



\$~

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

%

Reserved on: 14.02.2024
Pronounced on: 16.02.2024

+ **BAIL APPLN. 494/2024**

HARI OM RAI

..... Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate with Mr. Abhay Raj Varma, Mr. Arjun Rekhi, Ms. P. Rathi, Ms. Namisha and Ms. Sanskriti S. Gupta, Advocates

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. S.V. Raju, ASG with Mr. Zoheb Hossain, Special Counsel for ED, Mr. Manish Jain, Special Counsel for ED, Mr. Samrat Goswami, Mr. Vivek Gurnani, Mr. Kartik Sabharwal and Mr. Ishan Baisla, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

CRL.M.A. 4223/2024

1. The applicant has preferred an application i.e. Bail Appln. No. 494/2024 under Section 45 of Prevention of Money Laundering Act,



2002 ('PMLA') read with Section 439 of the the Code of Criminal Procedure, 1973 ('Cr.P.C.') seeking grant of bail in ECIR/STF/02/2022. By way of present application i.e. Crl.M.A. 4223/2024, filed under Section 482 of Cr.P.C., the applicant has sought interim bail on medical grounds.

2. Learned Senior Counsel appearing on behalf of the applicant argues that the applicant herein was arrested in the present case on 09.10.2023, and he is seeking release on interim bail, on medical grounds. It is argued that a bare perusal of the medical reports of the applicant make it apparent that the applicant has a chronic history of high triglycerides, cholesterol and related issues concerning his heart. It is stated that even prior to his arrest in October, 2023, he was consulting his doctors for treatments/procedures to mitigate his susceptibility to a stroke, heart attack and acute inflammation of the pancreas. It is stated that since his arrest, he has been taken to the jail dispensary several times complaining *inter alia* of shortness of breath, chest pains, etc., which makes it apparent that his medical issues are severe. It is further argued that the applicant had several medical emergencies in jail, and the jail authorities were unable to properly diagnose or treat the conditions and have stated that the applicant requires external cardiology, gastroenterology, and other specialist reviews and treatment, but such reviews are not being done in time. It is further pointed out that due to the worsening condition of the applicant, his dosage of statins has been doubled and he has been prescribed SOS medicines to control bouts of chest pain. It is



vehemently argued that these ailments are not being treated effectively or in a timely manner, which presents a life-threatening situation for the applicant. It is stated that the applicant has a long history of irritable bowel syndrome, and his allergy report clearly show that he cannot eat basic food items such as wheat, rice, potato, dal, etc. and thus, he was recommended a special diet while in judicial custody. However, the special diet was only provided for a few weeks and the jail authorities are not providing him the diet prescribed in view of his medical conditions, and as a result, he has lost 15-16kgs of weight. Further, non-provision of the special diet prescribed to him has led to further loss of power and health and aggravation of his other medical conditions as mentioned above. It is further stated that due to the failure of the jail authorities to get the ultrasonography conducted till date, though it was advised on 19.12.2023, the lower urinary tract symptoms due to his enlarged prostate have increased leading to decrease in urine flow. It is also pointed out that the applicant had a severe fall on his hip in jail and is in severe pain, and the same has likely led to a fracture in his hip which needs to be diagnosed and treated. However, despite such a severe fall and pain, the applicant has not been sent for orthopedic review at a specialised centre by the jail authorities. It is contended that the applicant needs a regular attendant to be present with him at all times due to severe pain in his hip, shoulder and due to aforesaid medical conditions, and consequently, he cannot move around or take care of basic needs without an attendant which is not available in jail.



Learned Senior Counsel further submits that the medical condition of the applicant has deteriorated severely while in judicial custody, and his health must be given primacy, and it is his fundamental right to be given adequate and effective treatment by the doctors of his choosing, in whom he reposes trust and confidence. It is therefore argued that the applicant is entitled to the benefit of the proviso to Section 45 of PMLA, being a sick person.

