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**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (Crl) NO. 3939 OF 2021**

**IN THE MATTER OF:-**

Asharam @ Ashumal ..... Petitioner

Versus

State of Rajasthan ..... Respondent

**COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT (STATE OF  
RAJASTHAN)**

‘PAPER BOOK’

{ FOR INDEX KINDLY SEE INSIDE }

**ADVOCATE FOR THE RESPONDENT: (D. K. DEVESH)**

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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (Crl) NO. 393



IN THE MATTER OF:-

Asharam @ Ashumal

..... Petitioner

Versus

State of Rajasthan

..... Respondent

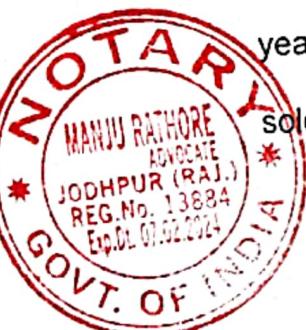
COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT (STATE OF  
RAJASTHAN)

MOST RESPECTFULLY SHOWETH:

I, Om Prakash Sharma S/o Shri Shyam Sundar Sharma aged about 55 years, posted as- Jail Superintendent Central Jail Jodhpur, do hereby most solemnly state and affirm as under:

A. That I am the officer-in-charge of the above-mentioned matter and posted as Jail Superintendent Central Jail Jodhpur and fully conversant with the facts and circumstances of the case and duly competent to file the Counter Affidavit on behalf of State of

Rajasthan.



  
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NOTARY, JODHPUR

  
Manju Rathore 7/6/21  
NOTARY, JODHPUR

B. That I, have read the copy the Special Leave Petition, the Synopsis, List of Dates and the Annexures as filed by the Petitioner mentioned above and have understood the contents thereof and in reply thereto I, have to state as under.

C. That each and every contention made in the said Petition is hereby denied, unless specifically admitted to herein below.

D. The ground which has not been pleaded before the court below has not be pleaded and averred in the present counter affidavit.

PRELIMINARY SUBMISSION/ BACKGROUND OF THE MATTER



1. The accused / petitioner was arrested in FIR No.122/2013 registered under section 370(4),342,376(2) (f), 376 (D), 354A,506,509/34,120 (B)IPC R/W section 23 and 26 of Juvenile Justice (Care and Protection of Children) Act 2000 R/w section 5 (F)/ 6, 5 (G)/ 6, 7/8 of POCSO Act 2012. The same was registered at police station - Mahila (west), Jodhpur. The accused was arrested on 01.09.2013.

2. That, during the pending trial, the accused moved SLP (Crl) No. 3852/ 2014, before this Hon'ble Court seeking regular bail on merit and on medical condition of the accused. Considering the plea of the accused , medical certificate issued by Dr. Mahip Singh Gaur, this Hon'ble Court constituted a committee of doctors comprising 8 doctors from

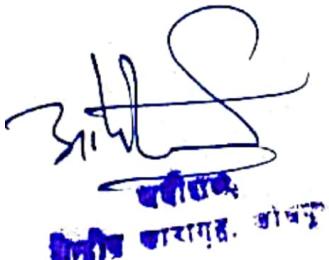
  
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different specialities of AIIMS, New Delhi and the committee conducted clinical examination of the accused and opined through its report dated 02.01.2015, that the accused was not required any surgery. They further opined that the disease of the accused can be managed through routine medical OPD basis. The order dated 20.01.2015 is not place on record by the accused in the present petition for the reason known to him. The modus operandi of the accused is identical to tone and toner of the present petition. A copy of order dated 20.01.2015 passed by this Hon'ble Court in SLP (Crl) No. 3852/ 2014 is herewith marked and annexed as ANNEXURE- R1 (Page 12 to 18).

3. The accused again filed a petition for interim bail in SLP (Crl) No. 6202/ 2016, on similar medical issues and grounds; that the accused is suffering from various ailments, which need immediate medical attention. This Hon'ble Court on the ground of medical urgency as raised by the accuse/ petitioner, directed the AIIMS Delhi for medical examination of accused. The accused was medically examined by the committee of 7 doctors of AIIMS New Delhi and the committee submitted its report dated 19.08.2016. According to the said report, the accused/ patient was stable. Therefore, the state government was directed, to provide medical facilities to the accused, at AIIMS Jodhpur and/ or Dr. Sarvepalli Radhakrishnan Rajasthan Ayurveda University, Jodhpur, while in judicial custody. A copy of order dated 24.10.2016



  
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passed in SLP (Crl) No. 6202/2016 by this Hon'ble Court is herewith marked and annexed as ANNEXURE- R2 (Page 19 to 22).

