

**ASIF ALI ZARDARI---Applicant**

**Versus**

**THE STATE---Respondent**

**2005 M L D 314**

**[Karachi]**

**Before Wahid Bux Brohi and Rahmat Hussain Jafferri, JJ**

Cr. Misc. No.75 of 2004, decided on 2<sup>nd</sup> September, 2004.

**ORDER**

The applicant is being tried in Special Case No.315 of 1998 State v. Asif Ali Zardari and others by the Session Judge (STA) Central Karachi (hereinbelow to be referred to trial Court). In addition to this case, as stated in the instant application, the following cases are also pending against him in the Province of Sindh:--

- (i) Special Case No.315 of 1998 under section 302, P.P.C. before the Sessions Judge (STA) Central, Karachi.
- (ii) Sessions Case No.516 of 2001 under section 302, P.P.C. before Sessions Judge Karachi (East).
- (iii) Sessions Case No.(sic) of 1999 under section 302, P.P.C. before Special Judge (STA) Hyderabad.
- (iv) Case No.4 of 1997 under section 5 of Anti-Corruption Act, 1947 before Special Judge Anti-Corruption, Karachi.

The applicant moved an application in the trial Court for his medical treatment coupled with a prayer for his immediate admission/shifting to Dr. Ziauddin Hospital, Karachi on the basis of advice of Medical Board dated 30-3-2004. Learned trial Court heard arguments and dismissed the same. Being aggrieved by this order the applicant moved the instant application under section 561-A, Cr.P.C. on 20-5-2004 with the following prayer:--

- (i) Allow the application and set aside the order dated 11-5-2004 passed by the learned Sessions Judge (STA) Central Karachi in Case No.315 of 1998, State v. Asif Ali Zardari and others.

- (ii) Suspend the order dated 11-5-2004 passed by the learned Sessions Judge (STA) Central, Karachi in Case No.315 of 1998, State v. Asif Ali Zardari and others.
- (iii) Direct the respondent and/or anyone else claiming or acting through under them to bring the applicant back to Karachi to enable him to have himself medically treated pursuant to the Medical Report dated 30-3-2004 and also to face trial in cases pending against him before the learned Sessions Judge (STA) Central Karachi and other Courts.
- (iv) Pass any other order being fit and proper in the circumstances of the case by the Hon'ble Court.

During these proceedings an order was passed on 9-7-2004 by consent of the learned counsel for applicant and the learned Assistant Advocate-General to the effect that the applicant may not be shifted from his present place of confinement. This order was passed keeping in view the fact that the learned Assistant Advocate-General sought two days' time for obtaining definite instructions in the matter from the concerned authorities whether they intended to shift the applicant to Islamabad or not. In fact, the applicant was brought from Islamabad to Karachi on 5-5-2004 to face his trial which was fixed on 6-5-2004.

On 26-7-2004 learned counsel for applicant produced a certificate issued by Dr. Imtiaz Hashmi pertaining to treatment of the applicant. In this context time was allowed to the learned Additional Advocate-General, to verify the fact if the proposed treatment was available in Dr. Ziauddin Hospital, Karachi or such treatment was available at Islamabad also. It was also ordered that this application shall be decided at Katcha Peshi stage. Lastly, on 31-8-2004 the learned Assistant Advocate-General stated that he was not able to collect such information. The matter was adjourned to 2-9-2004. In this way the applicant remained in the same place of confinement in continuation of the order dated 9-7-2004.

We have heard Mr. M. Farooq H. Naik, learned counsel for applicant assisted by M/s Akhtar Hussain and Abu Bakar Zardari and Mr. Habib Ahmed, learned Assistant Advocate-General Sindh for State and perused the relevant material available in the instant case.

In the first instance it was pointed out by learned Assistant Advocate-General that the prayer in the instant application inter alia was to issue a direction to the respondent (State) for bringing the applicant back to Karachi to enable him to have himself medically treated pursuant to the medical report dated 30-3-2004 and that the impugned order passed by the trial Court on 11-5-2004 be set aside. Thus, the prayer to the extent of bringing the applicant back to Karachi has become infructuous. Mr. Farooq H. Naik learned counsel for applicant, however, submitted that the applicant is continuously in jail for a period of about 7 years and 10 months. Elaborating the circumstances and the ground, on which the applicant was imprisoned he submitted that long incarceration has resulted in impairing the health of applicant, as such he needs complete and effective treatment accompanied by bed rest as advised by the Board of Doctors. Referring to the order dated 11-8-2000 passed by the Honourable Supreme Court in Criminal Petition No. 123 Karachi of 2000 he submitted that right to life is a fundamental right and the applicant is entitled to medical treatment on priority basis.

As far the question of treatment is concerned, the trial Court has addressed itself 'to this point and passed necessary orders in following terms: --

The accused has remained in Karachi for about 2 months or so. The prescribed period of 6 weeks and 8 weeks for bed rest has already expired. In the meantime the accused was removed to Islamabad from where he has recently been produced to attend murder cases on 5th, 7th and 8th of May, 2004. At Karachi accused is detained and kept at Dr. Ziauddin Hospital, Clifton, Karachi which has already been declared as sub jail. In case the health of a prisoner is deteriorated, he could be examined officially and cured by the Doctors of that every hospital in which arrangements of such jail are made by the Government this Court need not-to issue direction that the accused may be kept in a hospital at Karachi for such and such time for bed rest, etc., purpose. More so this Court cannot pass any order which may hamper the proceedings of Accountability Courts No.III and IV at Rawalpindi. The application in hand is misconceived and not sustainable in the eye of law, it is accordingly dismissed.

Apparently, there is no flaw in this order. The main function to be performed by the trial Court is to conduct the trial and the question of medical treatment is an extraneous/ancillary matter.

However, as observed by the Honourable Supreme Court that right to life is a fundamental right the trial Courts are always cautious to see that if life of an under trial prisoner is endangered on account of his ill-health or lack of medical treatment in the hospital. Necessary directions are often issued to the jail authorities to see that they should not fail in performing their duties about the safety and health of the under trial prisoner. But this does not at all cast a legal obligation on the Court to regulate the business of a hospital and issue directions that medical treatment may be administered in a particular manner. In the instant case, the trial Court has taken sufficient steps and even a Medical Board was constituted. Trial Court in the impugned order has stated that the said Court need not issue direction that the accused should be kept in the hospital at Karachi for such and such time for bed rest. No exception can be taken to this part of the order, as it is not in violation of any legal provisions. It cannot, therefore, be said that abuse of process of Court has resulted on account of aforesaid observations.

Additionally, the trial Court has remarked in the impugned order that it cannot pass any order which may hamper the proceedings of Accountability Courts No.III and IV at Rawalpindi. This too is in consonance with the normal procedure. On the whole the impugned order calls for no interference.

However; in view of the arguments, advanced by learned counsel for the applicant, that a medical treatment of the applicant is connected with the safety of the applicant, we are inclined to direct that the trial Court should not overlook the serious complainants whenever brought to its notice in respect of health of the applicant and it should take necessary steps calling upon the jail authorities to administer appropriate treatment to the applicant and particularly in the background of the opinion recorded by the Medical Board, which may include reassessment of the status of the health of applicant. The trial Court should however advert to its basic function of conducting the trial and should proceed expeditiously.

The instant application is, accordingly, disposed of with these observations and reservations. These are the reasons for short order announced on 2-9-2004.

H.B.T./A-147/K

Order accordingly.