

(1995) 04 CAL CK 0002

Calcutta High Court

Case No: Criminal Misc. case No. 2200 of 1993

T.K. Dutta

APPELLANT

Vs

Pawan Kumar Didwania

RESPONDENT

Date of Decision: April 19, 1995**Acts Referred:**

- Foreign Exchange Regulation Act, 1973 - Section 35

Citation: (1995) 78 ELT 424**Hon'ble Judges:** Satya Narayan Chakrabarty, J; Arun Kumar Dutta, J**Bench:** Division Bench**Advocate:** Promod Ranjan Roy and Prantosh Chakraborty, for the Appellant; Dilip Kumar Dutta and Arup Chatterjee, for the Respondent

Judgement

Arun Kumar Dutta, J.

By this application, filed on 15th June, 1993, the petitioner Shri T.K. Dutta, Enforcement Officer, Enforcement Directorate, Foreign Exchange Regulation Act, Calcutta (hereinafter referred to as petitioner) has prayed to the Court for modifying/setting aside/cancelling the order of Bail granted by this court on 10th May, 1993 in favour of the opposite party No. 1 - accused, Pawan Kumar Didwania (hereinafter referred to as accused) and for sending him (latter) to the Jail custody in terms thereof for the reasons stated therein. It is extremely unfortunate that the application could not be disposed of so long.

2. It is contended by the petitioner that the residential premises of the accused was searched by the officers of the Income Tax Department and also by the Officers of the Enforcement Directorate, Calcutta, on 4th May, 1993 and the accused was interrogated with reference to the documents seized during the said search. On the statements made by him on 4th and 5th May, 1993, he (accused) was arrested on 5th May, 1993 u/s 35 of the Foreign Exchange Regulation Act, 1973 and was produced before the Chief Metropolitan Magistrate at Calcutta, who had remanded

him to jail custody till 19th May, 1993. A bail petition was moved before this court on his behalf on 7th May, 1993, which was rejected by this court. But in view of the allegations of torture inflicted on him and injury allegedly sustained by him, while in custody, he was directed by the court to be kept in the jail custody under medical supervision by the order dated 7th May, 1993 in terms thereof.

3. On 10th May, 1993 another Bail Application was moved before this Court on behalf of the accused on the ground that he was suffering from Myo Cardiac Infraction with acute chest pain for which he had to be removed to the S.S.K.M. Hospital, Calcutta. And, upon consideration of the serious condition of his health, as made out by him, this court by order dated 10th May, 1993 had allowed his application for Bail in terms thereof. It is contended by the petitioner that the accused had made false statement before the court about the serious condition of his health, and had thus procured the order of bail by practising fraud upon the court. The Court was induced to release him on bail on the aforesaid false/frivolous ground as to his alleged illness made out by him before the court. It is further contended that there is a reasonable apprehension that he would interfere with the investigation of the case, for which the bail granted to him is required to be cancelled. Hence, the instant Application.

4. As already indicated, the Bail Petition filed on behalf of the accused had been rejected by this Court on 7th May, 1993. But in view of the allegations made by him about torture/assault inflicted on him while in custody, for which he had allegedly suffered injury on his person, the court by its said order had directed that he should be kept in jail custody under medical supervision. The Investigating Agency was given liberty to interrogate him in the Jail Hospital. And, if the condition of the accused required any specialised treatment, the Jail authority would provide such specialised treatment for him.

5. This court had subsequently granted bail to the accused by order dated 10th May, 1993 on being informed by the accused in his "fresh application", filed before the court on that day (10th May, 1993), that his physical suffering continued unabated throughout day and night of 7th May, 1993. On 8th May, 1993 he had developed acute pain on the left side of the chest in the medical ward of the jail. The Medical Officer of the Jail had examined him and found that the said pain was due to acute Myo Cordial Infraction suffered by him and he (Medical Officer) had reported the matter to the Jail Superintendent concerned. Realising that there was lack of proper infrastructure in the Jail to cope with such a situation, the Superintendent, Presidency Jail, had decided to remove him (accused) to the S.S.K.M. Hospital, Calcutta, under proper police protection. He was thus removed to the said Hospital on 9th May, 1993 and was examined in the Cardiology Department, which had also confirmed that he had suffered Cardiac Infraction. It had further been stated in paragraph 14 of the said "fresh application" that he (accused) wanted to be medically treated by his own Doctor and to avail of all modern medical facilities,

which were not available in the S.S.K.M. Hospital. He had thus prayed for bail to enable him to be treated by his own Doctor/Doctors, as stated in paragraph 15 thereof. "Considering the serious condition of his health" (in view of the aforesaid averments made in his said fresh application filed on 10th May, 1993) more so, in view of the submissions made on his behalf before the court that he intends to have the attendance of Doctors/Specialists of his choice, including Cardiologist, who are not available in the Government Hospitals, this court had directed him to be released on bail by the aforesaid order dated 10th May, 1993 in terms thereof.