4. That, subsequently, the accused has moved an application for modification of order dated 24.10.2016, wherein, the accused has prayed to get the treatment from AIIMS New Delhi and Ayurvedic Hospital situated at New Delhi, instead of AIIMS Jodhpur and Ayurvedic Hospital. It is important to mention here that the accused had placed on record the certificate/ report dated 07.10.2015, issued by Dr. Arun Tyagi (the then head of the department of medicine of Jodhpur Ayurvedic University Hospital and now a private practitioner Ayurvedic Doctor) wherein, Dr. Arun Tyagi had recommended specialized treatment at Kerala Hospital. This Hon'ble Court examined the averment of modification application and the health complication, as raised by accused and pleased to decline to modify, the order dated 24.10.2016. A true typed copy of order dated 30.01.2017 passed in SLP (Crl) No. 6202/2016 by this Hon'ble Court is herewith marked and annexed as ANNEXURE- R3 (Page 23 to 31).

5. The accused was convicted by special court under section 370 (4) IPC for 10 years R.I & fine of Rs 1,00,000/-, 342 IPC for 1 year R.I & fine of Rs. 1000/- 506 IPC for 1 year R.I & fine of Rs. 1,000, 376(2)(f) IPC for life (till his natural life) & fine of Rs. 1,00,000/- 376(D) IPC for life (till



  
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his natural life) & fine of Rs. 1,00,000 & 23 JJ Act for 6 months SI. The accused preferred an appeal before Hon'ble High Court, the same was admitted on 30.10.2018.

MEDICAL CONDITION OF THE ACCUSED

6. The accused has been raising his concern of immediate medical attention, since the day of arrest. The first such plea, came before this Hon'ble Court in 2014 by the way of SLP (Crl) No. 3852/ 2014, wherein, the medical certificate issued by doctor of accused namely Dr. Mahip Singh Gaur was found to be inconsistent with the report of the committee of 8 doctors from different specialities of AIIMS New Delhi as constituted by this Hon'ble Court. The committee of doctor vide its report dated 02.01.2015, opined. That the accused/ patient was stable and was not required any surgical management of the disease. Therefore, the contention and averment of the accused raised through Dr. Mahip Singh Gaur was found to be falsed. The petition was dismissed by this Hon'ble Court.



7. The accused again raised similar issue, on the basis of similar type of report/ certificate of doctor, opining immediate medical attention of the accused, in SLP (Crl) No. 6202/2016. This Hon'ble Court constituted again committee of 7 (seven) doctors of AIIMS New Delhi, who vide its report dated 19.08.2016, opined that the accused/ patient was stable.

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The accused/ petitioner has been under treatment of AIIMS Jodhpur and /or Ayurvedic University Hospital Jodhpur, in term of order dated 24.10.2016 of this Hon'ble Court.

8. The accused/ petitioner further through modification application prayed to change the hospital from AIIMS Jodhpur to AIIMS New Delhi for allopathic treatment and All India Institute of Ayurveda New Delhi. Such attempt was dismissed by this Hon'ble Court vide order dated 30.01.2017, the accused petitioner under the garb of his medical treatment, desiring to get his sentence suspended. The issues of medical condition and report / certificates of private doctors as produced by the accused, were found to be inconsistent to the reports of doctors of AIIMS New Delhi.

9. The accused/ petitioner through this petition, has made third attempt to get his sentence suspended, under the garb of medical treatment. In previous round of petitions, the accused had prayed for immediate medical surgery of his ailment, through allopathic method, which failed and now the accused through the present petition has raised his concern to get his treatment from Ayurveda. The accused has placed on record clinical summary dated 17.02.2021 (Annexure- A3 of the petition) issued by MM Hospital Jodhpur, wherein he was advised coronary angiography, which was refused by the accused/ patient. It is



  
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important to mention here that the clinical summary does not specify any specific health problem of immediate attention and such surgery or angiography cannot be done at Ayurveda Hospital.

10. The accused / petitioner has further placed on record the health report dated 24.02.2021 (Annexure- A4 of the petition), wherein, Dr. Arun Kumar Tyagi (the then head of the department of medicine of Jodhpur Ayurvedic University Hospital and now practicing as a private doctor), has opined that the accused/ patient be treated under proper guidance of cardiologist, neurologist, endocrinologist, urologist, orthopaedic consultant and experience Ayurvedacharya etc. Such opinion, itself suggest that the accused must be treated at place under committee of allopathic specialist and Ayurvedacharya. This specific requirement of committee is available at Jodhpur, wherein, AIIMS Jodhpur and Ayurveda University Hospital is situated and are capable to treat accuse/ patient effectively. He is the same person who in the year 2015 head opined the accused patient to be treated at Kerala Hospital. It is important to mention here that the accused/ petitioner through this petition sought permission to be treated at Praksh Deep Institute of Ayurvedic Science Raiwala, Haridwar-Rishikesh National Highway-58, Uttarakhand. It is relevant to mention here that Dr. Arun Kumar Tyagi is the treating Ayurvedic doctor of the accused petitioner, who

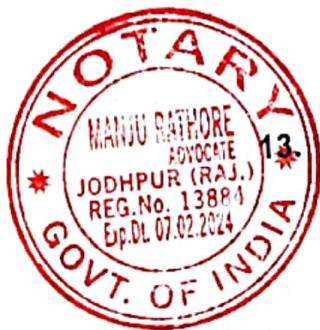


  
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continued to treat accused/ petitioner even after retirement from Jodhpur Ayurvedic Hospital, under the order of this Hon'ble Court.

