

Karnataka High Court
Mr Afsar Khan vs State Of Karnataka By on 4 May, 2023
Bench: G Basavaraja

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CRL.P No. 3846 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE G BASAVARAJA
CRIMINAL PETITION NO. 3846 OF 2023

BETWEEN:

1. MR AFSAR KHAN, S/O LATE BASHEER KHAN,
AGED ABOUT 42 YEARS,
R/AT NO.912, 31ST CROSS,
4TH T BLOCK, TIALK NAGAR,
BENGALURU-560041.

...PETITIONER

(BY SRI. KARIAPPA N A.,ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
SUDDAGUNTEPALYA POLICE STATION,
BANGALORE CITY-560093.

(REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BANGALORE_-560001.

Digitally signed by
PRAMILA G V

Location: HIGH
COURT OF
KARNATAKA

(BY SRI.R.D.RENUKARADHYA,ADVOCATE)

...RESPONDENT

CRL.P FILED U/S.482 CR.P.C BY THE ADVOCATE FOR THE
PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE
PLEASED TO SET ASIDE THE ORDER DTD 28-04-2023 PASSED IN
S.C.NO.784/2021 WHICH IS PENDING ON THE FILE OF HONBLE XXXII
ADDITIONAL CITY CIVIL AND SESSIONS JUDGE FOR CBI CASES
BANGALORE CITY AS PER ANNEXURE A AND CONSEQUENTLY DIRECT
THE JAIL AUTHORITIES OF CENTRAL PRISON, PARAPPANA AGRAHARA,
BANGALORE, TO SUBMIT THE MEDICAL HEALTH STATUS REPORT OF
PETITIONER BEFORE TRIAL COURT, TO DECIDE BAIL APPLICATION.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE
COURT MADE THE FOLLOWING:

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ORDER

The petition is filed under Section 482 of Cr.PC to set aside the order dated 28.04.2023 passed in SC No.784/2021, on IA filed under Section 91 of Cr.P.C by XXXII Additional City Civil and Sessions Judge, CBI court, Bengaluru.

2. On behalf of accused No.1/petitioner, the application was filed to call for medical report from prison authority to know the health condition of accused No.1.

3. The learned Special Judge for CBI cases has rejected the application.

4. It is submitted by the learned counsel for the petitioner that in order to decide the bail application filed on behalf of present petitioner, it is required to know the health condition of the petitioner. That is why application was filed. But same is rejected by the trial court, which is not sustainable under law. It is submitted by the learned counsel for the petitioner that still the bail application is pending before the trial court. If the application filed under Section 91 of Cr.PC is allowed, it will be helpful to the trial court to adjudicate the bail CRL.P No. 3846 of 2023 application in accordance with law. On all these grounds sought for allow this application.

5. A perusal of the material placed before this court, this court has noticed that on the basis of the complaint filed by one Mohammad Rafeeq, the Suddaguntepalya police have registered a case against accused Nos.1 to 4 in Cr.No.69/2021 for the commission of offences punishable under Sections 120B, 143, 147, 148, 302 R/w Section 149 of IPC.

6. The copy of the order sheet reveals that the accused No.1 is in Judicial custody. Annexure B is the copy of the application under Section 439 of Cr.P.C on behalf of accused No.1 for release of accused No.1. In the bail application in para 7, it is stated that accused No.1 is suffering from type 2 diabetic since more than 10 years and he is also suffering from Hyper tension and he was on medication before arrest in Deepak Hospital, Jayanagara, Bengaluru and now the health condition of the accused No.1 is deteriorated because there is no proper treatment for diabetics and hyper tension and also suffering from continuous chest pain and though he was referred to Jayadeva Institute of Cardiology and got CRL.P No. 3846 of 2023 diagnosed that he is suffering from Heart disease and prescribed medication but chest pain is not reduced.

7. On perusal of contents of bail application, it is crystal clear that accused has filed bail application on the ground that he is suffering from various disease that in order to prove the health condition of the accused No.1 the application was filed under Section 91 of Cr.P.C.

8. In view of proviso of Section 437 of Cr.P.C, the court may direct that person referred to in clause (i) or clause

(ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.

9. In order to prove the health condition of the petitioner, he had filed an application under Section 91 of Cr.P.C to summon the health records of the petitioner from the judicial authority, if the jail authority have produced the records pertaining to the health conditions of the accused No.1, same will helpful to the trial court to dispose of the bail application filed on behalf of the petitioner.

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10. Learned trial Judge has not considered the provisions of proviso of Section 437 of Cr.P.C and also the Section 439 of Cr.P.C procedure, 1973.

11. The learned Sessions Judge has rejected the application filed on behalf of the petitioner who is in judicial custody without assigning proper and acceptable reasons.

12. Hence, considering the facts and circumstances of the case and also to safeguard the health of the petitioner, who is in judicial custody, it is just and proper to allow this application. Hence, I proceed to pass the following:

ORDER

1. The Criminal petition filed under Section 482 of Cr.P.C is allowed.

2. The order passed by the trial court on IA filed under Section 91 of Cr.P.C filed by the accused No.1 dated 28.04.2023 in SC No.784/2021 on the file of Spl.Judge CBI court, Bengaluru is setaside.

3. The application filed under Section 91 of Cr.P.C on behalf of the petitioner is allowed.

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4. Jail authority is also directed to furnish report as to the health condition of accused No.1 to the trial court as early as possible.

5. After submitting medical report, the trial court is directed to dispose of bail application in accordance with law.

6. Registry is directed to communicate the same to the jail authority.

Sd/-

JUDGE BH