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

% **Reserved on: 20th August, 2024**
Decided on: 09th September, 2024

+ **BAIL APPLN. 2040/2024**

DHEERAJ WADHAWAN

..... Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate with Mr. Avishkar Singhvi, Mr. Ashish Verma, Mr. Vijay Kari Singh, Mr. Debopriyo Moulik, Mr. Rohan Dakshini, Mr. Prakhar Parekh, Ms. Janaki Garde, Mr. Vishwajit Singh, Mr. Tejas Popat, Mr. Raghav Dharmadhikari, Mr. Garvil Singh, Ms. Sanskriti Shakuntala Gupta and Mr. Vivek Kumar Singh, Advocates

V

CBI

..... Respondent

Through: Mr. Anupam Sharma, SPP, CBI with Mr. Prakarsh



**Airan, Ms. Harpreet Kalsi,
Mr. Abhishek Batra,
Mr. Ripudaman Sharma,
Mr. Vashisht Rao, Mr.
Syamantak Modgill,
Advocates**

**CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

O R D E R

1. The applicant/Dheeraj Wadhawan filed the present bail application under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) read with section 482 of the Code for grant of bail on medical grounds in CC bearing no.61/2022 arising out of FIR bearing no. RC2242022A0001 dated 20.06.2022.
2. The facts of the case are that RC2242022A0001 was registered by the respondent/CBI, AC-VI/SIT, New Delhi on 20.06.2022 for commission of offences punishable under section 120B IPC read with sections 409/420/477A IPC and under section 13 (2) read with section 13 (1) (d) of Prevention of Corruption Act, 1988 against M/s Dewan Housing Finance Corporation Limited (**DHFL**), Kapil Wadhawan, Dheeraj Wadhawan i.e. the applicant and others for having entered into criminal conspiracy to cheat consortium of



seventeen banks led by the Union Bank of India by inducing consortium banks to sanction huge loans aggregating to ₹57,242.05 crores approx. and siphoning off and misappropriating significant portion of the said funds by falsifying the books of account of M/s DHFL. The accused as named in RC2242022A0001 deliberately and dishonestly defaulted on repayment of the legitimate dues of the said consortium banks and caused a wrongful loss of ₹34,926.77 crores to the consortium lenders during the period w.e.f. January, 2010 to December, 2019.

2.1 The applicant being the promoter of M/s DHFL along with accused Kapil Wadhawan were arrested on 19.07.2022 on production from Lucknow Jail wherein they were in judicial custody in case bearing RC0062020A0005 for the custodial interrogation and other investigative purposes. The respondent/CBI after completion of the investigation filed report under section 173 of the Code on 15.10.2022 against 18 individuals including the applicant and 57 companies/entities for commission of offences punishable under section 120B IPC read with sections 206/409/411/420/424/465/468/477 IPC and under section 13 (2) read



with section 13(1) (d) of the Prevention of Corruption Act, 1988 and substantive offences thereof. The applicant was also arrested vide RC2192020E0004 in the month of April, 2020 and was in judicial custody. The applicant was released on interim bail vide order dated 08.12.2023 and subsequently released on regular bail by the Bombay High Court vide order dated 02.05.2024.

2.2 The applicant in present bail application claimed to be suffering from multiple comorbidities and chronic ailments including ischemic heart disease, chronic kidney disease, fluctuating serum creatinine levels, hypertension, obstructive sleep apnea, obesity etc. The applicant visited hospitals about 50 times during custody since 26.04.2020 besides multiple hospitalisation and has undergone about 08 surgeries during this period including Microlumbar Disectomy (Grade 5 spinal surgery in January, 2024), Complex Revision Decompression Surgery with Pseudo cyst excision and nerve root release along with L5 S-1 pedicle screw stabilisation with inter body fusion - (High risk Grade 7 spinal surgery in March, 2024), cholecystectomy (removal of gall bladder), surgery for removal of stones, nasal septoplasty, turbinoplasty etc. The applicant was



