other contention of the learned counsel for the accused is that the case of the accused is covered by the directions of the Hon'ble Supreme Court issued in view of the spread of COVID-19 and the lockdown which is in force. The learned counsel for the respondent has argued that the case of the accused is not covered by the directions of the Hon'ble Supreme Court and in any case the charges in which the accused has been booked carry the punishment for more than seven years.
8. The Court is of the view that the accused cannot take any leverage or benefit on the basis of the argument raised above. The case of the accused is not covered by the directions of the Hon'ble Supreme Court dated 23.03.2020 passed in suo motu Writ Petition (C) No. 1/2020, keeping in view the fact that the accused faces charges which are of serious nature. The bail cannot be granted on the mere asking of the accused nor can the accused claim bail as a matter of right. Each case has to be decided on its own merits.

9. In light of the discussion made above, the court finds no reason to grant bail to the accused Hilal Rather on medical grounds as pleaded in the application.
10. The application being without merit is dismissed. The merits of the case have not been argued by the counsels as the application for bail was mainly confined on medical grounds.

(PUNEET GUPTA)
JUDGE

Jammu
24.04.2020
Pawan Chopra

Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No

