

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CRL.) NO. 5154 OF 2024

**IN THE MATTER OF:**

ARVIND KEJRIWAL

...PETITIONER

Versus

DIRECTORATE OF ENFORCEMENT

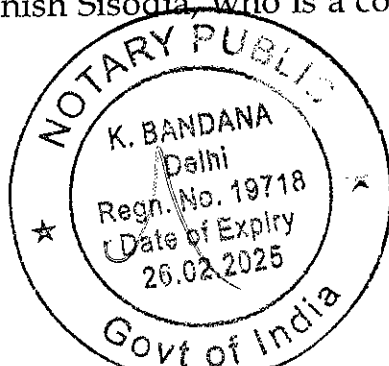
.... RESPONDENT

**AFFIDAVIT ON BEHALF OF THE RESPONDENT, ~~DIRECTORATE~~  
OF ENFORCCEMENT OPPOSING INTERIM BAIL**

**MOST RESPECTFULLY SHOWETH:**

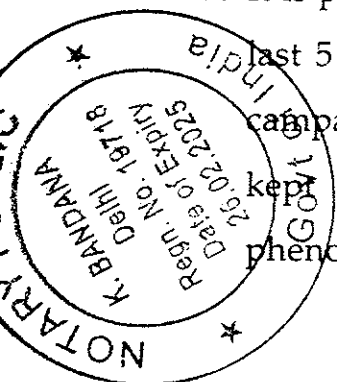
That, I Ms. Bhanu Priya Meena D/o Sh. Harkesh Meena currently working as Deputy Director having office at Room 332, B Block, Pravartan Bhawan, am authorized on behalf of the Respondent Department to file the present reply and as such I am well conversant with the facts and circumstances of the case as per available office records, during the ordinary course of my official duty and as such I am competent to swear the present affidavit.

1. That I have read and understood the contents of the present affidavit. The contents thereof are true and no part of it is false and nothing material has been concealed there from.
2. At the outset, it is submitted that this Hon'ble Court while rejecting the bail of Sh Manish Sisodia, who is a co-accused in this case, had held as follows:-

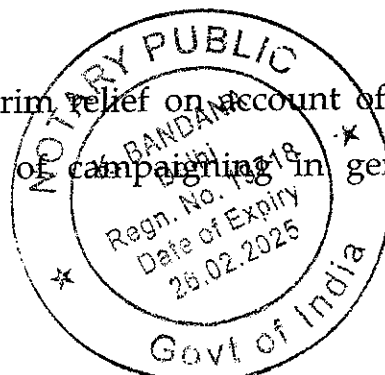


"Rule of law means that laws apply equally to all citizens and institutions, including the State. Rule of law requires an equal right to access to justice for the marginalised. The rule also mandates objective and fair treatment to all. ..."

3. The petitioner has pressed for interim bail primarily on the ground of his inability to campaign for Aam Aadmi Party in the General Elections, 2024.
4. It is relevant to note that the right to campaign for an election is neither a fundamental right nor a constitutional right and not even a legal right. [*Election Commission v. Mukhtar Ansari, 2017 SCC Online Del 7199, Para 17.*]
5. To the knowledge of the deponent no political leader has been granted interim bail for campaigning even though he is not the contesting candidate. Even a contesting candidate is not granted interim bail if he is in custody for his own campaigning.
6. Even the right to vote while in judicial custody which is considered by this Court as a statutory/constitutional right, is curtailed by statute by virtue of section 62(5) of the Representation of Peoples Act, and upheld in *Anukul Chandra Pradhan v. Union of India, 1997 (6) SCC 1*.
7. It is pertinent to note that around 123 elections have taken place in last 5 years and if interim bail is to be granted for the purpose of campaigning in an election then no politician can be arrested and kept in judicial custody since elections are all year round phenomena.