granted bail on medical ground by the Bombay High Court but was denied the medical bail vide order dated 24.05.2024 (hereinafter referred to as “**impugned order**”) passed by the court of Special Judge (P.C. Act), CBI-08, Rouse Avenue Court, New Delhi (hereinafter referred to as “**trial court**”). The trial court has already taken cognizance against the applicant vide order dated 26.11.2022 and subsequently a supplementary charge-sheet has already been filed as such there is no need for physical custody of the applicant in the present case. The applicant has already been released on bail in all other cases pending against him. The applicant is stated to have been suffering from various ailments as detailed in the bail application since January, 2018 when he was about 38 years old. The applicant underwent various surgeries.

2.3 The applicant was also permitted by the Special Judge, PMLA at Mumbai vide order dated 01.06.2021 to be admitted in private hospital of his choice to obtain appropriate medical treatment. The applicant was also directed to be re-admitted in the hospital vide order dated 08.04.2022 passed by the Bombay High Court and also underwent surgery again in a private hospital. Thereafter, the



applicant was sent Talaja Jail, Mumbai. The applicant was produced before the trial court on 19.07.2022 in pursuance of the production warrant issued on 15.07.2022 and was formally arrested in the present case on 19.07.2022. The applicant was sent to the judicial custody on 30.07.2022 which was extended from time to time. The applicant was admitted to default bail by the trial court vide order dated 03.12.2022 and the said order was upheld by this Court vide order dated 30.05.2023.

2.4 The applicant while he was in judicial custody was regularly taken and admitted to the jail dispensary/hospital for various ailments as detailed in the bail application. The applicant although released in the present case on the ground of default bail continues to remain in judicial custody in Talaja Jail, Mumbai arising out of FIR bearing RC2192020E0004. The applicant was also admitted in Lilavati Hospital at Mumbai on 18.06.2023 and was treated for various ailments. The applicant also filed bail application no.2471/2023 before the Bombay High Court for grant of bail on medical grounds and the Bombay High Court permitted the applicant to get tested as well as hospitalised at Lilavati Hospital. The Bombay High Court



vide order dated 08.12.2023 has granted interim medical bail to the applicant for 08 weeks for undergoing spinal surgery at Lilavati Hospital wherein he was admitted on 12.12.2023. The Supreme Court of India vide order dated 24.01.2024 had set aside the order of grant of default bail by the trial court and affirmed by this court. The applicant on 25.01.2024 filed an application bearing IA no.24/2024 seeking interim medical bail before trial court and trial court directed for medical examination of the applicant and the applicant was examined by a panel of doctors. The panel of doctors vide report dated 07.02.2024 while confirming the medical condition of the applicant noted that the applicant required follow up on an OPD basis. The trial court vide order dated 08.02.2024 has rejected application filed by the applicant for grant of interim bail on medical ground. The applicant challenged the order dated 08.02.2024 before this Court vide CrI. MC bearing no. 1137/2024.

2.5 The Bombay High Court after considering the reports of the applicant and interaction with doctors at Lilavati Hospital vide order dated 22.02.2024 has extended the interim medical bail for a further period of 06 weeks to enable the applicant to undergo further surgery



at Lilavati Hospital. The applicant on 01.03.2024 had undergone high risk grade-7 surgery. The Bombay High Court vide order dated 03.04.2024 further extended the interim bail of the applicant for a period of 02 weeks. The respondent/CBI also filed the Status Report dated 09.04.2024 in Crl. MC bearing no.1137/2024. The applicant withdrew the Crl. M.C. bearing no.1137/2024 which was allowed by this Court vide order dated 23.04.2024 without any opposition from the respondent/CBI. The Bombay High Court vide order dated 02.05.2024 after hearing the concerned parties and considering the medical conditions of the applicant which was admitted and undisputed by the CBI granted medical bail to the applicant. The applicant in pursuance of the medical bail was released from the Lilavati Hospital vide discharge summary dated 02.05.2024 issued by the Lilavati Hospital. The applicant immediately after order dated 02.05.2024 filed an application bearing IA no.36/2024 for grant of regular bail before the trial court which was dismissed vide order dated 10.05.2024 being not maintainable and premature on the ground that the applicant was not in the custody of the trial court in the present case and direction was issued to the respondent/CBI to



arrest and to take the accused in the custody as per the direction given by the Supreme Court vide order dated 24.01.2024 after 11.05.2024 i.e. after the expiry of the protection given by the Bombay High Court.

