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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 985/2024 & CRL.M.A. 9427/2024**

ARVIND KEJRIWAL

..... Petitioner

Through: Dr. Abhishek Manu Singhvi, Mr. Vikram Chaudhari, and Mr Amit Desai, Senior Advocates with Mr. Vivek Jain, Mr. Mohd. Irshad, Mr. Rajat Bharadwaj, Mr. Shadan Farasat, Mr. Karan Sharma, Mr. Rajat Jain, Mr. Mohit Siwach, Mr. Kaustubh Khanna and Mr. Amit Bhandari, Advocates

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. S.V. Raju, learned ASG with Mr. Zoheb Hossain, Special Counsel for ED, Mr. Simon Benjamin, SPP, Mr. Annam Venkatesh, Mr. Vivek Gurnani, Mr. Arkaj Kumar, Mr. Hitharth Raja, Ms. Abhipriya, Mr. Vivek Gaurav, Mr. Kanishk Maurya, Mr. Anand Kirti, Ms. Shweta Desai, Advocates for ED, Mr. Gaurav Saini, ALA and Ms. Bhanu Priya, DD

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER
27.03.2024

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**CRL.M.A. 9428/2024**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(CRL) 985/2024 & CRL.M.A. 9427/2024

3. The petitioner has approached this Court by way of present writ petition, filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C'), through which following reliefs has been sought by the petitioner:

“A. In consonance with the principles laid to rest by the Hon’ble Supreme Court, inter alia, in its latest locus classicus ‘Pankaj Bansal Versus Union Of India And Others 2023 SCC Online Sc 1244’, hold and declare the arrest of the petitioner at the hands of Respondent to be wholly non-est, illegal, arbitrary and unconstitutional and consequently set aside and quash the entire proceedings relating thereto including arrest order dated 21.03.2024 as a gross and blatant abuse of the process of law as well as perversion of power and authority is writ large thereby, infringing the petitioner’s fundamental rights as guaranteed under articles 14, 19, 21 and 22(1) & (2) of the Constitution of India;

B. Quash and set aside the order dated 22.03.2024 passed by the Special Judge (PMLA) whereby, the petitioner has been remanded to the custody of Respondent in a patently routine and mechanical manner and, therefore, such untenable remand orders cannot cure the constitutional infirmities as guaranteed under Articles 21 and 22(1) & (2) of the Constitution of India;

C. Direct the forthwith release of the petitioner from custody as his any further incarceration would be anathema to law and gravely detrimental to the cause of justice; d. Issue any other writ(s), order(s) or direction(s) that this Hon’ble Court may deem fit and proper in the facts and circumstances of the case in favor of the petitioner.”



4. Along with the main petition, the petitioner has also preferred an application for grant of interim relief under Article 226 of the Constitution of India read with Section 482 of Cr.P.C., seeking the following relief:

“i. Direct the release of the petitioner from illegal custody forthwith in ECIR/HIU/14/2022 on such terms and conditions as this Hon’ble Court may deem fit; AND/OR

ii. Pass any such other or further order(s) and/or direction(s) as this Hon’ble Court may deem fit in the peculiar facts of the case in favour of the Petitioner.”

5. Sh. Abhishek Manu Singhvi, learned Senior Counsel, appearing on behalf of the petitioner argues that there is no requirement for issuance of notice either of the main petition or the application for grant of interim relief since the grounds of arrest as well as the impugned order dated 22.03.2024 passed by the learned Special Judge (PC Act), CBI-09 (MPs/MLAs Cases), Rouse Avenue District Court, New Delhi (*learned Trial Court*), *vide* which Sh. Arvind Kejriwal was remanded to the custody of Directorate of Enforcement, are on record and the same clearly reflect the stand of the Directorate of Enforcement as far as the present petitioner and his arrest is concerned. He states that the grounds of arrest are frozen and neither the plea taken by the Directorate of Enforcement before the learned Trial Court can change, nor there can be any addition to the grounds or arguments addressed before the learned Trial Court by Directorate of Enforcement, which have to be brought before this Court in the form of a formal reply.



