

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 444 OF 2021

Father Stan Swamy

...Petitioner

Versus

The State of Maharashtra & Anr.

...Respondents

...
Mr. Mihir Desai, Senior Advocate, i/by. Mr Mihir Joshi a/w. Ms
Kritika Agarwal for appellant.

Mr. Anil C. Singh, ASG a/w. Mr. Sandesh Patil a/w. Mr. P.S. Gole
for Respondent- NIA.

Mr. J P Yagnik, APP for State.

...

**CORAM : S. S. SHINDE &
N. R. BORKAR, JJ.**

**DATE : MAY 28, 2021.
[VACATION COURT]**

P.C.:

. Not on board, on mentioning taken on board.

2. This appeal takes an exception to the order dated
22.10.2020 passed by the Special Court in Case No. 414 of 2020
along with 871 of 2020.

3. The present appeal was filed with the application for
condonation of delay and the same was taken up for hearing by this
Court (Coram:- S.S. Shinde & Manish Pitale, JJ.) on 4th May, 2021.
The said application for condonation of delay was allowed and delay
in filing the appeal stood condoned.

4. The aforesaid appeal was circulated before the Vacation Court (Coram:- S.J. Kathawalla & Surendra P. Tavade, JJ.) on 19th May, 2021. On 19th May, 2021 this Court was pleased to direct the Jail Superintendent, Taloja Central Prison, Navi Mumbai, to take the appellant to J.J. Hospital, Mumbai, for his medical checkup. The dean of J.J. Hospital, Mumbai was directed to form a committee of doctors including Neuro-physician, ENT, Orthopedic Surgeon, General Surgeon etc. The report of the said committee was directed to be placed before the Court on 21st May, 2021. The Superintendent of Taloja Central Prison was directed to produce the appellant before the Court for interaction through video conferencing.

5. On 21st May, 2021 the appeal was taken up for hearing and while passing the order the court has extensively referred to the findings and recommendations of the said committee in para 1 to 3 of the order.

6. It appears from the perusal of the order that the appellant was produced before the vacation Court on 21st May, 2021, and in Para 3 and 4 of the order dated 21st May, 2021 the Court has made reference to the interaction with the appellant

through video conferencing. It appears that a choice was given to the appellant, either to opt for treatment in J.J. Hospital or at any other hospital of his choice including Holy Family Hospital. However, the appellant was not inclined to get admitted in the hospital for treatment. However, this Court in para 5 of the said order made observations that, learned senior advocate seeks an adjournment for a few days to enable him to once again talk to the appellant and convince him to take treatment at the Holy Family Hospital at Bandra. The appeal was directed to be placed for hearing on 7th June, 2021. However, liberty was given to the learned counsel appearing for the appellant to apply prior to the adjourned date, if so required. The superintendent of Taloja Jail was directed to strictly follow the line of treatment as well as the facilities required to be provided to the appellant as set out in the report of the committee dated 20th May, 2021.

7. Mr. Mihir Desai, learned Senior Advocate appearing for the appellant submits that, he personally interacted with the appellant and requested him to take necessary treatment in Holy Family Hospital, Bandra, keeping in view the age of the appellant and ailment from which he is suffering. It is submitted that the appellant has acceded to his request and now he is ready to take

treatment in Holy Family Hospital at Bandra. It is submitted that from the last date of hearing till date, the health of the appellant started deteriorating and now it has become necessary to admit him in the hospital, so as to take proper treatment. Therefore, it is prayed that the respondent may be directed to shift the appellant from Taloja Central Prison to Holy Family Hospital at Bandra, for treatment. It is further submitted that the appellant will bear all the expenses for his treatment.

8. Mr. Desai, learned Senior Advocate during the course of hearing has tendered across the bar additional affidavit on behalf of appellant and same is taken on record. It is mentioned in the said additional affidavit that the appellant is now ready to take treatment in the Holy Family Hospital at Bandra. Further, it is mentioned in the said affidavit that the appellant will need attendant at all times in the hospital. It is also mentioned that one Father Frazer Francis Mascarenhas SJ who is a retired Principal of St. Xaviers College can make arrangements for two attendants to be therein in hospital to take care of the appellant, since the appellant is priest and do not have family.

9. Mr. J.P. Yagnik, learned APP appearing for Respondent-State submits that the appellant is being given proper treatment and medicines in the Taloja Prison hospital pursuant to the order passed by this Court on 21st May, 2021. It is submitted that if the appellant is ready to take treatment, he can be admitted in the J.J. Hospital, Mumbai for treatment in the prison ward. It is submitted that all the medical facilities, attendants and medicines are available in the J.J. Hospital, Mumbai and therefore, the prayer of the appellant to allow him to take treatment in Holy Family Hospital at Bandra may not be entertained.