2.6 The applicant thereafter filed Crl. MC bearing no 3849/2024 before this Court to challenge the impugned order dated 10.05.2024 and also seeking the interim bail but the applicant was re-arrested and due to this reason, the applicant withdrew the Crl. M.C. 3849/2024 filed before this Court vide order dated 17.05.2024. The applicant on 14.05.2024 also filed IA no.42/2024 seeking medical bail along with interim medical bail but the trial court has rejected the prayer for interim medical bail and the Jail Superintendent was directed to keep the applicant in Separate Cell for the time being and was ordered to be provided with one attendant for 24 hours and was also taken to Government Hospital for physiotherapy twice a day. The applicant was order to be shifted DDU Hospital in case of emergency and also provided with a wheel chair. The applicant was not given the proper medical attention in the Tihar Jail. The trial court had rejected the bail application filed by the applicant on the medical grounds vide the



impugned order dated 24.05.2024 and remanded him to judicial custody at Tihar Jail. The applicant being aggrieved filed the present petition and challenged the impugned order on various grounds as mentioned in the para no.6 of the bail application. It was prayed that the applicant be released on regular bail in RC 2242022A0001 on medical grounds. It was also stated that the applicant is not a flight risk and shall not tamper with the evidence and is also not likely to influence any witnesses.

3. The respondent/CBI filed the Status Report wherein besides mentioning the factual background related to the registration of the RC 2192020E0004 stated that the applicant was released on regular bail by the Bombay High Court vide order dated 02.05.2024. The applicant during judicial custody in the above-mentioned RC was admitted in Kokilaben Hospital wherein he met with co-accused Ajay Nawandar and others without permission of the court and also in further the criminal conspiracy and attempted to dispose of the paintings acquired from the diversion of the proceeds of crime.

3.1 The Supreme Court has directed the constitution of medical board for evaluation of the applicant vide order dated 03.11.2022 passed in



IA no.8089/2022 in Criminal Appeals bearing nos.701-702/2020 titled as **Enforcement Directorate Government of India V Kapil Wadhawan & another**. The Medical Board constituted at AIIMS after examining of medical documents and evaluation of the applicant and other investigation opined that the applicant requires regular, periodic follow up with the respective specialist on an outpatient basis for his ongoing condition and can be treated in jail. It was further opined that there is no indication for his hospitalisation as on date.

3.2 The applicant was ordered to be released on statutory bail under section 167 of the Code passed by the trial court and said order was affirmed by this Court in CrI.M.C.6544/2020 titled as **Central Bureau of Investigation V Kapil Wadhawan & another** vide order dated 30.05.2023. The applicant during the period with effect from 19.07.2022 till 30.05.2023 did not seek any relief on the medical ground in the present case. The applicant after confirmation of the statutory bail was shifted to Mumbai in connection with RC 2192020E0004 and was shifted to Lilavati Hospital for medical treatment in judicial custody. The applicant was released on interim



bail for his medical treatment vide order dated 08.12.2023 passed by the Bombay High Court in Bail Application no. 2471/2023 titled as **Dheeraj Wadhawan V Central Bureau of Investigation & another**. The Supreme Court in Criminal Appeal bearing no 391/2024 titled as **Central Bureau of Investigation V Kapil Wadhawan & another** vide order dated 24.01.2024 has cancelled the Statutory bail granted to the applicant. The applicant on 25.01.2024 filed an application before the trial court under first proviso to section 437(1) of the Code read with section 439 of the Code for grant of bail on medical ground and the trial court vide order dated 30.01.2024 directed the constitution of Medical Board of the doctors from AIIMS to examine the medical condition of the applicant. The medical board submitted the report dated 06.02.2024 wherein opined the applicant requires follow up with the respective specialists on an outpatient basis for his ongoing conditions but there was no indication for the hospitalisation as on date. The trial court vide order dated 08.02.2024 has dismissed the application filed under first proviso to section 437(1) of the Code read with section 439 of the Code for grant of bail on medical grounds. The applicant filed



CrI.MC. 1137/2024 titled as **Dheeraj Wadhawan V Central Bureau of Investigation** wherein no relief was granted to the applicant and hearing was deferred as the applicant was already on interim bail by the Bombay High Court.