11. The accused/ petitioner was tested covid positive on 06.05.2021, his HRCT was 8/ 25 CRP was 6. The accused/ petitioner was having mild symptoms, with low grade fever and was treated for Covid-19 properly.
12. The Hon'ble High Court on application of suspension of sentence of the accused, placing reliance of medical report summary dated 19.05.2021, issued by AIIMS Jodhpur, wherein the patient was stable and fit for discharge, pleased to dismiss the petition. Therefore, the averments of accused / petitioner in the petition are contrary to medical report of AIIMS Jodhpur and Dr. Arun Kumar Tyagi.



13. It is important to mention here that the discharge report dated 21.05.2021 issued by AIIMS Jodhpur (Annexure-A8 of the additional documents) shows that the patient was uncooperative, who refused to take injection; and later on, some oral medicine as well. The accused/ petitioner was not cooperative to the doctors at AIIMS Jodhpur. The accused was stable and fit to discharge and there was no any complication for last three days. Hence, there is no requirement of any further super specialities treatment of the accused.

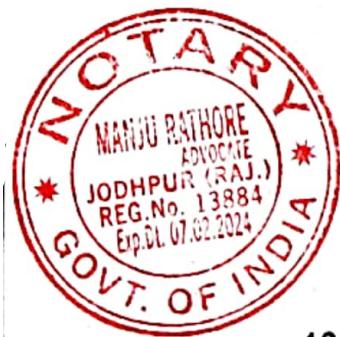
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14. The petitioner has placed on record medical card dated 23.05.2021 (Annexure- A9 at page 46 of additional documents), wherein the health of accused/ petitioner was found normal and no complication was found. It is further mentioned at page 48 of additional documents that the patient was not taking any medicine as prescribed by AIIMS Jodhpur. The accused is not cooperating with the doctors for his ulterior motive of shifting of venue of his custody.

PRELIMINARY OBJECTION

15. That, the accused/ petitioner has been facing trial in Sessions Court Gandhi Nagar, Gujarat in Case No. 34/2014 registered U/s 376 (2) (G), 377,354,357,342,346 IPC and pending trial at MM Court, Jodhpur in Criminal Case No. 1346/2017 (FIR No. 530/2014) registered U/s 353,355,384,117,189,120 (B) IPC and 66 of IT Act. The production warrant, as issued by aforesaid trial court is in operation, where, accused/ petitioner has to be presented on relevant date.

16. The accused/ petitioner with ulterior motive has been attempting to change the venue of his custody, under the guise of medical treatment. Such change, with due respect, an abuse of process of law. The accused deliberately to delay to pending trial at Gandhi Nagar as and Jodhpur, malafidely, raising such pleas, whereas he is stable and fit.



  
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17. That, jodhpur is one of the rare centres, wherein both the allopathic and Ayurveda excellent treatments are available. The treatment to the accused may be provided by committee of doctors of AIIMS Jodhpur and Ayurveda Hospital, Jodhpur as may be directed by this Hon'ble Court.

18. That the State of Gujurat is proper and necessary party in this petition. Therefore, the petition is suffered from *non-joinder* of the party.

REPLY TO SYNOPSIS AND LIST OF DATES

19. That the content of preliminary objection and submission be read in reply to synopsis and list of date.

PARAWISE REPLY TO THE SPECIAL LEAVE PETITION

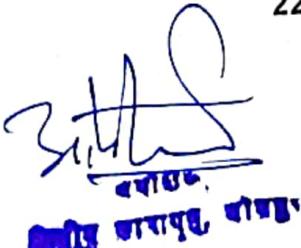
20. That the content of preliminary objection and submission be read in reply to SLP.

REPLY TO THE QUESTION OF LAW

21. That the content of preliminary objection and submission be read in reply to question of law.

REPLY TO DECLARATION IN TERMS OF RULE 4

22. The content of this para of the petition, being matter of records needs no reply by the answering Respondent.



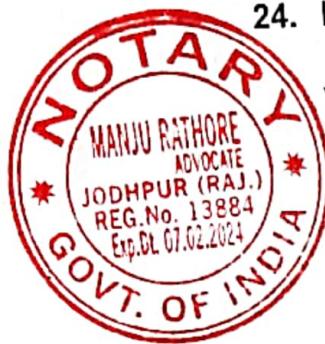
  
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REPLY TO GROUNDS:

23. It is submitted that for the purpose of reply to the ground preliminary submission/ objection / facts of the case and reply to the question of law may be read and relied upon.

REPLY TO MAIN PRAYER AND PRAYER FOR INTERIM RELIEF:-

24. It is submitted that the petitioner has not made out any case, whatsoever, which would require the indulgence of this Hon'ble court. Hence, the petition ought to be dismissed. In this regard, the petitioner seeks to refer to rely on the preliminary submission/ objection made hereinabove.