10. Mr. Anil C. Singh, learned ASG appearing for Respondent No. 2 submits that in J.J. Hospital, Mumbai, all the facilities to treat the appellant are available including good doctors, equipments, medicines etc, and therefore, prayer of the appellant to allow him to take treatment in Holy Family Hospital at Bandra, may not be entertained. It is submitted that, allowing the prayer of the appellant to take treatment in the private hospital may set wrong precedent. Without prejudice to the aforesaid submissions and in the alternate, it is submitted that in case this Court is inclined to give directions to shift and allow the appellant to take treatment in Holy Family Hospital, Bandra, in that case, no other private person/ persons may be allowed as attendant to attend the appellant.

11. We have given due consideration to the rival submissions. With the able assistance of Mr. Mihir Desai, learned Senior Advocate appearing for appellant, Mr. Anil Singh, learned ASG appearing for Respondent No. 2 and Mr. J.P. Yagnik, learned APP appearing for Respondent No. 1, we have perused the order passed by this Court on 21st May, 2021 and also the additional affidavit submitted by the appellant.

12. It would be apt to reproduce herein below para 4 and 5 of the order dated 21st May, 2021 passed by the Vacation Court (Coram:- S.J. Kathawalla & Surendra P. Tavade, JJ.).

“4. We have also spoken to the Appellant through video conferencing. We have observed that he has severe hearing problem and he is physically very weak. However, we have conversed with him with the assistance of the person sitting next to him. Though the Court as well as the learned Senior Advocate appearing for the Appellant inquired from the Petitioner whether he would like to take treatment at J.J. Hospital or at any other hospital of his choice, including Holy Family Hospital, he has categorically stated that he does not want to be treated at any hospital and he will prefer to die in jail rather than get admitted to any hospital. He has informed the Court that his general health has completely deteriorated after he came to the Taloja prison and ‘there is a lot of give and taken in the prison’. He has therefore insisted that he should get interim bail.

5. *In view of above, the learned Senior Advocate appearing for the Appellant has sought an adjournment for a few days to enable him to once again talk to the Petitioner and convince him to seek treatment at the Holy Family Hospital at Bandra. In view thereof, place the above Appeal on 7th June, 2021. Liberty to apply prior to the adjourned date if so required.”*

13. Pursuant to the liberty granted by Vacation Court, matter was mentioned by way of filing praecipe and after informing learned advocates appearing for the respective parties, and accordingly the same is taken on board. It is not in dispute that the age of the appellant is 84 years and even according to medical reports/findings recorded by the team of doctors from the J.J. Hospital, the appellant needs further treatment as mentioned in the report. There is no doubt that the J.J. Hospital, Mumbai is equipped with good doctors, medical staff, equipments and medicines. However, due to present pandemic situation and influx of patients in the said hospital, it may not be possible in said hospital to give personal attention to the appellant who is 84 years of age. As already observed the appellant is of 84 years of age and while hearing this appeal on 21st May, 2021, this Court has interacted with the appellant through video conferencing and asked his choice, whether he want to take treatment in the J.J. Hospital

or in any other hospital of his choice including Holy Family Hospital. In that view of the matter and in view of the submissions made across the bar by Mr. Mihir Desai, learned Senior Advocate appearing for the appellant and averments in the additional affidavit on behalf of the appellant, we are of the view that the appellant can be given choice of being admitted in Holy Family Hospital at Bandra for treatment for a period of 15 days from the date of his shifting to said hospital.

14. Accordingly, the respondents and in particular Respondent No. 2, are directed to shift the appellant to Holy Family Hospital at Bandra for treatment immediately, and preferably during the course of day.

15. As submitted by Mr. Mihir Desai, learned Senior Advocate appearing for the appellant during the course of arguments, the appellant will bear all the expenses for his treatment in the said hospital.

16. Keeping in view the age of the appellant and his ailments we request the administration of the said hospital to provide one attendant continuously to look after the appellant.

17. Father Frazer Francis Mascarenhas SJ who is a retired Principal of St. Xaviers College, is allowed to meet the appellant in the said hospital, subject to protocol of the said hospital.

18. We request the administration of the said hospital to allow one police constable in the hospital to protect/guard the appellant, since he is under trial prisoner.

19. We make it clear that, this order is passed in the peculiar facts and circumstances of this case. All parties to act upon an authenticated copy of this order.

20. List the appeal on 14th June, 2021.

(N.R. BORKAR, J.)

(S. S. SHINDE, J.)