8. In a federal structure, no set of election is more significant than another and therefore, every politician at every level would argue that if he is not let out on interim bail, he would suffer irreversible consequences.
9. Under the Prevention of Money Laundering Act alone presently there are many politicians who are in judicial custody and their cases are examined by competent courts upholding their custody. There must be several political leaders in judicial custody throughout the country in non-PMLA offences. There is no reason why a special prayer for a special treatment by the petitioner be acceded to.
10. Grant of interim bail merely for political campaigning would militate against and will be discriminatory to the rule of equality as work/business/profession or activity of every citizen is equally important to him or her. It would not be possible to hold that work of a small farmer or a small trader is any less important than political campaigning of a political leader who admittedly is not contesting. This Hon'ble Court would take the call about grant/refusal of interim bail/release after 3-day long arguments of the petitioner. As against this, the respondents have just begun. On this ground also this Hon'ble Court may take a final view about the petition after fully hearing the respondent particularly when there is no medical urgency which requires consideration of interim release without fully hearing the respondents.
11. If the petitioner is extended any interim relief on account of him being a politician for the purposes of campaigning in general



elections for his party there is no gain saying that all politicians incarcerated in some case or the other would not seek a similar treatment claiming that politicians are a class of their own.

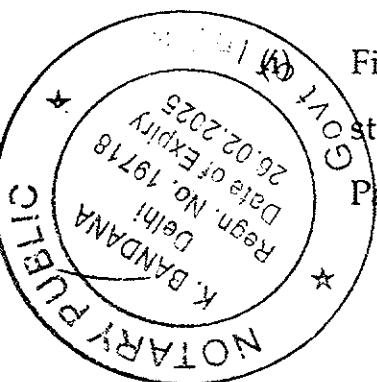
12. This Hon'ble Court in a larger bench in *Vijay Madanlal Chaudhary v UOI & Ors.* 2022 SCC OnLine SC 929, has held that "social and economic offence stand on a graver footing as they not only involve an individual victim but harm the society as whole" and that "we do not agree with the observations suggestive of that the offence of money laundering is less heinous offence than the offence of terrorism sought to be tackled under TADA Act or that there is no compelling State interest in tackling offence of money-laundering".

13. It is pertinent to note that in the reply dated 02.11.2023 to summons dated 30.10.2023, the petitioner in order to avoid the summons had used the very same excuse of state elections in 5 states and during the arguments on interim bail the petitioner is setting up the same ground of campaigning in general elections to seek interim bail.

A True Copy of the reply dated 02.11.2023 sent by the petitioner is annexed herewith and marked as **Annexure A-1** at Page 13 to 14.

14. In other words, if this Hon'ble Court grants interim bail to the petitioner, it will be giving judicial imprimatur to the following actions of the petitioner:

Firstly to avoid summons citing the reason of campaigning in state elections being a "star campaigner" of the Aam Aadmi Party',



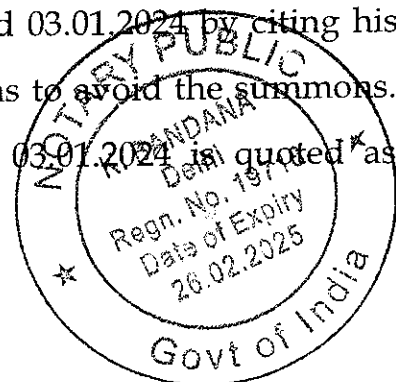
- (ii) Second, seek interim bail for campaigning for Aam Aadmi Party in the general elections thereby carving out a separate class in favour of politicians who wish to campaign for their respective political parties.

15. Such an approach would violate the cherished values of the Constitution which upholds the rule of law as a basic feature meaning thereby that howsoever high you might be you are not above the law. [See *I.R. Coelho v. State of T.N.*, (2007) 2 SCC 1 Para 129]

16. The relevant extract of his reply dated 02.11.2023 is as follows:

*"I am the incumbent Chief Minister of the Govt of NCT of Delhi and National convenor of the Aam Aadmi Party i.e. the ruling party in the State of NCT of Delhi and Punjab. The fact that there are 5 states in the country i.e. Mizoram, Madhya Pradesh, Chhattisgarh, Rajasthan and Telangana which are going to election shortly and Election Commission has already announced the dates. Elections are in November and the results will be announced on 3 December, 2023. Being the National Convenor and a star campaigner of the Aam Aadmi Party, a National Party, which is contesting elections, I am required to travel for campaigning and to provide political guidance to my field workers of Aam Aadmi Party".*

17. Similarly, the petitioner also chose to avoid the summons dated 22.12.2023 as evident from his reply dated 03.01.2024 by citing his preoccupation in the Rajya Sabha Elections to avoid the summons. The relevant extract of the reply dated 03.01.2024 is quoted as follows:



"Be that as it may, please note that the election commission of India has since decided to hold the elections to the council of the States (Rajya Sabha) inter-alia, from National Capital Territory of Delhi. Nominations starts from 3<sup>rd</sup> January. Voting will take place on 19<sup>th</sup> January. Result will be declared. The national capital territory of Delhi has been allocated 3 seats in the Rajya Sabha in the terms of the office of the present incumbents expires on 22<sup>nd</sup> January, 2024. Therefore, the said elections are being held to fill the above mentioned vacancies. Being national convener of the Aam Aadmi Party, I am held up in the process and run upto the critical elections.