**IDENTIFIED BY**

VERIFICATION

I, the deponent above named do hereby verify and declare that the facts stated in the above para 1 to 18 are true to my knowledge & belief. Verified at \_\_\_\_\_ on this 07<sup>th</sup> day of June 2021.

DEPONENT  
मन्जु राठोरे, जोधपुर

*Om braham saccay*  
Sig. Sworn Before Me by.....  
Who is Identified by.....  
ATTESTED  
NOTARY, JODHPUR

ENTERED IN NOTARY  
REGISTER AT SERIAL  
NO.....43....OF...07.06.21  
(MANJU RATHORE)  
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ATTESTED  
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ITEM NO.15

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 3852/2014

(Arising out of impugned final judgment and order dated 10/02/2014 in CRMBA No. 10115/2013 passed by the High Court Of Rajasthan At Jaipur)

SANT SHRI ASHARAM BAPU

Petitioner(s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

(with appln. (s) for bail and directions and exemption from filing O.T. and interim bail and permission to file additional documents and permission to place addl. documents on record and office report)

WITH

SLP(Crl) No. 4916/2014

(With appln. (s) for stay and appln. (s) for exemption from filing O.T. and Office Report)

SLP(Crl) No. 4918-4919/2014

(With appln. (s) for permission to file additional documents and appln. (s) for stay and appln. (s) for stay and appln. (s) for exemption from filing O.T. and Office Report)

Date : 20/01/2015 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR  
 HON'BLE MR. JUSTICE R.K. AGRAWAL  
 HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Petitioner(s) Mr. Vikas Singh, Sr. Adv.  
 Mr. Siddharth Luthra, Sr. Adv.  
 Mr. N.K.Modi, Sr. Adv.  
 Mr. Saurabh Ajay Gupta,Adv.  
 Mr. Saurabh Singhal, Adv.  
 Mr. Nishant Bishnoi, Adv.  
 Mr. Puneet Parihar, Adv.  
 Mr. Parvesh Khanna, Adv.  
 Ms. Deepika Kalia, Adv.  
 Mr. Nitin Saluja, Adv.  
 Mr. Kapish Seth, Adv.

Mr. Varun Singh, Adv.

Ms. Kamini Jaiswal, Adv.  
Ms. Shilpa Dey, Adv.  
Ms. Shumaila Altaf, Adv.

For Respondent(s) Ms. Kamini Jaiswal, Adv.  
Ms. Shilpa Dey, Adv.  
Ms. Shumaila Altaf, Adv.

Ms. Pinky Anand, ASG,  
Mr. S.S. Shamshery, AAG,  
Mr. Anish Kumar Gupta, Adv.  
Ms. Ruchi Kohli, Adv.  
MS. Deepshikha Bharati, Adv.  
Mr. Amit Sharma, Adv.  
MR. Sandeep Singh, Adv.  
Mr. Varun Punia, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The petitioner is being tried before the Sessions Judge, Jodhpur for offences punishable under Sections 370(4), 342, 354A, 376(2)(f), 376D, 506, 509/34, 120B, Indian Penal Code, Sections 23 and 26, Juvenile Justice (Care and Protection of Children) Act, 2000 and Sections 5(F)/6, 5(G)/6, 7/8, Protection of Children From Sexual Offences Act, 2012

As earlier application for bail filed by him having been declined, a second application was moved before the Trial Court which too came to be rejected by the said Court. The matter was then taken up before the High Court who has concurred with the view taken by the Trial Court and dismissed the plea for bail. The present special leave petition calls in question the correctness

of the said order.

When this petition initially came up before us on 15.10.2014 Mr. Salman Khurshid, learned senior counsel appearing for the appellant submitted that although several witnesses for the prosecution had already been examined at the trial, the petitioner shall be satisfied if he is permitted to refresh his application for enlargement on bail after the examination of the material witnesses. The prosecution has it is common ground named six material witnesses in terms of a list filed before this Court, two out of whom have already been examined and cross-examined while the third is still under cross-examination, although the petitioner's counsel has concluded the cross examination on his part. This implies that there are still three other witnesses apart from the one who is under cross-examination that need to be examined at the trial. Mr. Khurshid's submission that the petitioner will be satisfied if he is allowed to refresh his application for enlargement on bail after examination of the material witnesses clearly implied that the application for bail on merit was as good as withdrawn till such time the material witnesses were examined before the Trial Court. What had all the same been argued by Mr. Khurshid was that the medical condition of the

petitioner called for immediate surgery for which purpose he had placed reliance upon a certificate issued by Dr. Maheep Singh Gaur. It was argued that the petitioner would like to be evaluated at Kumud Chawla Gamma Knife Centre, Goodwill Hospital and Research Centre, NOIDA. We had in view of this submission made at the Bar directed constitution of a Medical Board by the Director of AIIMS to review the medical papers relevant to the petitioner's present condition and to submit a report as to whether there was any need for surgery as suggested by the petitioner's doctor. We had left it open to the Medical Board to call the petitioner for a clinical examination should if it considered necessary to do so.