3.3 The applicant despite opined to be treated with respective specialists on an outpatient basis at the AIIMS, Delhi but Lilavati Hospital, Mumbai continued to keep the applicant admitted at Lilavati Hospital and filed various certificates which were not depicting the real medical condition of the applicant. Lilavati Hospital decided to discharge the applicant on 17.04.2024 as his condition was improved and was only required outpatient follow up for his medical condition. The Bombay High Court vide order dated 17.04.2024 has directed Lilavati Hospital not to discharge the applicant without the permission of the court. The Bombay High Court vide order dated 19.04.2024 directed the respondent/CBI not to take the applicant in the custody without the permission of the Court. The Bombay High Court was not having the jurisdiction and the applicant was indulging in the forum shopping. The applicant withdrew CrI.MC.1137/2024 vide order dated 23.04.2024 passed by



this Court. The Bombay High Court also extended the protection given vide order dated 19.04.2024 by one week while granting the regular bail to the applicant vide order dated 02.05.2024.

3.4 The Bombay High Court was not having the jurisdiction in case stated to be pending in Delhi. The applicant after grant of regular bail on medical ground vide order dated 02.05.2024 also got discharged from Lilavati Hospital vide discharge summary dated 02.05.2024. The applicant on 06.05.2024 also preferred the application bearing IA no. 36/2024 under section 439 of the Code read with section 437 and the proviso 437(1) on medical ground which was dismissed vide order dated 10.05.2024 and the applicant was ordered to be taken into custody in compliance of the order dated 24.01.2024 passed by the Supreme Court of India. The applicant being aggrieved by the order dated 10.05.2024 approached this Court but was arrested on 13.05.2024. The Directorate of Enforcement filed a prosecution complaint under section 45 of PMLA Act in December 2019 against the petitioner and others before the Court of City Civil Court and Additional Sessions Judge, Greater Mumbai. The applicant moved another application for grant of bail on medical grounds under



section 439 of the Code read with section 437 of the Code and first proviso of section 437(1) of the Code which was dismissed vide impugned order dated 24.05.2024. The applicant does not fall within the category of sick person and coupled with his previous conduct and propensity to commit crime disentitled him to any relief prayed for by the applicant. The application is liable to be dismissed.

4. It is reflecting that the respondent/CBI registered RC no. 2242022A0001 on 20.06.2022 for commission of offences punishable under section 120B IPC read with sections 409/420/477A IPC and under section 13 (2) read with section 13 (1) (d) of Prevention of Corruption Act, 1988 against M/s Dewan Housing Finance Corporation Limited, Kapil Wadhawan, Dheeraj Wadhawan i.e. the applicant and other others for having entered into criminal conspiracy to cheat consortium of seventeen banks led by the Union Bank of India by inducing consortium banks to sanction huge loans aggregating to ₹57,242.05 crores approx. and siphoning off and misappropriating significant portion of the said funds by falsifying the books of account of M/s DHFL. The applicant was arrested on 19.07.2022 after being produced from Lucknow Jail wherein the



applicant was in judicial custody in RC 0062020A0005. The respondent/CBI after completion of investigation filed the final report under section 173 of the Code on 15.10.2022 against 18 individuals including the applicant and 57 companies/entities for the commission of offences punishable under section 120B IPC read with sections 206/409/411/420/424/465/468/477 IPC and under section 13 (2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 and substantive offences thereof. The applicant was found to have diverted/misappropriated Rs. 34,926.77 crores.

