2024:DHC:4776

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

% **Judgment reserved on : 25 June 2024**
Judgment pronounced on : 26 June 2024

\+ BAIL APPLN. 2024/2024, CRL.M.A. 18285/2024

AMIT KATYAL ..... Petitioner

Through: Mr. Aman Lekhi, Sr. Adv. with Ms. Bina Gupta, Mr. Gurpreet Singh, Mr. Bakul Jain, Mr. Ritviz Rishabh, Mr. Jatin Sethi, Ms. Akansha Saini, Advs.

versus

DIRECTORATE OFENFORCEMENT GOVERNMENT OF INDIA ..... Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED, Mr. Manish Jain, SPP with Mr. Vivek Gurnani, SPP for ED, Ms. Abhipriya, Mr. Samarvir Singh, Ms. Radhika Puri and Mr. Dipanshu Gaba, Advocates.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

CRL.M.(BAIL) 977/2024

1. The present application has been filed under Section 45 of the Prevention of Money Laundering Act, 2002[1] r/w Section 439 of the Code of Criminal Procedure, 1973[2] seeking *interim* bail on medical grounds by the applicant/accused.

[1] PMLA

2. Pursuant to the directions passed by this Court on 03.06.2024, the matter came up before the learned Single Judge (Vacation Bench) on 07.06.2024 and the Court considered the Status Report dated 07.06.2024 filed by the respondent as well as Medical Status Report dated 06.06.2024 filed on behalf of the Superintendent of Jail. Firstly, it would be apposite to refer to the Medical Status Report received from the Superintendent of Jail, which read as under:-

> "**D.No./SMO/CJ-07/2024/1159 Dated: 05-06-2024**
>
> **Sub: *Medical Status Report of Amit Katyal S/o Om Prakash Katyal.***
>
> *As per the Medical Documents submitted, the inmate patient is an operated case of Bariatric Sleeve Gastrectomy on 09/04/2024 and is on Specified Diet Plan since 23/04/2024, with history of Coronary Artery Disease, Obstructive Sleep Apnoea, Diabetes and Syncope. He was re-lodged in CJ07 on 01/05/2024.*
>
> *The recommended diet chart was forwarded to the Jail Superintendent for necessary action.* ***(Annexure A1 & A2).***
>
> *On 03/05/2024, scheduled OPD was cancelled as he submitted an application complaining of multiple episodes of vomiting along with pain in the chest.*
>
> *Subsequently in the evening the inmate visited jail dispensary with the complaint of Vomiting and Ghabarat after telephonic discussion with doctor he was provided with medication accordingly.*
>
> *On 06/05/2024, the inmate patient visited the jail dispensary with the complaint of vomiting and acidity along with pain in the operated site. He was examined and was provided with medicines.*
>
> *On 10/05/2024, the inmate patient visited jail dispensary with complaint for blood tinged vomiting along with pain abdomen for which he was given medication and was advised medication. The patient was not relieved after which he was advised intravenous injectable.*
>
> *On 11/05/2024, the inmate patient visited jail dispensary for the complaint of severe pain in lower abdomen for which he was referred to DDU Hospital Emergency. He was examined and ultrasonography was done which was suggestive of Grade 2 fatty*

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[2] Cr.PC

Liver with Hepatomegaly. Further he was advised to continue the diet as advised after bariatric surgery. ***(Annexure A3)***

Multiple times the inmate visited jail dispensary with the complaints of vomiting, pain abdomen and blood streaks in vomitus for which he was prescribed medicine accordingly.

On 02/06/2024, the inmate patient visited jail dispensary for the complaint of vomiting for which patient was advised injectable but he took oral medication.

On the next day i.e., on 03/06/2024, the inmate patient complained of episodes of vomiting with trace of blood for which he was advised injectables but he took oral medication.

At present, the inmate patient is a Operated case of Bariatric Sleeve Gastrectomy and with history of Coronary Artery Disease, Diabetes Mellitus, Obstructive Sleep Apnoea, Hepatomegaly and Syncope with normal blood pressure & pulse and raised sugar levels, frequently intolerant to the food provided as per the diet advised at Medanta Hospital dated 23/04/2024 and complaining of multiple episodes of vomiting and with blood streaks on & off in the vomitus, along with pain abdomen, and epigastric pain. Following the diet which is tolerant is crucial for the process of hearing of the stomach.