A Board comprising as many as 8 Doctors from different specialities was accordingly constituted by the AIIMS before whom the petitioner was produced in person for a clinical examination, apart from evaluation of his medical papers. The Board has based on their clinical examination and investigations submitted a report dated 02.01.2015 in which it has opined:

"On basis of above examination and investigations by the Medical Board, he was diagnosed to be suffering from Trigeminal Neuralgia with degenerative disc disease of the lumbar spine with Hypothyroidism and

Benign Hyperplasia of Prostate.

Radiological and blood investigation reports are enclosed in original.

At present, none of the above mentioned disease require surgical management but requires appropriate routine medical management on OPD basis.

The medical board concluded at 6.00 p.m."

It is evident from that above that the petitioner does not require any surgical intervention at this stage and that the diseases which he is found to be suffering from like Trigeminal Neuralgia, degenerative disc disease of the lumbar spine, Hypothyroidism and Benign Hyperplasia of Prostate can be handled in the OPD. We have no reason to doubt or reject the opinion given by the experts from the premier medical institute of the country. Mr. Vikas Singh, learned senior counsel all the same argued that some of the diseases namely degenerative disc disease of the lumbar spine with Hypothyroidism and Benign Hyperplasia of Prostate was developed by the petitioner during incarceration. There is nothing before us to support even that submission of learned counsel. Be that as it may since the Board has suggested only medical management on OPD basis, there is no compelling reason for us to enlarge the petitioner on bail at this stage when the petitioner is facing serious

charges some of which are punishable by imprisonment for life.

Mr. Vikas Singh at this stage submitted that the petitioner has been earlier treated by Dr. Arun Kumar Tyagi, Arogayadham Hospital and would like to continue with the treatment advised by him. There is no serious objection to that prayer being allowed. We also see no reason why the Doctor named by learned counsel for the petitioner should not be allowed to visit the petitioner in jail to administer such treatment as is considered necessary of course at the risk of the petitioner

It was next contended by Mr. Vikas Singh that the three witnesses described as material witnesses by the prosecution have not appeared despite efforts made by the Trial Court. He submits that in any case those witnesses are not material for purpose of determining whether the incident in question had indeed taken place. On behalf of the respondent it was submitted that the respondents had named only six out of a total of 58 witnesses as material witnesses, three of whom are already examined as mentioned earlier while the remaining three will be produced no sooner the third witness correctly made cross-examination is discharged. In that view all that we need to say is that the trial court shall take such steps as are necessary to ensure

that the trial of the petitioner does not get delayed unduly because of non-availability of witnesses. The trial will we are confident take all such steps as are necessary to have the witnesses served and produced before the Trial Court on such dates as may be fixed by it.

With these observations this special leave petition fails and and is hereby dismissed. Needless to say that after the recording of the material witnesses is complete, the petitioner shall be free to move a fresh application for grant of bail to him. In case any such application is made the trial court shall consider the same on its merits. We express no opinion on the merits of any such application.

SLP(C) Nos. 4916 of 2014 and 4918-4919 of 2014:

Post in May, 2015.

(Shashi Sareen)  
Court Master

(Veena Khera)  
Court Master



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ITEM NO.19

COURT NO.8

SECTION II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 6202/2016

(Arising out of impugned final judgment and order dated 18/07/2016 in SBCMB No. 3846/2016 18/07/2016 in SBCMB No. 5590/2016 passed by the High Court Of Rajasthan At Jodhpur)

ASHA RAM S/O THAWAR DASS @ THAUMAL

Petitioner(s)

VERSUS

STATE OF RAJASTHAN THR CHIEF SECRETARY

Respondent(s)

(with appln. (s) for exemption from filing c/c of the impugned judgment and exemption from filing legible copies of dim annexures and exemption from filing O.T. and permission to bring additional facts and documents on record and permission to file additional documents and interim relief and office report)

WITH

SLP(Crl) No. 6459/2016

(With appln.(s) for exemption from filing O.T. and appln.(s) for permission to file additional documents and appln.(s) for exemption from filing O.T. and Interim Relief and Office Report)

SLP(Crl) No. 7946/2016

(With appln.(s) for exemption from filing O.T. and appln.(s) for permission to file additional documents and appln.(s) for exemption from filing O.T. and Office Report)

Date : 24/10/2016 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE N.V. RAMANAFor Petitioner(s) Mr. Soli J. Sorabjee, Sr. Adv.  
Mr. Raju Ramchandran, Sr. Adv.  
Mr. Sandeep S. Ladda, Adv.  
Mr. Devender Singh, Adv.  
Mr. Soumik Ghosal,Adv.  
Mr. Devadatt Kamat, Adv.  
Mr. Gautam Talukdar,Adv.  
Mr. Rajesh Inamdar, Adv.  
Mr. Amol Chitale, Adv.  
Mr. Javedur Rahman, Adv.

Mr. Saurabh Ajay Gupta, Adv.  
Mr. Saurabh Singhal, Adv.  
Mr. Sewa Ram, Adv.  
Mr. Nishant Bishnoi, Adv.  
Ms. Shashi Bhusan, Adv.  
Ms. Stuti Chopra, Adv.