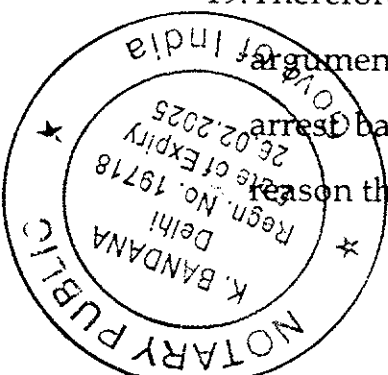
A True Copy of the reply dated 03.01.2024 sent by the petitioner is annexed herewith and marked as **Annexure A-2** at Page 15 to 19.

18. Again in letter dated 18.01.2024 replying to the summons dated 12.01.2024 the petitioner herein avoided the summons citing Goa elections as the reasons as evident from para 12 therein as follows:

"It is just a coincidence that just a few hours after I announced on 12.01.2024 that I would be visiting Goa on 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup> January for upcoming Lok Sabha election that I received the summons from ED requiring my presence on 18<sup>th</sup>/19<sup>th</sup> January?"

A True Copy of the reply dated 18.01.2024 sent by the petitioner is annexed herewith and marked as **Annexure A-3** at Page 20 to 36.

19. Therefore, from the petitioner's own replies it is evident that the argument that the timing of arrest before elections would render the arrest bad is a complete red-herring and self-contradictory for the reason that for the past 6 months the petitioner has cited one election



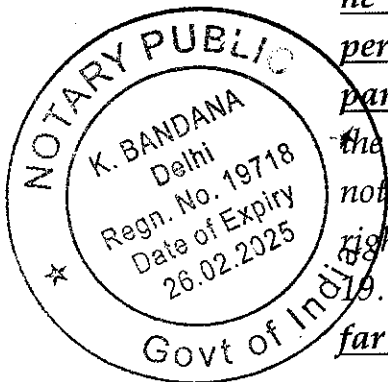
or the other be it state elections, or Rajya Sabha Elections, as the reason for not complying with the law which an ordinary citizen would be otherwise obliged to follow.

20. This Hon'ble Court speaking for a 5 Judge Constitution Bench in *K. Ananda Nambiar v. Chief Secretary to Govt. of Madras and Anr*, AIR 1966 SC 657 at para 17-19 has held that consequence of being in custody is to forgo the right to participate in the business of the legislature and that Members of Legislature can claim no special status higher than that of an ordinary citizen and is as much liable to be arrested and detained under it as any other citizen. Relevant extracts are as follows:

"17. ...If the order of detention validly prevents him from attending a session of Parliament, no occasion arises for the exercise of the right of freedom of speech and no complaint can be made that the said right has been invalidly invaded.

18. . . . It is true that the conviction of a person at the end of a trial is different from the detention of a person without a trial; but so far as their impact on the alleged constitutional rights of the Members of Parliament is concerned, there can be no distinction. If a person who is convicted and sentenced, has necessarily to forego his right of participating in the business of the legislature to which he belongs, because he is convicted and sentence, it would follow that a person who is detained must likewise forego his right to participate in the business of the legislature. Therefore, the argument that so long as the Member of Parliament has not incurred any disqualification, he is entitled to exercise his rights as such Member, cannot be accepted.

19. ...The true constitutional position, therefore, is that so far as a valid order of detention is concerned, a Member



of Parliament can claim no special status higher than that of an ordinary citizen and is as much liable to be arrested and detained under it as any other citizen.