This is for your information and onward submission."

3. Learned Single Judge (Vacation Bench) in the order dated 07.06.2024 posed for adjudicating a short question as to whether the petitioner is entitled to interim bail on medical grounds? Alluding to the *proviso* to Section 45 (1) of the PMLA and the case law cited at the Bar by learned counsels for the parties including reasons spelled out in the interim bail granted to the petitioner earlier by the learned Special Court vide order dated 05.02.2024 and finding that the petitioner had surrendered on 01.05.2024 as well and taken into judicial custody, this Court found that in the absence of an opinion from the experts, it was difficult to come to a conclusion as to whether the conditions for grant of interim bail on medical grounds were made out.

4. At the same time, learned Single Judge observed that the Medical Status Report of the petitioner on the record could not be brushed aside, which *prima facie* suggested that he is a heart patient and has undergone Bariatric Surgery and in suffering from other ailments. Accordingly, the following directions were passed:-

> *(i) The Director, All India Institute of Medical Sciences (AIIMS) is directed to immediately constitute a Medical Board of Doctors from minimum three different specialties having regard to the nature of ailments the petitioner is stated to be suffering from, for evaluating the medical condition of the petitioner.*
>
> *(ii) The Jail Superintendent is directed to furnish all medical records of the petitioner to the Medical Board of Doctors so constituted on or before 11.06.2024. The pairokar of the petitioner is also at liberty to furnish the relevant medical records of the petitioner to the Board, with a copy thereof to the learned Special Counsel for the Directorate of Enforcement.*
>
> *(iii) The Jail Superintendent shall also ensure that the petitioner is presented before the Medical Board on 11.06.2024 at the time and place indicated by the Board. If considered necessary by the Medical Board, the petitioner may be admitted in AIIMS for evaluation for a period deemed fit.*
>
> *(iv) Upon evaluation of medical records and examination of the petitioner, the Medical Board shall furnish its report to this Court, on or before 14.06.2024.*
>
> *(v) The report must, inter alia, indicate specifically – whether any single ailment of the petitioner or all the ailments taken together, warrant specialized or more sustained treatment, personal care and special diet which cannot be provided in the primary healthcare facility of Jail.*

5. It would be relevant to point out that on 12.06.2024, this Court entertained CRL.M.A. 18285/2024 for certain directions to the Tihar Jail for complying with the order dated 03.06.2024 and eventually on 19.06.2024, the relevant details about the diet chart were received from the Superintendent of Jail and the Report dated 14.06.2024, was also received from a Medical Board of the AIIMS.

6. In the aforesaid background Mr. Aman Lekhi, learned Senior Counsel appearing for the petitioner has submitted that the petitioner is suffering from multi morbidities resulting in acute Morbid Obesity and other side effects post Bariatric Surgery that was conducted pursuant to the order dated 05.02.2024 passed by the learned Special Judge, which **entails removal of 75% of the stomach**.

7. It is vehemently urged that post Bariatric Surgery, the strict dietary requirements of the petitioner are critical for his survival. Alluding to the report of the Medical Board, AIIMS dated 14.06.2024, it is emphasised that the petitioner has not only lost 14 kgs of weight till date, but has also been suffering from intermittent bouts of blood vomiting. Alluding to the report by the Medical Board, the Dietary Opinion envisages that post surgery which was conducted on 09.04.2024, the patient has to follow normal dietary pattern envisaging three major meals (breakfast, lunch and dinner); three minor meals (mid morning, evening snacks and post dinner); and that he is supposed to avoid certain fruits. He is advised to not consume sugar and sugary products and each major meal is prescribed to include complex cereals, minimum of 25-30 grams; apart from a protein rich intake like milk/curd/non-veg and provision of fruit allowances per day of 100 to 150 grams. As per the dietary recommendations, the patient is advised to avoid rice, bread, refined flour and its products and avoid beverages containing sugar; and advised that liquid intake should be more than 2 litres per day including water and low calorie drinks, seasonal vegetables specially *lauki, torayee* etc. should be consumed, and it is further advised that

he should avoid food items which are difficult to digest in initial months of surgery-specially *bhindi*, excess raw food, items etc., avoid potato especially in fried form and avoid other fried foods as well.