For Respondent(s) Mr. Tushar Mehta, ASG  
Ms. Ruchi Kohli, Adv.  
Mr. Yash Mishra, Adv.  
Mr. Sonam Sharma, Adv.  
Mr. V. Anand, Adv.  
Ms. Chandni Goyal, Adv.  
Ms. Nidhi Jaswal, Adv.  
Ms. Naina Sharma, Adv.  
Ms. A. Dewan, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Special Leave Petition (Crl.) No(s) . 6202/2016

In this petition the petitioner is seeking interim bail on the ground that he is suffering from various ailments which need immediate medical attention. Having regard to these averments in the special leave petition, the case of the petitioner was referred to All India Institute of Medical Sciences (AIIMS), New Delhi for medical examination. He was medically examined and a report dated 19.08.2016 is submitted by the AIIMS, New Delhi. As per the said report, a team of seven doctors was constituted which co-opted five doctors of various disciplines. As many as 29 tests were conducted, particulars whereof are given in the report. The petitioner, however, refused to undergo the following investigations:

- "1. Stress Thallium (Dobutamine)
- 2. MRI Prostate

## 3. Carotid Doppler.

On the basis of the tests conducted, the AIIMS, New Delhi had reported that he is diagnosed to have the following conditions:

1. Trigeminal Neuralgia
2. Cervical and lumbar spondylosis, Osteoarthritis knees
3. Primary Hypothyroidism
4. Prostatomegaly
5. Carpel Tunnel Syndrome
6. Coronary Artery disease (functional severity not established-as explained below)
7. Low vitamin D3 level (subclinical)

Overall, the report/finding of the Board is that the medical condition of the petitioner is 'stable'.

Though, the petitioner has filed objections to the said report wherein it is submitted that because of certain ailments which are established in the report of the AIIMS, New Delhi as well, the petitioner, who is 79 years of age, needs immediate medical attention and some of these ailments if not taken care of medically, will lead to further complications.

Mr. Mehta, learned ASG also does not dispute that medical treatment is needed in respect of the diseases with which the petitioner is suffering. However, he has given the suggestion that such treatment of high quality can be provided at All India Institute of Medical Sciences (AIIMS), Jodhpur itself. To another request of the learned senior counsel for the petitioner that the

petitioner wants Ayurvedic treatment, it is also responded by Mr. Mehta that there is a State Ayurvedic Hospital in Jodhpur namely Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur itself and State can ensure that the petitioner shall be treated there if he wants so.

We find the suggestion of Mr. Mehta to be quite reasonable and acceptable. Thus, subject to the consent of the petitioner, the petitioner shall be provided full medical facilities at AIIMS, Jodhpur and/or Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur while in judicial custody.

List on 21.11.2016

Special Leave Petition (Crl.) No(s). 6459/2016

Learned counsel for the petitioner points out that no formal notice has been issued in this special leave petition so far.

Issue notice.

Ms. Hemantika Wahi, Advocate-on-record accepts notice on behalf of the respondent/State.

Reply be filed before the next date of hearing.

List on 21.11.2016.

(Crl.) No. 7946/2016.

List on 21.11.2016.

(Ashwani Thakur)  
COURT MASTER



(Mala Kumari Sharma)  
COURT MASTER

// TRUE COPY //

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(CRIMINAL) NO.6202/2016

Asha Ram s/o Thawar Dass @ Thaumal ..Petitioner

versus

State of Rajasthan through Chief Secretary ..Respondent

O R D E R

To support the petitioner's claim for modification of the order passed by this Court on 24.10.2016, declining bail to the petitioner on medical grounds, learned counsel for the petitioner has drawn our attention to a communication dated 29.06.2016. Paragraph 6 thereof, to which our attention was drawn, is extracted hereunder:

"It is correct that Shri Asha Ram cannot perform his daily routine matters and cannot walk without the assistance of other inmate persons/tools. On the basis of prison medical records (as per Prison doctor and Ayurvedic doctor Sh. Arun Tyagi) many a times Shri Asha Ram suffers with stabbing pain in head and many times the urine and stool is passed in his clothes."

(emphasis is ours)

2. In addition to the above, learned counsel for the petitioner, drew our attention to the report dated 11.07.2016, submitted by the Superintendent, Central Prison, Jodhpur, based on a hospital prescription, wherein the petitioner had complained of urine and stool incontinence. Learned counsel for the petitioner was at pains to point out, that the afore-stated complaint should

be understood to mean, that the petitioner had no control either on urination or in passing stools.

3. In order to supplement the claim of the petitioner, with reference to his having no control on urination, learned counsel also drew our attention to a report dated 21.09.2016, furnished by the All India Institute of Medical Sciences, New Delhi, in furtherance of, and in compliance with, orders passed by this Court on 11.08.2016 and 30.08.2016. An extract of the above report, to the extent the same is relevant, is being reproduced hereunder:

"The petitioner refused to undergo the following investigations:

1. Stress Thallium (Dobutamine)
2. MRI Prostate
3. Carotid Doppler

On the basis of clinical and results of investigations received by medical board, he was diagnosed to have the following conditions:

1. Trigeminal Neuralgia
2. Cervical and lumbar spondylosis,  
Osteoarthritis knees
3. Primary Hypothyroidism
4. Prostatomegaly
5. Carpel Tunnel Syndrome
6. Coronary Artery disease (functional severity not established, as explained below)
7. Low vitamin D3 level (subclinical)

Radiological and blood investigation reports are enclosed in original.