6. Sh. Singhvi also argues that it is a delaying tactic which is reflective of malicious intent on the part of Directorate of Enforcement to stall or delay any order being passed on the release of the petitioner herein. He also states that this Court may decide the petition and the application either way, on the basis of his petition and arguments, and the previous stand taken by the Directorate of Enforcement before the learned Trial Court at the time of remand. Thus, he insists that there is no need for a reply being filed by the Directorate of Enforcement.

7. On the other hand, Sh. S.V. Raju, learned Additional Solicitor General ('ASG') appearing on behalf of the Directorate of Enforcement opposes the present writ petition and argues that it is the right of the Directorate of Enforcement to file a reply and to be heard before passing any order. Learned ASG also argues that he cannot be denied opportunity to file a reply nor the petitioner can decide as to whether the Directorate of Enforcement has to place before the Court any new fact or not. He, therefore, prays that he be given time to file reply to the main petition as well as the application for grant of interim relief.

8. Learned ASG also argues that one of the prayers sought in the main petition and the prayer in the application seeking interim relief are identical. Furthermore, there is a specific averment in the application for grant of interim relief that the contents of the main petition be read as part and parcel of the application for grant of interim relief i.e. immediate release of the petitioner herein.

9. Sh. Singhvi, learned Senior Counsel for the petitioner, in rebuttal to the aforementioned argument, argues that it is a standard paragraph



mentioned in an application for interim relief and nothing more than that, and this cannot be used as a ground for seeking time to file a reply. He further argues that since the interim relief as well as the relief sought in the main petition are identical, no reply is needed for either of them and the matter can be disposed of by hearing arguments on behalf of both the parties today itself or tomorrow.

10. However, learned ASG, while countering this argument, states that the copy of the petition was handed over to the respondent yesterday itself, which runs into more than 400 pages, and there was a deliberate delay on part of the petitioner and objections were not removed on time, neither a copy was given to them despite two emails sent to them for providing a copy of the paper book.

11. In response, Sh. Singhvi, learned Senior Counsel for the petitioner submitted that since the Registry was closed on account of the festival of Holi, they could not have anticipated the objections and that there is no delay on their part and they had prayed for an early hearing on the day this Court was closed.

12. Having heard arguments addressed by the learned Senior Counsel appearing on behalf of the petitioner as well as the learned ASG appearing on behalf of the respondent/Directorate of Enforcement, this Court notes that the petitioner himself mentions in his application for interim relief that since he is hopeful of succeeding in the main petition, the contents of the main petition be read as part and parcel of the application for grant of interim relief. The relevant portion of the application for interim relief reads as under:



“1. That the petitioner is approaching this Hon’ble Court vide the main petition invoking the writ jurisdiction of this Hon’ble Court under Article 226/227 of the Constitution as well as under Section 482 Cr.P.C. and other enabling provisions to set at naught absolutely illegal, arbitrary and unconstitutional action of the Enforcement Directorate in arresting the petitioner and the subsequent mechanical and patently routine remand order passed by the learned Special Court. **The petitioner is sanguine in the success of the main petition and therefore, Brevitatis causa, contents of the main petition may kindly be read as a part & parcel of the instant application as well.**”

13. The contention of the learned Senior Counsel for the petitioner is that it is a standard paragraph mentioned in every application for interim relief, and therefore, it should not come in the way of granting interim relief today itself without waiting for a response from the opposite side. In this regard, this Court had raised a specific query that, if that be so, should the Court not read the petition and its contents and should only read the application for interim relief, however, the same did not evoke a response from the side of petitioner, since the learned Senior Counsel had himself referred to and raised issues from the main petition while addressing arguments on the application for grant of interim relief.

14. This Court also takes note of the fact that the learned ASG has also placed on record the copies of two emails sent by the respondent to the counsel of the petitioner seeking copies of the paper-book on 24.03.2024 and 25.03.2024. However, the copy of the petition was provided to them on 26.03.2024 in the afternoon. This fact is not disputed by the learned counsel for the petitioner.



