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**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Bail Appln.No.32 of 2018
In Cril.J.A.No.4 of 2018

Sandam Bhogen Meetei, aged about 38 years, s/o S. Bheigya Meetei of
Sairemkhul Mayai Leikai, PO & PS Lamsang, District Imphal West, Manipur.

..... Petitioner

– Versus –

State of Manipur

.... Respondent

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner	:	Mr. S. Jibon, Adv.
For the Respondents	:	Mr. H. Samarjit, PP
Date of reserved	:	14.07.2022.
Date of order	:	23.08.2022.

JUDGMENT & ORDER
(CAV)

[1] This petition has been filed by the petitioner, who is in jail under Section 389(1) of Cr.P.C. praying for releasing him on bail by suspending the sentence dated 19.10.2018 pending criminal appeal.

[2] By the judgment dated 16.10.2018, the learned Special Judge (POCSO), Imphal West, convicted the petitioner under Section 6 of the POCSO Act, 2012 and by the order dated 19.10.2018, he was sentenced to undergo 20 years rigorous imprisonment and to pay fine of Rs.30,000/-, in default to undergo 6 months simple imprisonment.

[3] The petitioner has preferred jail appeal. Along with the appeal, he has filed the present petition seeking to suspend the sentence stating that during the course of trial, the learned trial Judge had violated the mandatory provision provided in Section 35(2) of the POCSO Act, 2012 and the petitioner was wrongly implicated by the complainant in view of the earlier enmity.

[4] The learned counsel for the petitioner submitted that the petitioner is a patient who has been suffering from failure of right kidney, calculi on the gall bladder, spinal cord problem and other serious bodily injuries, which were made caused from the shot with gun on different parts of body of the petitioner by some unknown persons on 8.8.2017. He would submit that the petitioner is unable

to freely sit, stand and sleep without waist belt because of his ailment on spinal cord due to such bullet injuries.

[5] The learned counsel further submitted that in the jail too, the petitioner is facing such problem and his conviction was made ahead of one day of his admission in RIMS hospital for removal of right kidney as well as for removal of gall bladder by performing major operation. His failed right kidney has become crucial day by day in the jail as removal of his right kidney and gall bladder by performing major operation was become failed due to his conviction on 16.10.2018.

[6] The learned counsel urged that if the petitioner is not released on bail +pending disposal of the appeal, his life will be shortened within a short duration due to becoming more serious than earlier of his failed right kidney. Thus, a prayer is made to grant bail in the pending appeal to save the life of the petitioner.

[7] The learned counsel for the petitioner next submitted that there are lot of infirmities in the impugned judgment and that the petitioner has a good case on merits in succeeding the appeal. He would submit that the petitioner is the sole bread winner of his family consisting of his wife and four daughters and

he has to look after them. He would submit that the petitioner was in jail from 19.10.2018, apart from judicial custody during trial.

[8] The learned counsel then submitted that the appeal would not be taken up for hearing in the near future and, therefore, the petitioner is entitled to suspension of sentence pending appeal and that the petitioner undertakes to abide by the conditions imposed by this Court.

[9] Per contra, the learned Additional Public Prosecutor submitted that the petitioner is not entitled to suspension of sentence taking into consideration the sexual assault upon the victim, who is a minor girl aged 3 ½ years at the time of occurrence.

[10] As far as the ailment alleged by the petitioner is concerned, the learned Additional Public Prosecutor submitted that in the jail lot of facilities are available to treat the petitioner and, therefore, there is no necessity for the petitioner in taking treatment outside the jail.

[11] By placing reliance upon the decision of the Hon'ble Supreme Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and others, (1994) 6 SCC 731***, the learned Additional Public Prosecutor submitted that where the under trial accused is

charged with an offence under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an under-trial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount. He urged that when aforesaid is being the condition imposed by the Apex Court for under-trials, the petitioner who is a convict in POCSO Act and who has not suffered half of the term i.e. 10 years, cannot be enlarged on bail by suspending the sentence. Thus, a prayer is made to dismiss the petition.

[12] This Court considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[13] The petitioner was convicted and sentenced to undergo 20 years rigorous imprisonment and to pay fine of Rs.30,000/- under Section 6 of the POCSO Act and in default of fine, he has to undergo 6 months simple imprisonment. On deposit of the fine, the same should be given to the victim as compensation. The trial Court also recommended for providing compensation of Rs.5 lakh under Section 357A read with the Victim Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 to the victim through her guardian. The judgment of the learned Special Judge is dated

16.10.2018 and the sentence was imposed on 19.10.2018. The petitioner is in jail since 19.10.2018.