8. It is further pointed out that a Dietary chart is also provided alongwith the report and it is vehemently urged that the jail is completely ill-equipped to ensure and provide such dietary requirements to the applicant and thereby monitor his health. Mr. Lekhi also pointed out that in the interregnum, the petitioner was medically examined in DDU Hospital[3] on 21.06.2024 and in terms of the prescription slip, forming part of the record of this Court, it was opined as under:-

> "Pt. was operated 9/April/2024 in Medanta Hospital and then subsequently he was advised very strict diet which is to given in different phases and also the diet is very crucial and essential for adequate recovery of the patient. Untill proper diet is given recovery is unlikely to happened Pt. has already been seen in casualty earlier also complains and as per advice from Medanta Pt. was prescribed died accordingly but Pt. is complainant the advised died is not given.
> Only Remon diet is given to patient Although CMO advised that proper diet should be given.
> Pt present Pt is complainant of fever and deranged blood glucose because of given prescribed diet.
> There has been in several episodes in jail when blood was coming out with vomiting Pt is complaining of weakness and in day to day activity.
> Refer to Sx (202) for further management."

9. It is emphasised that as per the copies of the Dietary Chart provided to the petitioner in Tihar Jail, placed on the record by the Jail of Superintendent from 13.06.2024 to 18.06.2024, the only diet food

[3] Deen Dayal Upadhyay Hospital , New Delhi

provided was lemon juice without sugar. It is submitted that although certain items have been purchased from the Jail Canteen including coconut water, chaach, lassi, yogurt, the dietary requirements as advised by the operating Doctors at Medanta Medicity, Gurugram, have not been made available *viz.*, such as egg white, fruits, double toned milk, cereals, vegetables, chicken, yakult etc.

10. *Per-contra*, Mr. Zoheb Hossain, learned Special Counsel for the ED[4] has urged that the learned Vacation Judge on 07.06.2024 heard the matter for almost two hours and no relief was granted to the petitioner. It is vehemently urged that the petitioner is seeking review of the earlier order passed by this Court and it cannot be overlooked that interim bail on medical grounds is being sought on the same grounds which have already been agitated *in extenso*. It was pointed out that the petitioner earlier remained on interim bail on medical grounds for almost 84 days and he cannot seek enlargement on bail on medical grounds all the time.

11. Lastly, Mr.Hossain alluding to the order dated 01.05.2024 passed by the learned Special Judge (PC Act) CBI-24 (MP/MLA Cases), Rouse Avenue District Courts, New Delhi, wherein no issue was raised about the dietary requirements of the petitioner, urged that if there is any requirement of a special diet to the petitioner, the same can be brought to the jail premises by way of home-cooked food and can be made available to the petitioner.

12. In rebuttal, Mr. Lekhi, learned Senior Counsel for the petitioner has urged that his grievance started after 01.05.2024 when the medical

condition deteriorated due to post operative effects of Bariatric Surgery and it was urged that the learned Special Counsel for the ED has not refuted the plea that special dietary requirements to the petitioner should be of paramount consideration so as to avoid any life threatening situation. Mr. Lekhi in his submission has relied on decisions in **Devki Nandan Garg v. Directorate of Enforcement**[5]; **Vijay Agrawal v. Directorate of Enforcement**[6]; **Kewal Krishan Kumar v. Enforcement of Directorate**[7]; **Sameer Mahandru v. Directorate of Enforcement**[8]; **Satyendar Kumar Jain v. Directorate of Enforcement**[9]; **Sri Nara Chandra Babu Naidu v. State of A.P.**[10]; and **ED v. Bharat Rana Chaudhary**[11]**.**

ANALYSIS AND DECISION

13. Having bestowed my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties and on meticulous perusal of the relevant record of the case, this Court finds that evidently in terms of the report of the Deputy Superintendent, Central Jail No. 7, Tihar, Delhi, the dietary requirements for the health and survival of the petitioner are being provided only partially to him. If the remarks/opinion of the Doctors at DDU Hospital are believed, the provision of a strict diet is very critical and essential for the adequate recovery of the petitioner since the surgery has led to removal of 75% of stomach. The said remarks

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[4] Directorate of Enforcement, Government of India
[5] 2022 SCC OnLine Del 3086
[6] 2022 SCC OnLine Del 4494
[7] 2023 SCC OnLine Del 1547
[8] 2023 SCC OnLine Del 3606
[9] 2023 SCC OnLine SC 686
[10] [Crl.P. No. 7951 of 2023 dated 31.10.2023]
[11] CT No. 09/2023 dated 31.08.2023

on the treatment card dated 21.06.2024 also go to suggest that until and unless proper diet is given, the recovery of the patient is unlikely to happen. It is brought forth that the applicant has been experiencing fever and deranged blood glucose level besides the fact that there has been several episodes of blood vomiting.

