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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 291/2020**

BABU LAL Appellant

Through: Mr. Amit Chauhan, Adv.

versus

STATE (N.C.T. OF DELHI) Respondent

Through: Ms. Asha Tiwari, APP.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **20.04.2020**

Crl.M.(BAIL) 5786/2020 (application u/s 389 of Cr.P.C. for suspension of sentence and grant of bail to the appellant)

1. The criminal appeal stands admitted by order dated 13.04.2020.
2. Notice was issued on this application seeking suspension of sentence on 13.04.2020, which was accepted by Ms. Asha Tiwari, learned APP for the State. In view of the averments made by the appellant, by the same order, the Jail Superintendent was also directed to furnish a report on the appellant's medical condition.
3. In compliance of the order, medical report dated 14.04.2020 has since been submitted, which, after reciting the medical history of the applicant, records as under :

“ x x x x x

Accordingly, all relevant investigations were done and appropriate treatment was started for the patient. The

investigation reports have confirmed high blood sugar level of the patient (Photocopy enclosed) and high blood pressure was recorded on various occasions.

He was seen by Jail visiting Medicine specialist on 26.02.2020 in view of the above mentioned conditions and appropriate treatment was given. He was seen by Eye specialist on 18.03.2020 in view of operated cataract in both eyes and advised accordingly. He was last reviewed by jail Duty Doctor on 07.04.2020 and given appropriate treatment.

At present, his condition is stable and satisfactory and prescribed medications are being provided from Jail Dispensary itself.”

4. Mr. Amit Chauhan, learned counsel appearing for the appellant however states that medical report dated 14.04.2020 does not accurately reflect the true medical condition and the underlying morbidities from which the appellant is suffering. He points-out that the contents of Discharge Summary dated 13.09.2016 prepared by Max Super Speciality Hospital, Vaishali, Ghaziabad which records the course of treatment the appellant had undergone in 2016 relating to various illnesses, *inter alia* myasthenia gravis with aspiration pneumonitis, Type-II diabetes mellitus, hypertension and bronchial asthma for which the appellant was hospitalised from 23.08.2016 to 13.09.2016. Mr. Chauhan further draws attention to the OPD Record of the applicant at the Guru Govind Singh Government Hospital, Raghbir Nagar, New Delhi to submit that the appellant remains under heavy medication and requires regular monitoring and care for him to remain in a stable medical condition. It is noticed that the OPD Record of the appellant shows that he was examined atleast upto

02.01.2020. It is further submitted that the appellant is a retired school teacher aged about 73 years ; and that, as evidenced by the record, his past medical condition puts him in a vulnerable category, that makes it medically unsafe for him to remain in prison in the present circumstances of the prevalent public health emergency.

5. While Ms. Asha Tiwari, learned APP for the State, opposes the suspension of the sentence since the appellant has been convicted under section 6 read with section 5(m) of the POSCO Act and has been sentenced to 10 years in prison, she does not dispute that the appellant is certainly in a medically vulnerable position in prison. The APP confirms that the applicant has paid the fine of Rs. 10,000/- that was imposed on him as part of the sentence ; and that the victim as also received 1.25 lacs under the Delhi Victim Compensation Scheme, 2018.
6. Although the record shows that the applicant has only been in prison since 24.02.2020 which was the date the sentencing order was passed ; and that he has been convicted of heinous offences under the POCSO Act, in the unprecedented circumstances of a public health emergency that prevail today and the consequent need to decongest prisons for the overall medical safety of all prisoners, this court is persuaded to grant to the appellant *interim* suspension of sentence for a period of three months subject to the following conditions :
 - (a) The appellant shall furnish a personal bond in the sum of Rs.50,000/- to the satisfaction of the Jail Superintendent. Considering the prevailing lockdown, the furnishing of surety as a condition of bail, is dispensed with at this stage ;
 - (b) The appellant will not leave the State of Delhi without

permission of the court and *ordinarily* reside in his place of residence as per prison records ;

- (c) The appellant will make a video-call every Friday between 11 am and 11:30 am to the Investigating Officer, and in case the Investigating Officer is no longer in service or is otherwise unavailable, then to the SHO of the Police Station where the case was registered and also 'drop-a-pin' on Google maps, so that the IO/SHO can verify the appellant's presence and location. Counsel for the appellant has confirmed that the appellant has the wherewithal to comply with this condition ;
 - (d) The appellant shall furnish to the Jail Superintendent a cellphone number on which the appellant may be contacted and shall ensure that the number is kept active and switched-on at all times ;
 - (e) If the appellant has a passport, he shall also surrender the same to the Jail Superintendent upon revocation/easing of the prevailing lockdown;
 - (f) The appellant will not indulge in any act or omission that would prejudice the proceedings in the appeal in any manner;
 - (g) Upon expiry of the period of interim suspension of sentence, the appellant shall surrender before the concerned Jail Superintendent.
- 7. The application stands disposed of in the above terms.
 - 8. List before Roster Bench in the category of 'Regular' matters in due course.
 - 9. Copy of this order be sent to the concerned Jail Superintendent.

ANUP JAIRAM BHAMBHANI, J.

APRIL 20, 2020/uj