3. On the other hand, learned ASG appearing on behalf of the Directorate of Enforcement argues that the learned Trial Court has rightly held that the twin conditions under Section 45 of PMLA are applicable even while considering an interim bail application and that the applicant herein does not fall within the proviso to Section 45(1) of PMLA. It is argued that the medical condition of the applicant is not of such nature which warrants grant of interim bail on medical grounds. It is stated that the applicant herein, admittedly, was reviewed by jail dispensary number of times and was further taken to G.B. Pant Hospital, Delhi for medical checkup by the Department of Gastroenterology and the Cardiology Department, and it is evident from the medical records that sustained medical treatment is being provided to the applicant. It is further argued that there is absolutely no satisfaction by any authority that the treatment which is being provided by the jail authorities is either inadequate or insufficient to take care of the health condition of the petitioner. It is also submitted that the applicant has himself stated during his first medical examination by the jail medical doctors that he was not suffering



from any chronic illness and had merely complained of diminution of vision and bloating for which he was prescribed medication. Further, the medical report of 28.11.2023 and 12.12.2023 received from the jail dispensary shows constant medical supervision and the fact that the condition of the inmate is stable. On 02.02.2024, the applicant was also taken to the jail dispensary complaining of severe pain in the right hip region', for which he was given medication. It is further argued that apart from the aforesaid, the applicant has repeatedly complained of bloating, irritable bowel syndrome, palpitation, chest pain/unstable angina, and for all of these issues, he has been prescribed medication and has been referred to G.B. Pant Hospital where he has been prescribed medication. It is thus, contended that it is evident from the medical reports of jail dispensary and G.B. Pant Hospital that the complaints of medical discomforts are not serious or life-threatening diseases which warrant invocation of proviso to Section 45 of PMLA. It also argued that if medical treatment can be provided by prison authorities, bail on medical grounds should not be granted, and the learned Trial Court has correctly applied the law laid down by this Court in the case of *Sameer Mahendru v. Directorate of Enforcement 2023 SCC Online Del 6680*. It is further argued on behalf of respondent that exceptional ground of 'sickness' for seeking bail should be exercised in a sparing and cautious manner, and any and every nature of sickness would not entitle an accused to be released on bail. It is further submitted that applicant is relying on medical reports of G.B. Pant Hospital, and must be referred to AIIMS,



Delhi for fresh medical examination and status report. On these grounds, it is prayed that the present interim bail application be dismissed.

4. This Court has heard arguments addressed by learned Senior Counsel for the applicant as well as learned ASG appearing for the respondent. The material placed on record including the medical reports of the applicant has also been perused.

5. In the present case, the applicant Hari Om Rai was arrested by the Directorate of Enforcement on 09.10.2023 and was remanded to judicial custody on 18.10.2023. The case set out by the applicant in the present application is that his medical condition is of such nature that he ought to be released on interim bail on medical grounds. However, the same has been opposed on behalf of the respondent on the ground that the applicant's medical condition cannot be termed as very serious or life threatening, so as to grant him medical interim bail in a case registered for commission of offence under PMLA.

6. Section 45 of PMLA prescribes the mandatory twin conditions that are required to be met before bail can be granted to an accused, which are as under:

- a) there are reasonable grounds for believing that the accused is not guilty of the offence of money laundering, and
- b) he is not likely to commit any offence while on bail.

7. However, the proviso to Section 45 provides exceptions to the general rule i.e. the cases where Special Courts can exercise their



discretion *de hors* the satisfaction of twin conditions. These exceptions are as follows:

- a) accused is less than the age of 16 years,
- b) accused is a woman,
- c) accused is sick or infirm, or
- d) if the allegations of money laundering against the accused are of an amount less than one crore rupees.

8. To appreciate the rival contentions raised on behalf of both the parties, this Court has examined all the medical documents/medical reports filed before this Court.