Findings from the extent of completed evaluation reveal the petitioner's medical condition as 'Stable'. However, coronary, carotid and prostate evaluation remained incomplete as the petitioner refused to undergo the requisite tests.

(emphasis is ours)

Referring to the aforesaid report, it was submitted on behalf of the petitioner, that the petitioner was pointedly diagnosed, as

having a condition of 'prostatomegaly'. It was submitted, that the aforesaid condition, is relatable to the prostate gland, wherein there is no control on urination.

4. In order to appreciate the submissions advanced at the hands of the learned counsel for the petitioner (seeking modification of this Court's order dated 24.10.2016), it is essential to extract the relevant part of the aforesaid order. The same is accordingly reproduced below:

"In this petition the petitioner is seeking interim bail on the ground that he is suffering from various ailments which need immediate medical attention. Having regard to these averments in the special leave petition, the case of the petitioner was referred to All India Institute of Medical Sciences (AIIMS), New Delhi for medical examination. He was medically examined and a report dated 19.08.2016 is submitted by the AIIMS, New Delhi. As per the said report, a team of seven doctors was constituted which co-opted five doctors of various disciplines. As many as 29 tests were conducted, particulars whereof are given in the report.

xxx                   xxx                   xxx                   xxx

xxx                   xxx                   xxx                   xxx

Overall, the report/finding of the Board is that the medical condition of the petitioner is 'stable'. Though, the petitioner has filed objections to the said report wherein it is submitted that because of certain ailments which are established in the report of the AIIMS, New Delhi as well, the petitioner, who is 79 years of age, needs immediate medical attention and some of these ailments if not taken care of medically, will lead to further complications. Mr. Mehta, learned ASG also does not dispute that medical treatment is needed in respect of the diseases with which the petitioner is suffering. However, he has given the suggestion that such treatment of high quality can

be provided at All India Institute of Medical Sciences (AIIMS), Jodhpur itself. To another request of the learned senior counsel for the petitioner that the petitioner wants Ayurvedic treatment, it is also responded by Mr. Mehta that there is a State Ayurvedic Hospital in Jodhpur namely Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur itself and State can ensure that the petitioner shall be treated there if he wants so. We find the suggestion of Mr. Mehta to be quite reasonable and acceptable. Thus, subject to the consent of the petitioner, the petitioner shall be provided full medical facilities at AIIMS, Jodhpur and/or Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur while in judicial custody.

List on 21.11.2016."

(emphasis is ours)

5. It was submitted, that the instant application for modification, had been filed by the petitioner, in spite of the offer made at the behest of the learned counsel representing the State of Rajasthan, that adequate treatment would be available to the petitioner, at the All India Institute of Medical Sciences, Jodhpur, and/or the State Ayurvedic Hospital in Jodhpur. It was pointed out during the course of hearing, that both the aforesaid hospitals, where the petitioner was relegated for treatment, do not have the facilities, for extending specialized treatment, for the ailments suffered by the petitioner. This position has expressly been depicted by the petitioner, in his application for modification. The manner in which the submission has been canvassed, emerges from the averments contained in paragraphs 2 to 4 of the said application, which are reproduced below:

"2. The petitioner/Applicant is constrained to move this Hon'ble Court for a partial modification of the Order dated 24.10.2016 inasmuch as instead of the State Ayurvedic Hospital in Jodhpur and

AIIMS Jodhpur, the petitioner is urging this Hon'ble Court that the treatment may be given at AIIMS, Delhi and in Ayurvedic Hospital situated at Delhi.

3. Pursuant to the order dated 24.10.2016, the Petitioner/Applicant sent his authorized representative to AIIMS Jodhpur and it was found that for the diseases suffered by him, AIIMS Jodhpur does not have the necessary facilities. Besides, it has also been confirmed that there is no Inpatient Department at AIIMS, Jodhpur. In view of the report of the Medical Board of AIIMS, the following specialties are essential for treatment of the Petitioner.

- i. Neurology
- ii. Urology
- iii. Endocrinology
- iv. Cardiology
- v. Rheumatology
- vi. Geriatric Medicine; etc.

None of the above facilities are available in AIIMS Jodhpur. The screenshort taken from the website of AIIMS Jodhpur shows that none of the above specialized Departments are available in AIIMS, Jodhpur. Copy of the screenshot taken from the website of AIIMS Jodhpur on 25.10.2016 is annexed hereto and marked as Annexure A-1(pg 12-13).

