

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Cr. Bail Application No.S- 901 of 2018

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DATE	ORDER WITH SIGNATURE OF JUDGE
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08.03.2019

Mr. Ishrat Ali Lohar, Advocate for applicant.

Mr. Rao Faisal, Advocate holding brief on behalf of Mr. Chaudhry Aftab Ahmed Waraich, Advocate for complainant.

Ms. Sobia Bhatti, A.P.G. for the State.

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**Zulfiqar Ahmad Khan, J:** Through instant Criminal Bail Application, applicant seeks post arrest bail in Crime No.70 of 2015, registered at Police Station Mehmoodabad under Section 302, 34 PPC.

2. The allegation against the present applicant is that on 29.11.2015 at about 1600 hours, he alongwith co-accused Muhammad Saleem by doing firing allegedly committed murder of Muhammad Yaseen, the cousin of complainant over the dispute of some money transaction.

3. At the outset, learned counsel for the applicant contended that he is pressing this bail application on the sole ground of medical. Per learned counsel the applicant was arrested in December, 2015 and since then is in custody; that the applicant is patient of Hepatitis `C` which is at an advanced age and the proper treatment is not being provided to him inside the jail and his further remaining in jail shall be detrimental to his health and his life would be in danger; that there is apprehension that such disease of Hepatitis may increase day by day; that Hepatitis `C` is a virus which spread from one person to another; that it is fundamental right of a person to get proper treatment with regard to his dangerous disease; that applicant is ready to furnish any huge surety and to attend the trial Court regularly. In support of his contentions, learned counsel has placed

reliance on the cases reported as **2009 SCMR 425**, **2002 SCMR 282**, **2017 P.Cr.L.J 269** and **2014 YLR 1363**.

4. Conversely, learned A.P.G. vehemently opposed the instant bail application and contended that the applicant has been nominated in F.I.R. with specific role of causing fire shots upon the deceased and thereby committed his murder; that the condition of applicant is not a critical and such treatment is available in the jail hospital.

5. I have carefully considered the arguments of learned counsel for the parties and perused the material available on record.

6. A perusal of the record shows that applicant is in custody since more than 03 years without any progress in the trial. The applicant is suffering from Hepatitis `C` which disease cannot be treated while keeping him in custody. It appears that vide order dated 11.10.2018 while issuing notice, this Court called report from the Medical Officer District Jail, Mirpurkhas regarding the health condition of applicant as well as called Incharge of Hepatitis Control Program. Thereafter, a report was submitted by the Medical Officer District Prison, Mirpurkhas dated 18.10.2018 declaring that the applicant is suffering from Hepatitis `C` and is under treatment. Thereafter, a latest medical report dated 15.02.2019 was received from the Medical Officer District Prison, Mirpurkhas which reads as under:-

***“It is reported that UTP Abdul Sattar Arain s/o Habib Ali Arain known case of Hepatitis `C` diagnoses on 05/04/2017, taken treatment for six months (from August 2017 to April 2018). His HCV PCR was repeated after completion of 06 months treatment, which shows failure of treatment. Consultant of Civil Hospital Mirpurkhas again advised three months treatment to cure hepatitis `C` but treatment not provided to him by Hepatitis Prevention and Control Program Mirpurkhas.”***

The Medical Officer in his report further observed that:-

***“his present health condition is as its previously. His viral load increased. Ultrasound shows increased retexture consultant physician Civil Hospital Mirpurkhas said if he not treated, he may lead to liver cirrhosis (cancer of liver) in late stage which is not curable.”***

7. Counsel for the applicant has also annexed the medical certificates alongwith instant bail application which clearly show that the applicant requires immediate treatment and close monitoring by Medical Specialists which object could not be achieved by detaining him in jail for an indefinite period. It further appears that acute sickness and ailment of accused could not be properly treated inside the jail which requires specialized treatment and proper care which in my view is not possible in jail. Learned counsel for the applicant has placed reliance on 2009 SCMR 282, in which the Honourable Supreme Court held as under:-

***“We have given anxious thought to the contentions raised at the bar and are of the opinion that petitioner is in custody for more than four years and trial has not been concluded. The petitioner is suffering from a chronic disease which cannot be treated while keeping him in custody. Accordingly, petition is converted into appeal and is allowed. Appellant Sardar Amjad Ali Khan is granted bail subject to furnishing surety in the sum of Rs.2,00,000 (Rupees two lacs) with P.R. bond in the like amount to the satisfaction of the trial Court.”***

In another case reported as 2002 SCMR 282, it has been observed that:-

***“Medical ground urged in support of the prayer for bail has also not been controverted by the prosecution. It was rather conceded that the petitioner requires immediate treatment, hospitalization and close monitoring by Specialists in a well-equipped hospital. This object obviously cannot be achieved by detaining the petitioner in jail indefinitely or to refer him to a hospital for the purpose of treatment for a limited time. Since the petitioner has been found to be entitled to the concession of bail on variety of grounds and the grant of***

***bail cannot be withheld by way of punishment, we hold that petitioner has made out a case for grant of bail.”***

In another case reported as 2017 P.Cr.L.J 269, this Court observed as under:-

***“It is significant to mention that on the day of arrest petitioner was got medically examined by the NAB and doctor referred him to S.I.U.T. for dialysis. Such directions were also issued by the learned NAB Court vide order dated 26.11.2015, passed on the application for judicial custody moved by the Investigating Officer. Subsequently, learned NAB Court, in view of no objection given by the Sr. Prosecutor NAB, vide order dated 30.11.2015, again directed Superintendent, Central Prison, Karachi to produce the petitioner before the consultants of Agha Khan University Hospital for medical check-up and treatment, on the ground that petitioner is patient of diabetics, retinopathy, chronic cardio, myopathy and chronic kidney diseases. Superintendent, Central Prison, Karachi referred the petitioner to Agha Khan University Hospital, Karachi on 01.12.2015, and considering the chronic kidney diseases of the petitioner, he was admitted in hospital and advised for dialysis. Material available on record emanate that acute sickness and ailment of accused cannot be properly treated within the jail premises which requires specialized treatment and proper care which is possible in jail and his continuous detention in jail would definitely be detrimental and harmful to his life. Considering the no objection extended by Sr. Prosecutor NAB, petitioner is also entitled for concession of bail on the medical grounds.”***

8. In view of the foregoing circumstances, I have come to the conclusion that applicant/accused has been able to make out a case for grant of bail on the medical ground which could not be withheld as a punishment. Accordingly, the instant bail application is allowed and the applicant is granted bail subject to his furnishing solvent surety in the sum of Rs.5,00,000/- (Rupees five lac) and P.R. Bond in the like amount to the satisfaction of the trial Court with direction to the applicant to attend the trial Court regularly.

**JUDGE**

Tufail/PA