9. This Court notes that as recorded in medical status report dated 28.11.2023, the applicant was taken to jail dispensary on 17.11.2023 due to complaints of chest pain and palpitation for which he was examined and prescribed medications and he was again reviewed for postural hypotension, palpitation and chest pain on 22.11.2023. The medical report dated 28.11.2023 further reveals that the inmate patient i.e. the present applicant had visited jail dispensary on multiple occasions in emergency for complaints of chest pain on exertion, back pain, bloating, loose stools, etc. The medical report dated 12.12.2023 filed by the concerned Jail Superintendent further reveals that the applicant was scheduled for a review at G.B. Pant Hospital on 07.12.2023 from the Cardiology and Gastroenterology department, however, same could not be done since the applicant had to be produced before the Court concerned *via* video conferencing. But the applicant was reviewed by jail visiting doctor as a follow up



case of unstable angina with irritable bowel syndrome and with complaint of left sided chest pain on and off with loose stools. However, the jail doctor had found that the cholesterol and potassium levels of the applicant had increased substantially, and therefore, the dosage of *statins* i.e. a drug used to treat higher level of cholesterol was doubled and he was also prescribed *sorbitrate* which is a drug used to treat angina and severe chest pains. He was also advised for cardiology and gastrology review.

10. It is reflected in the medical report dated 21.12.2023 that on 21.12.2023, the applicant was reviewed at GB Pant Hospital by the cardiology department for his complaint of angina on daily activity and the doctors concerned had advised blood thinning medications to him along with coronary vasodialators and he was also advised coronary angiography and/or revascularization. Besides this, the medical report also reveals that the patient was earlier reviewed at the jail dispensary with complaints of ‘lower back radiating to lower right limb’ and was advised treatment as well as X-ray. However, the X-ray which was planned for 13.12.2023 was not done, since the applicant had to be produced before the Court for court-hearing, Further, on 19.12.2023, the applicant was also reviewed by the jail dispensary with complaint of decreased flow of urine with lower urinary tract symptoms, and was advised appropriate treatment including ultrasonography.

11. Another medical status report of the applicant dated 07.01.2024 has also been placed on record, which reveals that on



01.01.2024, the applicant had visited jail dispensary on an emergency call with complaint of chest pain on exertion. Five days thereafter, the applicant was again reviewed by the duty doctor with complaint of chest pain with palpitation. As mentioned in the said report the applicant is a follow up case of *“Unstable Angina, CAD, Irritable Bowel Syndrome, GBRD, Dyspepsia, Postural hypotension, LUTS, LBA with radiation to right lower limb and was advised Coronary Angiography +/- Revascularisation. The inmate patient complains of persistence of chest pain on daily activity along with lower backache and decreased urine flow.”*

12. The latest medical report of the applicant is of 03.02.2024 in which it has been mentioned that inmate patient i.e. applicant complains of persistence of chest pain on daily activity and has been advised coronary angiography. The report also reveals the incident when the applicant had visited jail dispensary for complaints of severe back pain, knee pain and upon examination, tenderness and swelling was found in knee joints, for which he was advised X-ray, MRI as well as use of stick/walker when necessary. On 24.02.2024, the applicant was also referred to neurosurgery department at G.B. Pant Hospital for the complaint of back ache, pain radiating to lower limb, tingling and numbness in bilateral lower limb, and he was advised MRI lumber sacral spine and MRI cervical spine. It is also mentioned in the report that on 02.02.2024, the applicant had visited jail dispensary with complaint of severe pain in the right hip region with alleged history of fall.