6. As already noted above, the Bail petition, previously filed on behalf of the accused before this court, was rejected on 7th May, 1993. But in view of the injury allegedly caused to him due to alleged assault/torture on him while in custody, the court by the aforesaid order dated 7th May, 1993 had directed him to be kept in jail custody under medical supervision. It was further directed therein that if his condition required any specialised treatment, the Jail Authority would provide such specialised treatment for him. The said order being, what it is, no liberty had been granted to the Jail Authority concerned to remove him to the Hospital. Even so, it had been stated in paragraph 12 of the said fresh application filed on behalf of the accused before this court on 10th May, 1993, that the Medical officer of the jail had examined him and found that the pain complained of by him (accused) on the left side of his chest was due to acute Myo Cardiac Infraction suffered by him, which was reported to the Jail Superintendent, who had decided to remove him to the S.S.K.M. Hospital in the absence of proper infrastructure in the Jail. We wonder how the accused could conceivably have been removed from the jail to the aforesaid Hospital, despite the court's aforesaid specific order dated 7th May, 1993, without the court's prior permission, or even intimation to the court about the urgency therefore! The Jail Authority concerned was liable to account for the same. No explanation was, however, sought from them! However, that may be, there is no report of the Medical Officer of the Jail or that of the Jail Superintendent concerned on record to support the aforesaid contention of the accused that he had to be removed to the S.S.K.M. Hospital, in the circumstances stated in his aforesaid fresh application. The order of the court dated 10th May, 1993 would, at once clearly indicate that the court, "upon consideration of the serious condition of health" of the accused (on the averments made in his aforesaid fresh application), was of the view that he should be enlarged on bail; "more so, in view of the submissions made on his behalf that he intends to have attendance of Doctors/Specialists of his choice, including Cardiologist, who are not available in the Government Hospitals". As already noted, it is contended by the petitioner in his instant application that the accused had made false statement about his alleged illness, and had procured the order of Bail dated 10th May, 1993 from this court on the basis of the incorrect statements contained in his aforesaid fresh application by practising fraud upon the court.

7. Let us now consider whether the ground as to the alleged serious illness made out by the accused in his aforesaid fresh application filed before the court on 10th

May, 1993 was false, frivolous or not.

8. It would oddly appear from the materials on record that the accused was arrested and produced before the local Chief Metropolitan Magistrate on 5th May, 1993 in connection with the relevant matter. A Bail Petition had been filed on his behalf before the said Magistrate on the same day (5th May, 1993), copy of which had been annexed to his aforesaid fresh application as Annexure "B" thereto. The only ground made out in the said Bail application filed on his behalf before the said Magistrate on 5th May, 1993 is that he was brutally assaulted by an officer of the Enforcement Directorate, while in custody, causing serious hurt to him, and inflicting injuries on his person for which he required immediate medical assistance " as he had to suffer inhuman torture from 9 p.m. of 4th May 1993 till 12 noon of 5th May, 1993." There is not the merest and faintest whisper in his said application for bail filed before the Chief Metropolitan Magistrate on 5th May, 1993 that he was suffering from acute Myo Cardiac Infraction. The conclusion which would at once readily seem to suggest itself is that he did not suffer from any such ailment till at least 5th May, 1993, when the aforesaid Bail application was filed before the said Magistrate.

9. A Bail petition was also subsequently filed before this court which was rejected on 7th May, 1993. The only ground for his bail made out before this court on 7th May, 1993 was the injury stated to have been suffered by him as a result of torture/assault upon him, while in custody, for which this court by the said order had directed him to be kept in jail custody under medical supervision in terms thereof, as already indicated above. There was neither the slightest whisper before this court on that day as well (7th May, 1993) that he (accused) was suffering from acute Myo Cardiac Infraction. The implication appears to be immediately apparent and obvious, namely that he had no such ailment even till that date,