4. Even as far as the State Ayurvedic Hoispital is concerned, the facilities at Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur, are extremely basic. As a matter of fact, the Jodhpur Sessions Court vide its order dated 03.12.2013 passed an order to constitute a medical board under the supervision of Dr. Sarvepalli Radhakrishnan Ayurveda University, Jodhpur. A medical board of three Ayurvedic consultants was constituted by Dr. Sarvepalli Radhakrishnan Ayurveda University headed by Dr. Arun Tyagi who was the Head of Department of Medicine at the University at that time. From 18.12.2013 to 09.07.2014 he was provided multiple sittings of IPD, day care and OPD based treatments under supervision of Dr. Arun Tyagi at Dr. Sarvepalli Radhakrishnan Ayurveda University Hospital, Jodhpur with no satisfactory improvement. Further Dr. Arun Tyagi was allowed to treat the petitioner in Jail by this Hon'ble Court vide order dated 20.01.2015 in SLP(Crl.) No. 3852 of 2014. The said Dr. Tyagi, as far back as on 07.10.2015, had reported to the

Jail Authorities that the Ayurvedic facilities at the Hospital are not adequate and that he had recommended specialized treatment at Kerala Hospitals. True and typed copy of the report of Dr. Arun Tyagi dated 07.10.2015 submitted to the Jail Authorities is annexed hereto and marked as Annexure A-2 (pg 14-17)."

Based on the aforesaid suggestions at the hands of the learned counsel for the petitioner, it was prayed, that the petitioner be granted bail, on account of the medical condition suffered by him.

6. The instant application for modification of this Court's order, dated 24.10.2016, has vehemently been opposed by the learned Additional Solicitor General, representing the State of Rajasthan. It was contended on behalf of the respondent - State of Rajasthan, that the petitioner does not suffer from any serious medical complication. Relying on the medical report of the All India Institute of Medical Sciences, extracted hereinabove, it was submitted, that the findings of the medical board, comprising of eight senior doctors of the hospital reveal, that the petitioner's medical condition was stable. It is also pointed out, that the report expressly indicates, that the 'coronary, carotid and prostate evaluation of the petitioner depicted in the report cannot be relied upon, in view of the fact, that evaluation on those medical conditions remained incomplete because the petitioner refused to undergo the requisite tests. From the extract, recorded hereinabove, it was submitted, that the petitioner without any justification, declined to undergo the 'MRI Prostate' examination, which would have clearly disclosed the actual condition of the petitioner, with reference to his prostate evaluation.

7. In spite of the submissions advanced at the hands of the learned counsel for the petitioner, it was submitted at the behest of the State of Rajasthan, that the petitioner has been extended treatment at the Mahatama Gandhi Medical College and Hospital at Jodhpur itself, ever since 2013. It was submitted, that the treatment at the said hospital was of the highest standard available, and that persons holding highest posts at Jodhpur, get medical treatment, at the said hospital. It is submitted, that not only the hospital specializes, in the field of Urology and Kidney Transplant, it also has all facilities to deal with the condition of the petitioner.

8. We have given our thoughtful consideration, to the submissions advanced at the hands of the learned counsel for the rival parties.

9. The issue that boils down in respect of the medical condition of the petitioner is that, he has difficulty in urination, emerging out of a condition described as prostatomegaly. We are of the view, that the present condition, is not such a serious condition, as would entail the transfer of the petitioner from one jail to another, or to require him to be subjected to any kind of specialized treatment, at some different station. The medical condition of the petitioner has been described as stable, and as such, there is no question of extending him the concession of bail on medical grounds.

10. For the reasons recorded hereinabove, we find no justification, to interfere with, or modify the order passed by

this Court, on 24.10.2016.

11. The instant petition being devoid of any merit is accordingly hereby dismissed.

.....CJI.  
[JAGDISH SINGH KHEHAR]

NEW DELHI;  
JANUARY 30, 2017.

.....J.  
[N.V. RAMANA]

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CRL.) No(s) . 6202/2016

(Arising out of impugned final judgment and order dated 18.07.2016 in SBCR MA No. 5590/2016 in SB Crl.Misc. 3<sup>rd</sup> Bail Application No. 3846/2016 passed by the High Court for Rajasthan at Jodhpur)

ASHA RAM S/O THAWAR DASS @ THAUMAL

**Petitioner(s)**

## VERSUS

Date : 30/01/2017 This petition was called on for hearing today.

**CORAM :**

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE N.V. RAMANA

**For Petitioner(s)** Mr. Shekhar Naphade, Sr. Adv.  
Mr. Devadatt Kamat, Adv.  
Mr. Rajesh Inamdar, Adv.  
Mr. Sndeep S. Ladda, Adv.  
Mr. Javedur Rahman, Adv.

**For Respondent(s)** Mr. Tushar Mehta, ASG  
Ms. Ruchi Kohli, Adv.  
Mr. Yash Mishra, Adv.  
Mr. Vieraj Anand, Adv.  
Mr. Adit Khurana, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The special leave petition stands dismissed, in terms of the signed order.

(Renuka Sadana)  
Assistant Registrar  
[signed or

(Parveen Kumar)  
AR-cum-PS

John

[signed order is placed on the file]

// TRUE COPY //