15. This Court is further of the opinion that the present petition raises several issues of legality and validity regarding the arrest and remand of the petitioner. Additionally, it questions whether the arrest may be politically motivated and malafide. There are also serious concerns which have been raised by Sh. Singhvi, learned Senior Counsel on behalf of the petitioner, which relate to Article 21 of the Constitution of India and Section 19 of PMLA, as well as the validity of the statement of an approver. The necessity and timing of the arrest of the petitioner and the motive behind it has also been argued at length by the learned Senior Counsel, Sh. Singhvi. He has also raised serious and critical questions before this Court that this Court being a constitutional Court must apply its mind to the motive behind the arrest which is patently illegal and has a direct bearing on the democratic process of impending elections in the country. In this Court's opinion, such important questions and issues cannot be summarily heard and decided, by giving opportunity to only one party to file petition, documents, short note of arguments and compilation of judgments relied upon by them, especially when copy of the petition was provided to the Directorate of Enforcement yesterday itself, and the short note of arguments and compilation of judgments relied upon by them were provided to the Court as well as the learned ASG during the hearing itself. It will be unfair to not give an opportunity to the Directorate of Enforcement to rebut the same by way of filing of a detailed response.

16. Thus, having regard to the nature of issues raised in this petition, this Court is of the opinion that the respondent has to be granted an



opportunity to file a reply, as an opportunity for effective representation, and declining this opportunity would amount to denial of fair hearing as well as violation of one of the principles of natural justice i.e., *audi-alteram partem*, which is applicable to both the parties and not one.

17. This Court also cannot presume that the respondent will have no reply to file and will remain bound only by the contentions raised before the learned Trial Court. Moreso, since there may be some additional material in the possession of the investigating agency, collected during the custodial interrogation of the petitioner herein, which they may wish to place before this Court, which may be crucial to decide the present case. Such material may also be crucial for the petitioner himself.

18. The Court while hearing and deciding a case is duty bound to hear both sides fairly keeping in mind the principles of natural justice. Thus, the reply by Directorate of Enforcement is essential and crucial to decide the present case, and therefore, the contention of the learned Senior Counsel for the petitioner that no reply is required to be filed on behalf of the respondent is rejected.

19. This Court also takes note of the fact that the relief sought in prayer (C) of the main petition i.e. the release of the petitioner and the prayer sought in the application for grant of interim relief is similar and identical. The issues raised in the main petition and prayer (A) i.e. declaring the arrest as illegal and prayer (B) i.e. quashing of remand order, will lead to an order being passed on prayer (C) of the main petition i.e. release of the petitioner from custody. Thus, deciding the



present application for interim release of petitioner would amount to disposing of and granting relief sought in the main petition in prayer (C).

20. Further, any release order from custody will amount to enlarging the accused/petitioner on bail or interim bail, as an interim measure. The writ jurisdiction under Article 226 of the Constitution of India is not a ready substitute for recourse to the remedy of bail under Section 439 of the Cr.P.C. ordinarily.

21. As noted above, the relief sought in prayer (C) in the main petition is dependent on the outcome of prayer (A) and (B). Therefore, any order passed in the application for interim release of petitioner, pending disposal of the main petition without calling for reply of the respondent, at this stage, would rather amount to deciding the main petition itself. This Court remains conscious of the fact that to reach a conclusion as to whether the petitioner herein is entitled to immediate release or not, this Court will necessarily have to decide the issues raised in the main petition, as those issues are the edifice of arguments of the learned Senior Counsel for the petitioner seeking immediate release of the petitioner.

22. In such circumstances, this Court deems it appropriate to issue notice of the main writ petition as well as application for grant of interim relief, returnable on 03.04.2024.

23. Mr. Zoheb Hossain, learned Special Counsel accepts notice on behalf of Directorate of Enforcement.

24. The Directorate of Enforcement will ensure that replies are filed to the main petition as well as the application for interim release of the petitioner by 02.04.2024 and copies of the same are provided in digitized



form as well as hard copy to the learned counsel for the petitioner. The application as well as the main petition will be taken up for final disposal on 03.04.2024. No adjournment shall be granted on the said date.

25. The order be uploaded on the website forthwith.

MARCH 27, 2024/ns

SWARANA KANTA SHARMA, J

[Click here to check corrigendum, if any](#)