10. The ground as to his aforesaid "serious illness" due to acute Myo Cardiac Infraction appears to have been taken for the first time in paragraph 12 of his fresh application filed before this court on 10th May, 1993. Curiously, however, and unhappily for him, there seems to be no report from the Medical Officer of the Jail, or from the Jail Superintendent concerned in support of his said contention. And, apart from his aforesaid averments in paragraph 12 of his aforesaid fresh application, there is nothing on record in support of his said contention. As against that, it would pretty clearly appear from the letter of Dr. (Prof.) Monotosh Panja, Department of Cardiology, S.S.K.M. Hospital, Calcutta dated 29th May, 1993, forwarded by the Superintendent of the said Hospital, being Annexure "C" to the petitioner's instant application, that the accused Pawan Kumar Didwania was admitted to the said hospital on 9th May, 1993 at 12.00 P.M. with complaint of chest pain and sweating. During hospital admission, the provisional diagnosis was hypertension with hypothyroidism and mild chest pain, but E.C.G. not suggestive of coronary heart disease. There was no evidence of Myo Cordial Infraction both clinically and electro cardio graphically. (ECG). The patient (accused) was discharged

on 10th May, 1993. (the following day) on his risk bond. The aforesaid letter of the Doctor concerned dated 29th May 1993 would, therefore, clearly indicate that the patient (accused) had no Myo cordial Infraction at the relevant point of time. He had thus obtained his discharge from the hospital on the very next day on his own risk bond. He presumably had obtained his discharge from the hospital on the very next day (on 10th May, 1993) on his own risk bond as he had already obtained an order of bail from this court on that day, and the purpose of causing him to be removed to the hospital the complaint of chest pain had been served, and there was no more necessity for him to remain hospitalized thereafter. Chest pain or, for that matter, any sort of bodily pain, cannot be treated clinically, mechanically or otherwise, and has to be considered only on the complaint of a patient. Even if the complaint of chest pain is false or frivolous, there is nothing to detect it. The aforesaid conclusion would all the more be confirmed by the facts that there is no material whatsoever on record to indicate that the accused had required or received the treatment for such severe ailment, as alleged by him, since his release on bail in terms of the aforesaid order of this Court dated 10th May, 1993, during all this period of about two years, even though it was submitted on his behalf before the Court during the hearing on 10th May, 1993 that he intended "to have attendance of Doctors/Specialists of his choice, including cardiologist, who are not available in the Government Hospitals", like serious ailment, as alleged by the accused, could not conceivably be caused or cured overnight. Mr. Dilip Kumar Dutta, learned senior Advocate, appearing for the opposite party accused during the hearing of the instant application, had all been frank enough to submit, on our query, that there is no material to show that the accused had required/received any treatment for his aforesaid alleged serious illness since his release on bail in terms of the aforesaid order of this court dated 10th May, 1993, giving the clearest and conclusive indication that he had no such "serious illness", as made out by him.

11. In view of the discussions above, there could be no running away from the inescapable conclusion that the accused had no such serious ailment, Myo cordial Infraction, as contended by him in his aforesaid fresh application filed before this Court on 10th may, 1993 and submitted on his behalf before the Court during the hearing on that day. And as already indicated above, bail had been granted to him by the aforesaid order of this court dated 10th May, 1993 only on consideration of the "serious condition of his health", as stated in his aforesaid fresh application, and on the submission made on his behalf before the court that "he intended to have attendance of Doctors/Specialists of his choice, including Cardiologist, who are not available in the Government Hospitals". The opposite party No. 1 accused clearly, therefore, had obtained the aforesaid order of bail dated 10th May, 1993 on the aforesaid false/frivolous plea taken in his aforesaid fresh application filed on 10th May, 1993 and on the said submissions made before the court on his behalf, which was nothing short of practising fraud upon the court for obtaining the said order.

12. True it is, there is no allegation by the petitioner that the accused has abused the privilege of bail or misused the liberty granted to him. The instant application for cancellation of Bail had also been filed by the petitioner on 15th June, 1993 which unfortunately could not be disposed of, in the meanwhile, despite lapse of little less than two years from the passing of the aforesaid bail order on 10th May, 1993. Little purpose could possibly therefore, be served by cancelling the bail granted to the accused by the aforesaid order dated 10th May, 1993 in the relevant matter at this stage. Even so, we would feel inclined to cancel the bail granted to him by the aforesaid order dated 10th May, 1993 since he had obtained the said order on false/frivolous plea as to the illness alleged, by practising fraud upon the court, for the reasons amply and appallingly made clear above, so that it may serve as a lesson for all concerned, and also for upholding and maintaining the dignity of the court and sanctity of the orders passed by it.

13. In the above premises, we allow the petitioner's instant application. The bail granted to opposite party No. 1 accused Pawan Kumar Didwania by the order of this court dated 10th May, 1993 be hereby cancelled. The opposite party No. 1 accused is hereby directed to surrender before the learned Chief Metropolitan Magistrate, Calcutta within seven days from this date. On his failure to do so, the Chief Metropolitan Magistrate, Calcutta, shall issue appropriate processes for securing his arrest and production before him for being detained in custody in connection with the relevant matter.

14. Let a copy of this order be forthwith sent down to the said Magistrate for his information and strict compliance.

Satya Narayan Chakraborty, J.

15. I agree.