[14] The petitioner has challenged the judgment of the learned Special Judge on various grounds as could be seen from the grounds of appeal. The petitioner has raised a ground that the petitioner and the witnesses who were examined by the prosecution were from two rival factions. All these witnesses were having animus against the petitioner. Therefore, in order to prove the charges levelled against the petitioner beyond reasonable doubts, it was necessary for the prosecution to examine natural and independent witnesses when they were available to them.

[15] The other ground raised by the petitioner is that the alleged two injuries found over the vulva of the victim can be caused due to falling on blunt surface and it cannot be caused by a private part of the male and if the private part of the petitioner has caused such two injuries over the vulva of the victim, it is compulsory to cause something abnormal on the private part of the petitioner. But nothing has been stated by the medical officer in his report. Thus, the learned trial Judge without any evidence has wrongly converted the stick which caused injuries over the vulva of the victim to be the private part of the petitioner by discharging the statement of victim who deposed as P.W.5 and before the

Investigating Officer and also before the Magistrate who recorded the statement under Section 164 Cr.P.C. In case the learned trial Judge applied his judicious mind regarding the same, the petitioner would not be convicted.

[16] It appears that one of the grounds urged by the petitioner for setting aside the impugned judgment is that the learned trial Judge had violated the mandatory provision provided in Section 35(2) of the POCSO Act, 2012. The aforesaid grounds raised by the petitioner and referred to by this Court cannot be gone into at this stage, as the same would involve arguments, coupled with the judicial pronouncements in that regard. Further, the merits of the judgment regarding the injuries over the vulva of the victim canvassed by the learned counsel for the petitioner also cannot be gone into at this stage.

[17] Now the point that arises for consideration is whether the petitioner is entitled to enlarge on bail by suspending the sentence on medical grounds pending appeal.

[18] According to the petitioner, his failed right kidney has become crucial day by day in the jail. Further, the petitioner was suffering calculi on the gall bladder and spinal cord, apart from other serious bodily injuries. Therefore, his prayer is to enlarge him on bail for taking better treatment outside the jail.

[19] While imposing sentence, the learned trial Judge recorded the submissions of the learned counsel for the petitioner to the effect that the petitioner is a patient of different diseases such as (i) right kidney failure; (ii) calculi in gall bladder; (iii) spinal cord problem. Though the aforesaid recording of the submission is of the year 2018, still the petitioner complaining of the same diseases and prayed for bail.

[20] By producing the health status report of the petitioner dated 14.10.2019 issued by the Superintendent of Manipur Central Jail, Sajiwa, the learned Additional Public Prosecutor submitted that no immediate surgery or related treatment is required, however, the inmate is still complaining of pain abdomen and generalized weakness and his symptoms have not been relieved.

[21] As stated supra, the said report is dated 14.10.2019 and the current health status of the petitioner has not been produced by the prosecution. When the petitioner who is a convict prisoner complains of his severe health problems/issues, it is the bounden duty of the prosecution/jail Superintendent to produce the latest health records of the petitioner to show that the petitioner is hale and healthy in jail. Further, for the ailment, if any, the jail authorities are providing timely treatment to the petitioner to save his life.

[22] Though the crime alleged against the petitioner is serious in nature and also affront to the human dignity of the society, taking into consideration the health condition of the petitioner that failure of his right kidney and also becoming more serious of his gall bladder from calculi, in order to take better treatment outside the jail, this Court considers it appropriate to release the petitioner on bail mainly on medical grounds by suspending the sentence. Furthermore, this Court finds that due to practical reason, the appeal could not disposed of expeditiously.

[23] At this juncture, it is to be pointed out that time and again, the Hon'ble Supreme Court and this Court held that when a convicted person is sentenced to a fixed period of sentence and the appellate Court finds that due to practical reasons the appeal cannot be disposed of expeditiously, it can pass appropriate orders for suspension of sentence.

[24] In *Bhagwan Rama Shinde Gosai and others v. State of Gujarat*, (1999) 4 SCC 421, the Hon'ble Supreme Court held:

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter.

Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence, so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.”