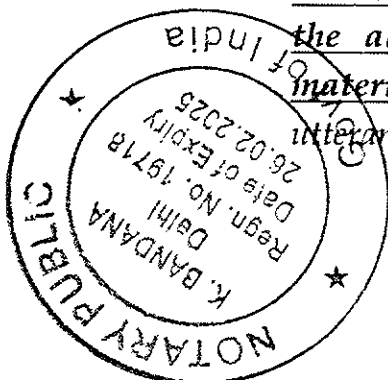
21. This Hon'ble Court has repeatedly frowned upon grant of bail to a person only on the consideration that he is a political leader of some prominent political party. For instance this Hon'ble Court in *State of Maharashtra v. Anand Chintaman Dighe*, (1990) 1 SCC 397:

"6. This Court would not ordinarily interfere with the discretion of the lower court in granting or refusing bail but in cases where bail has been granted on irrelevant considerations, such as the status or influence of the person accused and regardless of the nature of the accusation and relevancy of materials on record, this Court would not hesitate to interfere for the ends of justice.

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8. In the present case the learned Judge observed that it is a case of respectable person of a big political organisation, his freedom cannot be curtailed if he is entitled to bail. His liberty cannot be curbed if enlarged on bail and, therefore, no kind of condition is required to be imposed. The court also observed that being a leader of the big political organisation one cannot expect that the respondent will commit any offence if enlarged on bail and he cannot be called to be a criminal. The learned Judge was obsessed by the fact that the respondent was associated with a political party and was oblivious of the nature of the allegations made against him and the relevant materials indicating that the respondent had been making utterances inciting violence...

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9... The court below misdirected itself in refusing to look into such statements and concluding that it is a case for granting bail taking into account only the position held by the respondent in the party. The court clearly erred in disposing of the application for bail."

22.A politician can claim no special status higher than that of an ordinary citizen and is as much liable to be arrested and detained for committing offences as any other citizen.

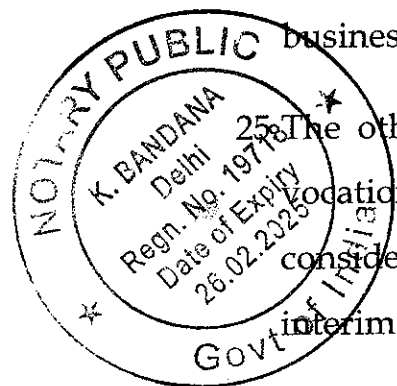
23.If the right to campaign is treated as a basis for grant of interim bail it would breach the principles of Article 14 for the reason that harvesting for a farmer would be an equally important factor seeking interim bail as would a board meeting or an annual general meeting for a director of a company who commits a crime as these are their respective vocations or professions.

24.There is absolutely no principle which justifies giving a differential treatment to a politician for campaigning over a farmer or a businessman who wishes to pursue his vocation.

25.The other categories may equally cite irreversible injury to their vocation or profession if not released on bail. However, such consideration has been held to be totally alien for grant of bail or interim bail.

26.It is equally relevant to note that the petitioner has not filed any regular bail or interim bail before this Hon'ble Court or any other Court.

27.The consistent approach of this Hon'ble Court has been to relegate parties to the remedy of bail under CrPC when they had challenged



their arrest claiming it to be illegal. In this regard, it is relevant to note that one of the co-accused persons namely Sanjay Singh in SLP 14510/2023 had challenged the judgment of the High Court of Delhi upholding the arrest and remand of the said accused. This Hon'ble Court by way of an order dated 20.11.2023 passed the following order:

*"Issue notice returnable in the week commencing 11.12.2023.*

*Notice will be served by all modes, including dasti.*

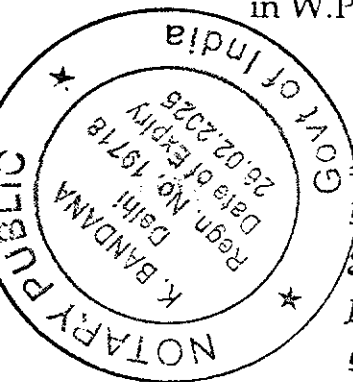
***In the meantime, it will be open to the petitioner - Sanjay Singh, to apply for a grant of regular bail if so advised. If any such application is filed, the same will be considered and decided on its own merits without being influenced by the impugned judgment, which is sub judice before this Court."***

28. Ultimately, the said SLP challenging the High Court judgment upholding the arrest was dismissed as infructuous while the SLP against rejection of bail was allowed.