13. Having taken note of the medical status reports pertaining to the present applicant, this Court notes that the applicant has been on medications pertaining to high cholesterol levels and coronary artery disease for last few years and his condition *qua* the said medical issue has worsened since the time he has been in judicial custody. The same is reflected also from the fact that the dosage of the drug *statin*, prescribed to the applicant, was doubled by the jailed doctor and he was also prescribed another medicine i.e. *sorbitrate*, which is often used as an emergency drug in cases of severe chest pain/angina/heart attacks. The doctors concerned at G.B. Pant Hospital, Delhi have already suggested coronary angiography to the present applicant, which is a procedure conducted to increase the blood flow to the heart, in order to prevent heart attacks or to treat the same. All these facts emerge from the medical reports submitted by the jail itself, and also the fact that the applicant had been visiting Jail dispensary repeatedly with complaints of chest pain due to daily activity, and in every report filed by the jail authorities, it is mentioned that the applicant is a case of unstable angina and has been advised coronary angiography.

14. Besides the cardiac health of the applicant, the latest medical reports also reveal that the applicant is also suffering from several orthopedic and neurological issues, including pain in his spine and neck, tingling and numbness in bilateral lower limb, etc. and he has also been advised MRIs by the hospital concerned. At this stage, it is also important to take note of the fact that though the MRI was



suggested to done, by the doctors on 24.01.2024, the same has been scheduled for 25.04.2025 i.e. after a period of about one year and three months.

15. It is also revealed from the medical records that the applicant had complained of abdominal pain and decreased flow of urine with lower urinary tract symptoms, for which he was advised urine investigation and ultrasonography of whole abdomen. However, it has been pointed before this Court that the said ultrasonography, as advised to be conducted on 19.12.2023, has not been conducted till date and due to the same, the applicant is suffering from decreased flow and pain during urination, as reported. The medical reports filed on record also nowhere mention that any such ultrasonography has been conducted till date.

16. As regards the argument raised on behalf of Directorate of Enforcement that the reports of GB Pant Hospital may not be relied upon and the report from AIIMS be called, this Court is not inclined to accept this argument. Firstly, G.B. Pant Hospital, Delhi in one of the jail referral hospitals itself and there is no reason as to why the report prepared and treatment advised by its doctors should not be relied upon by this Court. Secondly, in this regard, reference can also be made to the order of Hon'ble Apex Court in case of *Satyendra Kumar Jain v. Directorate of Enforcement SLP (Crl.) 6561/2023*, wherein the medical status report of the accused therein, as prepared by G.B. Pant Hospital, Delhi was relied upon to grant interim bail in a case under PMLA, and the request for formation of medical board



at AIIMS, Delhi was not accepted. The relevant portion of the decision reads as under:

“The Report of the G.B. Pant Institute of Post Graduate Medical Education and Research, New Delhi, dated 04.05.2023 has been pressed before us for consideration.

The Additional Solicitor General representing Enforcement Directorate opposed such prayer and pressed upon for independent medical examination before All India Institute of Medical Sciences [AIIMS].

After hearing learned counsel for the parties, at present there is no reason to disbelieve the Report of G.B. Pant Institute of Post Graduate Medical Education and Research. We think it appropriate that the citizen is having a right to take treatment of his choice, at his own expenses, in a private hospital.

Therefore, we deem it appropriate to release the petitioner on interim bail on medical grounds for a limited period of six weeks.”

17. Learned ASG appearing for respondent had also drawn this Court’s attention to the decision in case of *Sameer Mahandru v. Directorate of Enforcement 2023 SCC Online Del 6680*, which was authored by this Bench, to contend that since the jail dispensary and referral hospitals are good enough to treat the applicant, bail should not be granted to him as was also not granted in case of *Sameer Mahandru (supra)*. However, this Court while examining such contention notes that though the regular bail application filed by accused Sameer Mahandru, on medical grounds, was dismissed by this Court *vide* judgment dated 19.10.2023, he had earlier been granted interim bail by this Court as well as by the learned Trial Court, in view of his medical condition and considering that life



threatening diseases put the person in the category of ‘sick’ under Section 45 of PMLA. Facts of each case are different and while comparing the case of *Sameer Mahandru (supra)* with the present case, this Court remains conscious of the fact that the applicant in *Sameer Mahandru (supra)* was aged about 45 years and was suffering from spinal issues, and had also remained on interim bail for several months, whereas the applicant in present case is aged about 57 years and is suffering from spinal as well as cardiac health issues, which are yet to be appropriately diagnosed and addressed alongwith other issues of diminished urine flow, irritable bowel syndrome, etc.