[25] In *Union of India v. Ram Samujh and another*, (1999) 9 SCC 429, the Hon'ble Supreme Court held that the jurisdiction of the Court to grant bail is circumscribed by the Act. The bail can be granted and sentence suspended in a case where there are reasonable grounds for believing that the accused is not guilty of the offence for which he is convicted and he is not likely to commit any offence while on bail and during the period of suspension of sentence.

[26] As stated supra, the Hon'ble Supreme Court in the case of *Bhagwan Rama Shinde Gosai* (supra), held that the prayer for suspension of

sentence pending appeal should be considered liberally unless there is any statutory restriction.

[27] Where an appeal is preferred against conviction before the High Court, the High Court has ample power and discretion to suspend the sentence. That discretion has to be exercised judiciously depending upon the facts and circumstances of each case. While considering the suspension of sentence, each case has to be considered on the basis of the nature of the offence, the manner in which the occurrence had taken place, whether bail granted earlier had been misused. There was no straitjacket formula which could be applied in exercising discretion and the facts and circumstances of each case would govern the exercise of judicious discretion while considering an application filed by a convict under Section 389 Cr.P.C.

[28] The petitioner is the resident of Sairemkhul Mayai Leikai, where the family of the victim resides. Therefore, there is no apprehension that the petitioner will abscond/give a slip to the law, if his sentence is suspended and he is released on bail. Nothing has been produced by the prosecution to show that the petitioner has absconded during trial and will abscond during the bail period. Though the serious or gravity of offence is to be seen in cases where accused/convict is punished with death penalty, life imprisonment or

imprisonment of more than 10 years, wherein, while considering the application for suspension and bail the judicial discretion lies in the wisdom of the Court.

[29] Right to life and liberty of an individual is precious under Article 21 of the Constitution of India and is also a very valuable right of accused/convict which also continues during the appeal period, as appeal is the continuation of the trial. The medical records available on record would *prima facie* reveal that failure of right kidney of the, calculi in gall bladder and spinal cord problem. As stated supra, though the medical records produced are of the year 2019, nothing has been produced by the prosecution to show improvement in the health of the petitioner and also failed to produce any latest medical record pertaining to the petitioner to show that in jail proper treatments are given to the petitioner for nearly four years.

[30] At this juncture, it apposite to mention that under-trial prisoner's right to life does not diminish even a wee bit when in jail as an accused/convict for an offence and such person's health concerns have to be taken care by the State and if not done so, by the judiciary. The right to dignity of an accused does not dry out with the Judges. Rather, it subsists beyond the prison gates and operates until his last breath.

[31] The most precious fundamental 'right to life' unconditionally embraces even an under-trial. Owing to the apparent precarious health condition of petitioner as he is suffering from right kidney failure; calculi in gall bladder and spinal cord problem, it is necessary that he should get himself adequately and effectively medically treated. Every person who is accused of an offence requires a humane treatment by the prison authorities. Humane treatment to all including accused/convict is requirement of law. Furthermore a prisoner/convict who is suffering from an ailment has to be given due treatment and care while in prison.

[32] In view of the aforesaid and as stated supra and also considering the totality of the facts and circumstances and for the reasons noted above, on health ground, this Court is persuaded to suspend the sentence of the petitioner/convict.

[33] Accordingly, the sentence imposed on the petitioner in Special Trial(POCSO) case No.15 of 2015 against the petitioner on the file of the learned Special Judge(POCSO), Imphal West vide order dated 19.10.2018 is suspended, subject to the compliance of the following conditions by the petitioner:

- (a) the petitioner is directed to be released on bail on his furnishing a personal bond for Rs.50,000/-(fifty Thousand) with two sureties in

the like sum to the satisfaction of the learned Special Judge(POCSO), Imphal West, Manipur.

(b) the petitioner, on his being enlarged on bail, is directed to report before the learned Special Judge(POCSO), Imphal West on all Tuesdays and Fridays at 10.00 am till the disposal of the appeal pending before this Court.

(c) the petitioner shall also report before the Border Affairs Police Station on the first Monday of every month at 10.00 am.

(d) The petitioner shall not indulge in any criminal activities during the period of suspension of sentence.

(e) The Border Affairs Police is directed to monitor the petitioner and if any they find the petitioner involved in any criminal activities, the Border Affairs Police is at liberty to bring it to the notice of this Court through the Public Prosecutor.

(f) The petitioner shall not leave the jurisdiction of the Court.

(g) In case of violation of any condition, the prosecution may ask for cancellation of bail.

(h) It is made clear that this Court has not delved into the merits of the appeal.

JUDGE

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