29. Similarly, when another co-accused - K. Kavitha approached this Hon'ble Court against her arrest by way of a writ petition, this Hon'ble Court declined to pass any interim relief and gave her liberty to file a bail application by way of an order dated 22.03.2024 in W.P. (Crl) 153/2024 to the following effect:

*"Issue notice ...*

***It will be open to the petitioner - Kalvakuntla Kavitha to move before the trial court or invoke any other remedy for grant of bail as permissible in law. If any such application is filed, the same will considered expeditiously and in accordance with law. All pleas and contentions are left open."***



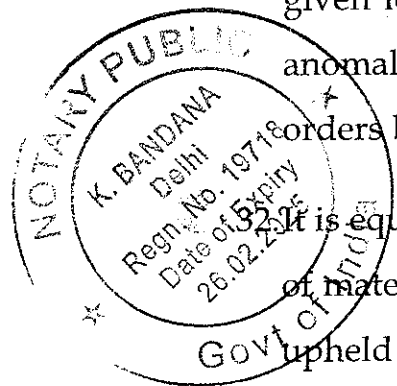
30. Yet another example is when another co-accused, Mr. Manish Sisodia had approached this Hon'ble Court challenging his arrest by way of a writ petition, this Hon'ble Court had refused to entertain the petition relegating him to other remedies available under the CrPC, which ultimately led to the said accused filing a bail application. See. Manish Sisodia vs. Central Bureau of Investigation, order dated 28.02.2023 in W.P. (Crl) 81/2023:

"Since the petitioner has efficacious alternate remedies available under the provisions of the Code of Criminal Procedure 1973, we are not inclined to entertain the petition under Article 32 of the Constitution, at this stage."

31. This Hon'ble Court has stressed upon consistency and uniformity in judicial orders. In Bir Bajrang Kumar v. State of Bihar [AIR 1987 SC 1345] this Court held that cases involving identical points must be given identical treatment by the court, otherwise it may create an anomalous position, as there may be a possibility of contradictory orders being rendered in similar types of cases by the same court.

It is equally important to note that the reason to believe on the basis of material in possession of IO that the petitioner is guilty has been upheld by a Special Court manned by a judge of the rank of a session judge as well as the High Court who have independently applied their mind and the reasons to believe has withstood the scrutiny by two courts of law.

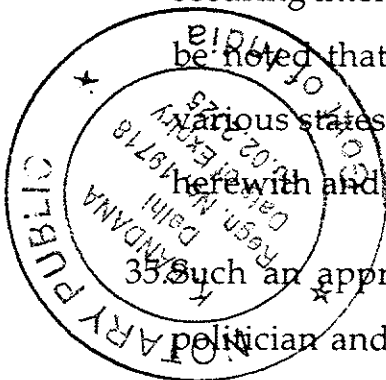
33. That by itself is sufficient to demonstrate that the petitioner has no prima facie case when two courts have given concurrent findings



upholding the reason to believe, especially when even prior to arrest the entire material in the case file was perused by the Division Bench of the Delhi High Court which declined the interim relief in "Crl. Misc. Application 9106/2024 in WP 937/2024". Therefore, three courts have concurrently found the material in possession of IO to be sufficient to arrest the petitioner.

34. In light of the above, any special concession in favour of the arrestee enlarging him on interim bail for campaigning in general election would, in the humble submission of the respondent, amount to anathema to the rule of law and equality and create a precedent which would permit all unscrupulous politicians to commit crimes, avoid investigation under the garb of one election or the other be it municipal election, or panchayat election or assembly election or general election and thereafter upon being arrested, seek interim bail to campaign for one election or the other thereby creating two separate classes in the country viz. ordinary people who are bound by the rule of law as well as the laws of the country and politicians who can seek exemption from the laws under the with the hope of securing interim bail to campaign for elections. In this regard, it may be noted that in the past 5 years, 123 elections have been held in various states in India and a table depicting the said data is annexed herewith and marked as **Annexure A-4** at Page 37 to 41.

35. Such an approach would incentivise every criminal to become a politician and being in campaign mode throughout the year while committing rampant offences and violations of laws in the country.



36. There are numerous examples where politicians contested elections in judicial custody and some have even won but were never granted interim bail on this ground.

37. In light of the above factual and legal submissions, the prayer for interim bail deserves to be rejected as it would not only be contrary to settled principles of law but violate the rule of law which is a basic feature of the Constitution.

