

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 28104 of 2024

Applicant :- Qayamuddin

Opposite Party :- State of U.P.

Counsel for Applicant :- Raghuvansh Misra, Sarve Nazir, Zafar Abbas

Counsel for Opposite Party :- Brijesh Kumar Mishra, G.A., Vinayak Varma

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Raghuvansh Misra, learned counsel for the applicant, Sri Vinayak Varma, learned counsel for the first informant and Sri Birendra Pratap Singh, learned counsel for the State and perused the material on records.

3. This is second bail application of the applicant. The first bail application of the applicant was rejected by this Court vide order dated 29.11.2023 passed in Criminal Misc. Bail Application No. 1727 of 2023 (Qayamuddin vs. State of U.P.).

4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Qayamuddin, seeking enlargement on bail during trial in connection with Case Crime No. 105 of 2022, under Sections 147, 148, 149, 323, 325, 504, 506, 302, 307, 308/34, 120-B I.P.C., Police Station Baghauch Ghat, District Deoria.

5. This Court on 05.09.2024 passed the following order:-

"1. Heard Sri Sarve Nazir, learned counsel for the applicant, Sri Ajay Singh, learned A.G.A.-I for the State, Sri Ashok Kumar Yadav, Advocate, holding brief of Sri Brijesh Kumar Mishra, learned counsel for the first informant and perused the record.

2. Learned counsel for the applicant submits that the applicant is unwell in jail and on his application dated 16.4.2024 an order was passed by the Additional Sessions Judge, Court No. 1, Deoria on 22.4.2024 for providing him appropriate facility for treatment and direction was issued to the Jail Superintendent, District Jail, Deoria for it, but the Jail Superintendent, District Jail, Deoria through his letter dated 15.5.2024 has refused providing him treatment stating that due to Code of Conduct/Lok Sabha Election force is not available and once the force is available then steps will be taken for the surgery of the accused-applicant.

3. This is totally unacceptable. The accused is in custody under supervision of the State. The State cannot by any stretch decline providing him adequate medical facility on any ground. In the present case, in the opinion of the Court, the ground as taken by the Jail Superintendent, District Jail, Deoria is totally uncalled for.

4. The District Magistrate, Deoria and the Superintendent of Police, Deoria are directed to look into the matter personally and file their personal affidavits within two (02) weeks and also intimate the Court as to why adequate arrangements for surgery of the applicant were denied. They shall also intimate under what circumstances movement of the applicant for surgery was denied and who was responsible for it since if surgery was opined then the same cannot wait on the whims of officers but has to be performed on the opinion of the doctors. Needless to state, the care during illness and providing of medical facility to an under trial is also the responsibility of the State to which it cannot escape.

5. Let the matter be listed on 30.09.2024.

6. Office to communicate this order to the District Magistrate, Deoria and the Superintendent of Police, Deoria within two days from today for compliance."

6. In compliance of the said order, personal affidavit of Ms. Divya Mittal, District Magistrate, Deoria and Sri Sankalp Sharma, Superintendent of Police, Deoria have been filed which are on record.

7. The perusal of the personal affidavit dated 27.09.2024 of the District Magistrate, Deoria goes to show that the District Magistrate ordered an enquiry in the matter to be done by the Additional District Magistrate (Administration) and Additional Police Superintendent (North) with regard to proper medical treatment of the accused-applicant and a report was submitted that the treatment of the accused-applicant is going on continuously from District Jail and he was sent to the District Hospital and local Medical College for better treatment. It further states that on 23.01.2024 the accused-applicant was referred to BRD Medical College by the Surgery Department Maharshi Devraha Medical College and on 23.02.2024, 29.03.2024 and 29.04.2024 he was sent for treatment. He is undergoing treatment in the District Jail under the supervision of Medical College and his case is not an emergency case. It further states that proper treatment has been provided to the accused-applicant. It further states that from 23.01.2024 to 13.09.2024 police was provided 12 times and his surgery was done on 09.07.2024 at BRD Medical College. On 03.05.2024, 11.05.2024 and 13.05.2024 the force could not be provided on account of its deployment in Assembly Election but the accused-applicant was under supervision of doctors and proper treatment was given to him.

8. Further a supplementary affidavit 15.12.2024 has been filed on behalf of the applicant and reliance has been placed at page 39 of the same being letter dated 02.12.2024 of the Superintendent of Police, District Jail, Deoria addressed to the trial court stating therein that since the accused-applicant is admitted in the jail hospital his production the Court is not possible.

9. Learned counsel for the applicant submits that in so far as the treatment & hospitalization of the accused-applicant is concerned, the same has now become counter-productive in as much as due to his admission in the hospital, he is unable to be produced before the trial court concerned and thus the trial is pending.

10. The concern of the Court was previously on account of the fact that if an accused under the supervision of the State is in jail and surgery or immediate medical attention is needed then it is the responsibility of the State to provide him with appropriate, adequate and required treatment and the same cannot be refused to him on any count as has been in the present matter as the surgery of the applicant was scheduled but he was not taken to the hospital on account of non-availability of police force due to the Lok Sabha Elections and Code of Conduct being in-force.

11. Although the personal affidavit of the District Magistrate concerned goes to

show that the applicant has been provided with adequate and proper medical treatment but the same also states that three times he was not produced before the doctor concerned due to non-availability of police force as the deployment was for election purposes. In so far as the medical treatment of the accused-applicant is concerned, since the affidavit of the District Magistrate states that proper and efficient medical treatment is being given and provided to him and there being nothing contrary to it on record, this Court does not propose to enter into this issue any further and feels satisfied with the deposition in the affidavit of the District Magistrate concerned.

12. However, the issue regarding non-availability of force due to their deployment in the Assembly Elections due to which the accused-applicant could not be taken to the hospital on three dates for treatment cannot be appreciated. The life of an individual even though he is in jail cannot be taken for ransom for any reason. The State is under a bounden duty to protect the life of a citizen. The State should ensure that timely and proper treatment is available to the jail prisoners irrespective of any activity within the area or within the State.

13. This order be communicated by the Registrar (Compliance) to the District Magistrate concerned, The Chief Secretary, Government of Uttar Pradesh, Lucknow and the Director General of Police, Government of Uttar Pradesh, Lucknow for compliance.

14. In so far as the non-appearance of the accused-applicant before the trial court due to his hospitalization as has been informed and brought forward before the Court on the basis of letter dated 02.12.2024 of the Superintendent of Police, District Jail, Deoria is concerned, let a fresh report be called for regarding the status of the medical condition of the applicant and the feasibility of his appearance physically before the trial court concerned. Even the Superintendent of Police, District Jail concerned shall intimate whether the appearance of the accused-applicant through Video Conferencing before the trial court is possible and the accused gives its consent for it or not and the viability of the same.

15. The report be called for within 10 days.

16. Let the matter be listed on **06.03.2025**.

Order Date :- 17.2.2025

AS Rathore

(Samit Gopal,J.)