

ITEM NO.17

COURT NO.5

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No.9216/2022

(Arising out of impugned final judgment and order dated 26-04-2022 in CRLWP No. 3116/2021 passed by the High Court Of Judicature At Bombay)

GAUTAM NAVLAKHA

Petitioner(s)

VERSUS

NATIONAL INVESTIGATION AGENCY & ANR.

Respondent(s)

(IA No. 116981/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 116983/2022 - EXEMPTION FROM FILING O.T.

IA No. 116980/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 144836/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 29-09-2022 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.
Ms. Warisha Farsat, Adv.
Mr. Shadan Farasat, Adv.
Mr. Nizam Pasha, Adv.
Ms. Aparajita Jamwal, Adv.
Mr. Shourya Dasgupta, Adv.
Mr. Bharat Gupta, Adv.
Ms. Hrishika Jain, Adv.
Mr. Raghav Tankha, Adv.
Mr. Shadan Farasat, AOR

For Respondent(s) Mr. Tushar Mehta, SGI
Mr. Suryaprakash V. Raju, ASG (NP)
Mr. Ashutosh Ghade, Adv.
Ms. Sairica S Raju, Adv.
Mr. Annam Venkatesh, Adv.

Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya A. Pande, AOR
Mr. Bharat Bagla, Adv.

UPON hearing the counsel the Court made the following
O R D E R

This special leave petition is filed against the impugned judgment by which the High Court of Judicature at Bombay rejected the prayer of the petitioner who is lodged in Taloja Jail, to place him under house arrest. This Court issued notice on 27.09.2022 making it returnable to today.

When this matter was taken up, learned counsel for the petitioner pointed out that letter for adjournment was received by them but the Court was not aware of the letter. However, learned senior counsel for the petitioner pressed for passing an urgent order. It is pointed out that considering the age of the petitioner and his medical conditions, this is a fit case where the petitioner should be allowed to be under house arrest in the form of custody while the petitioner is allowed to stay at his sister's place in Mumbai and further avail medical facilities.

Mr. Tushar Mehta, learned Solicitor General of India has stoutly opposed the request for grant of the facility of house arrest. He further points out that he did not have time to look into the matter and make his submission. However, he would submit that the petitioner indeed admittedly made an application on 13.09.2022 (Exh.850). Therein the prayer of the petitioner was to direct the Superintendent, Taloja Central Prison to take the petitioner to KEM hospital for colonoscopy and skin allergies and to Nair Hospital for his dental checkup. He further submits that this is not a case which warrants an order in favour of the petitioner to permit him to remain in house arrest. He, however,

would very fairly submit that though the application dated 13.09.2022 was not pressed by the petitioner before the concerned Court, the respondents would have no objection, if the petitioner is allowed to be taken to the hospital for availing medical treatment.

No doubt, the learned senior counsel for the petitioner in reply would point out that there were reasons for the petitioner for not pressing the application dated 13.09.2022.

Having heard the learned counsel for the parties, we are of the view that the petitioner who is an undertrial prisoner and what is far more important is the right of an undertrial prisoner to seek medical treatment and this would be a fundamental right. We should therefore pass an order directing the petitioner to be taken immediately for a thorough medical checkup.

Accordingly, there will be direction to the Superintendent, Taloja Central Prison, Navi Mumbai to take the petitioner immediately to the Jaslok Hospital, Mumbai (the hospital of the choice of the petitioner) so that the petitioner is enabled to undergo all the requisite medical check up and receive treatment.

We make it clear that the petitioner will necessarily remain in police custody while he is staying in the said hospital. We further direct that *Sahba Husain* (partner of the petitioner) and *Mridula Kothari* (sister of the petitioner) alone will be permitted to interact with the petitioner in the hospital which we permit as per the rules of the hospital. The hospital Authority will send up the report to this Court by the next date of hearing.

We have not considered the larger issue relating to the entitlement of the petitioner for being granted the benefit of house arrest, particularly in view of the fact that learned Solicitor General pointed out that he was put on short notice in the matter.

List this matter on 21st of October, 2022.

(JAGDISH KUMAR)
COURT MASTER (SH)

(RENU KAPOOR)
ASSISTANT REGISTRAR