14. Although Mr. Hossain, learned Special Counsel has rightly pointed out that in the opinion of the Medical Board of the AIIMS, treatment can easily be provided in the primarily health care facility of the jail, however, what is pertinent to appreciate is that the applicant certainly needs to be provided special dietary requirements so as to have full physical, mental and psychological recovery post his Bariatric Surgery. Evidently, as per the diet chart for the period 13.06.2024 to 18.06.2024, the facilities at the Jail appear to be completely ill-equipped so as to meet even the elementary dietary requirement of the petitioner.

15. In the cited case of **Pawan @ Tamater v. Ram Prakash Pandey**[12], the Supreme Court had an occasion to hold that the discretion vested in the courts to grant bail on medical grounds should be exercised in a sparing and cautious manner. It was observed that every nature of sickness would not entitle the accused to be released on bail unless it is demonstrated that the sickness is of such nature that if the accused is not released, he cannot get proper treatment.

16. In a decision by this Court tilted **Sanjay Jain (JC) v. Enforcement Directorate**[13], it was held that the right of an individual

[12] (2002) 9SCC 166
[13] 2023 DHC 4092

to be released on interim bail on medical grounds arises when specialized treatment becomes necessary and the same cannot be provided by the jail authorities. It would be apposite to refer to the relevant observations in the judgment that go as under:-

> *"29. The power to grant bail on medical grounds under the first proviso to Section 45(1) of the Act is discretionary, therefore, the same has to be exercised in a judicious manner guided by principles of law after recording satisfaction that necessary circumstances exist warranting exercise of such a discretion.*
> *30. In* ***Pawan Alias Tamatar (supra),*** *the High Court had granted bail to the accused merely on the pretext on the allegations of ailment were not specifically denied. The Hon'ble Supreme Court while setting aside of the order of the High Court observed that the ailment of the accused was not of such a nature requiring him to be released on bail. It was further observed that the accused can always apply to the Jail authorities to see that he gets the required treatment.*
> *31.* ***Clearly, it is not every ailment that entitles an accused for grant of bail on medical grounds. The*** *expression* ***used in the first proviso to Section 45 of PMLA is that a person can be released on bail if he is "sick" or "infirm".***
> *32. In* ***Kewal Krishan Kumar (supra)*** *this Court laid down following guiding principle as to the level of sickness that will entitle a person to bail under proviso to section 45(1):-*
> *"Though no straight jacket formula can be laid down as to what is the level of sickness that a person is to suffer to entitle him to bail under section 45(1) proviso, the thumb rule is that the sickness should be so serious that it is life threatening and the treatment is so specialized that it cannot be provided in the jail hospital. However, this is not an exhaustive parameter and each case will depend on its own peculiar facts and circumstances."*
> *33. It was further observed in* ***Kewal Krishan Kumar(supra)*** *that for granting bail on the ground of infirmity, it must consist of a disability which incapacitates a person to perform ordinary routine activities on a day-to-day basis. The material part of the decision reads as under:-*
> *"Mere old age does not make a person 'infirm' to fall within section 45(1) proviso. Infirmity is defined as not something*

> *that is only relatable to age but must consist of a disability which incapacitates a person to perform ordinary routine activities on a day-to-day basis."*
> *34. In* ***Vijay Aggarwal through Parokar (supra)*** *a Coordinate Bench of this Court while granting interim bail on medical grounds in a case under PMLA, observed that the discretion for granting interim bail on medical ground may not be exercised only at a stage when the person is breathing last or is on the position that he may not survive.*
> *35.* ***Plainly, the health of the petitioner has to be given primacy and it is his fundamental right to be given adequate and effective treatment whilst in jail. However, in case specialized or sustained treatment and care is necessary, having regard to the petitioner's medical condition which is not possible whilst in jail, then the petitioner will be entitled to the benefit of interim bail in terms of the first proviso to Section 45(1) of the PMLA."***
> *(emphasis supplied)*