18. There is no doubt about the fact that the treatment which the applicant requires at this stage, especially the one relating to his spinal and cardiac/heart related issues cannot be provided to him in the jail dispensary since the prisons are non-equipped to deal with such situations as they lack appropriate machines and equipment required to carry out such procedures. This Bench also, in case of *Amandeep Singh Dhall v. Directorate of Enforcement CRLM. (BAIL) 1723/2023 in BAIL APPLN. 2093/2023*, had observed that it is crucial to have appropriate medical care system in the prisons which meets the requirements of the inmate patients, and had issued directions to the Government of NCT of Delhi *inter alia* for formation of a committee which would give suggestions, regarding improving the health care facilities in Delhi prisons and ways to promote equal health care to all prisoners, and as to whether facilities



are available in the jail hospital to deal with emergency situations such as cardiac arrest, hemorrhages etc. as the first few minutes in such eventuality are crucial to save life of a person. However, no compliance report was filed on behalf of the State, and this Court had accordingly put up the matter for compliance on 13.02.2024 and issued further directions.

19. Furthermore, though the applicant has been referred to jail referral hospital on multiple occasions, there is delay in administering required treatment to him and one such example is the fact that the MRI of applicant's spine has been scheduled, after a period of one and a half year i.e. in the year 2025.

20. In this case, the applicant is aged about 57 years, who is admittedly suffering from heart related issues including angina and has been advised coronary angiography, and the same is clearly discernible from all the medical reports filed by the jail Superintendent himself. In this Court's opinion, even otherwise, the life threatening nature of coronary artery disease or cardiac related issues cannot be equated with other category of illnesses. Such medical conditions have the potential to precipitate life-threatening events at any moment, and thus, they stand unparalleled in their urgency and criticality.

21. In these circumstances, this Court is of the considered opinion that the applicant's health condition is of such nature that it would fall within the category of 'sick' under Section 45 of PMLA and he



must be given an opportunity to get himself treated in the hospital of his choice.

22. The delicate balance between life and death in cardiac emergencies underscores the importance for prioritization and specialized care required in such cases, for mitigating the profound risks posed by these medical conditions. Each passing moment in the face of cardiac distress is fraught with the peril of irreversible harm, and in case of any eventuality that may occur in applicant not getting proper and specialised treatment, this Court will have to bear the weight of regret.

23. Therefore, this Court is inclined to grant interim bail to the present accused/applicant for a period of three (03) months on the following terms and conditions:

- a) The applicant shall furnish a personal bond in the sum of Rs.1,00,000/- with one surety of the like amount, subject to satisfaction of the concerned Trial Court//Successor Court/Link Court/Duty Judge
- b) The applicant shall share his mobile number with the concerned Investigating Officer, on which he can be contacted if required. The mobile number so shared shall be kept operational at all times.
- c) The applicant shall also inform the details of his residential address/permanent address to the investigating officer and the Trial Court.



- d) In case of change of residential address or contact details, the applicant shall immediately inform the same to the concerned Trial Court and the Investigating officer.
- e) The applicant will surrender his passport before the learned Trial Court, and he shall not leave the country during the period of interim bail.
- f) The applicant shall not, directly or indirectly, make any attempt to influence the witnesses in the present case, or tamper with the evidence in any manner.
- g) On expiry of period of interim bail, the applicant shall immediately surrender before the Court concerned.

24. In above terms, the present interim bail application i.e. CrI.M.A. 4223/2024 stands disposed of.

BAIL APPLN. 494/2024

25. List on 24.05.2024.

26. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 16, 2024/zp