17. It is pertinent to mention that the aforesaid decisions were also relied upon by the learned Single Judge (Vacation Bench), while passing the aforesaid directions *vide* order dated 07.06.2024. It would be relevant to point out that interpretation of the *proviso* to Section 45 (1) of the PMLA as to what constitutes a person to be 'sick' or 'infirm' has come up for judicial discussion and interpretation in a plethora of judgments. In the case of ***Devki Nandan Garg*** (supra) relied upon by the learned Senior Counsel for the petitioner, the applicant was suffering from severe co-morbidities including but not limited to a serious heart condition and non-functional kidney besides other related ailments. This Court, holding such aspects to be covered by the word 'sick' in the proviso of Section 45 (1) allowed interim bail to the applicant/accused on medical grounds.

18. In the case of ***Vijay Aggarwal*** (supra) relied upon by the learned Senior Counsel for the petitioner, the applicant was suffering from ailments relating to the spine alongwith other back problems and there was material produced to the effect that on account of lack of treatment in the jail, the applicant's strength and sensory powers had immensely decreased. Considering such neurological issues, interim bail on medical ground was allowed. Likewise, in the case of ***Kewal Krishan Kumar*** (supra), the applicant was suffering from a chronic medical history having undergone Bariatric Surgery, a chronic case of varicose veins and functioning with 20% stomach capacity due to Bariatric Surgery, apart from suffering from seizures, behavioural disorders and hypertension. This Court allowed grant of interim bail on medical grounds.

19. Suffice to state that we can embark on a long academic discussion on the issue, but the crux of the matter, as was earlier noted by the learned Single Judge (Vacation Judge) vide order dated 07.06.2024, is whether there are grounds to assume that the medical condition of the petitioner is such that adequate care facilities cannot be provided in Jail?

20. On a conspectus of the report dated 14.06.2024 by the Medical Board of the AIIMS as also the treating Doctors at DDU Hospital as per the prescription dated 21.06.2024, besides the medical history of the applicant, the answer should be in the affirmative. It is but manifest that the dietary requirements of the applicant are such that they cannot be provided in the jail premises. Considering that the petitioner has undergone surgery on 09.04.2024, post Bariatric

Surgery, he needs to be given a proper diet in order to attain adequate physical, mental and psychological well-being for at least a period of 3 to 4 months. The level of care, attention, minute to minute monitoring and emergency response which the applicant requires, cannot be provided at the jail presently. There is no gainsaying that providing home cooked food on an every day basis for a long duration is fraught with several technical hurdles at the jail premises.

21. Lastly, it would not be out of place to mention that although the complaint/chargesheet has since been filed against the applicant accused, the matter is still under investigation *qua* the co-accused. The petitioner was earlier also on interim bail on the medical grounds for about 84 days, and nothing is attributed against him so as claim that he interfered or influenced the course of investigation in any manner.

22. In view of the foregoing discussion, this court is inclined to allow the application for interim bail on medical grounds for a period **of six weeks** from the date of his release from jail, subject to the following terms and conditions:

> (a) the applicant shall furnish a personal bond with a surety in the sum of Rs 2,50,000/- each to the satisfaction of the concerned court/Duty MM;
> (b) the applicant shall appear before the court as and when directed;
> (c) the applicant shall provide his mobile number to the investigating officer (IO) concerned at the time of release, which shall be kept in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
> (d) in case he changes his address, he will inform the IO concerned and this Court also;

(e) the applicant shall not leave the country during the bail period and surrender his passport at the time of release before the IO;
(f) the applicant shall not indulge in any criminal activity during the bail period;
(g) the applicant shall not communicate with or intimidate any of the prosecution witnesses or tamper with the evidence of the case; and
(h) no further relief shall be granted on the grounds espoused in the present application.

23. The application is disposed of in the aforesaid terms.

24. A copy of this order be given *dasti* under the signatures of the Court Master.

DHARMESH SHARMA, J.
(VACATION JUDGE)

JUNE 26, 2024
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