4.1 The petitioner was also arrested in another RC 2192020E0004 in the month of April, 2022 and was in judicial custody. The applicant was released on interim bail vide order dated 08.12.2023 passed by the Bombay High Court and was subsequently released on regular bail vide order dated 02.05.2024. The Supreme Court was pleased to direct the constitution of Medical Board from AIIMS for evaluation of the applicant vide order dated 03.11.2022 passed in I.A. no.80949/2022 and criminal appeal nos.701-702/2024 titled as **Enforcement Directorate Government of India V Kapil Wadhawan & another** and as per medical opinion, there was no



indication of his hospitalisation and the applicant only required periodic follow up with respective specialists on outpatient basis for his medical condition.

4.2 The applicant was ordered to be released on statutory bail under section 167 of the Code vide order dated 03.12.2022 passed by the trial court and the said order dated was upheld by this court vide judgment dated 30.05.2023 passed in CrI.MC.6544/202 dated 30.05.2023. The applicant was also shifted to Mumbai subsequent to the confirmation of the Statutory bail in current R.C no 2192020E0004 and thereafter, shifted to Lilavati Mumbai for his medical treatment. The applicant was also released on interim bail for medical treatment by the Bombay High Court vide order dated 08.12.2023 in bail application no. 2471/2023 titled **Dheeraj Wadhawan V Central Bureau of Investigation & another**. The Supreme Court set aside the statutory bail vide order dated 24.01.2024 passed in Criminal Appeal no. 391/2024 titled as **Central Bureau of Investigation V Kapil Wadhawan & another**. The applicant on 25.01.2024 also filed an application before the trial court under first proviso to section 437(1) of the Code read with section



439 of the Code for grant of bail on medical ground and the trial court vide order dated 30.01.2024 directed the constitution of Medical Board of the doctors from AIIMS to examine the medical condition of the applicant. The Medical Board submitted the report on 06.02.2024 wherein it was opined that the applicant requires follow up with the respective specialists on an outpatient basis for his ongoing condition and there was no indication of the hospitalisation as on date. The trial court vide order dated 08.02.2024 dismissed the application for grant of bail on medical ground. The applicant also preferred the CrI.M.C.1137/2024 titled as **Dheeraj Wadhawan V Central Bureau of Investigation** to impugn the order dated 08.02.2024 and said CrI.M.C.1137/2024 was dismissed as withdrawn vide order dated 24.04.2024 passed by this Court.

4.3 Lilavati Hospital on 17.04.2024 after considering the improved medical condition of the applicant decided to discharge him as the applicant was only requiring outpatient follow up for his medical treatment. The Bombay High Court vide order dated 07.04.2024 directed the Lilavati Hospital not to discharge the applicant without permission of the court. The Bombay High Court vide order dated



08.04.2024 also directed to the respondent/CBI not to take applicant in the custody without permission of the court. The applicant was granted regular bail vide order dated 02.05.2024 passed by the Bombay High Court. The applicant immediately after grant of bail by the Bombay High Court got discharged himself from the Lilavati Hospital vide discharge summary dated 02.05.2024. It is also reflecting that the applicant also preferred an application under section 439 of the Code read with section 437 and proviso to section 437(1) of the Code on medical ground which was dismissed vide order dated 10.05.2024 and the respondent/CBI was also directed to arrest the applicant in compliance of the order dated 24.01.2024 passed by the Supreme Court. The applicant preferred a petition before this court to impugn the order dated 10.05.2024 and this Court on 11.05.2024 did not grant any stay against the order dated 10.05.2024. The applicant was arrested on 13.05.2024 and filed another application for grant of bail on medical ground under section 439 read with section 437 of the Code and first proviso 437(1) of the Code which was dismissed vide impugned order dated 24.05.2024.



5. The applicant as stated hereinabove was granted regular bail on medical ground by the High Court of Judicature at Bombay Criminal Appellate Jurisdiction in bail application no.2471/2023 vide order dated 02.05.2024. The perusal of the order dated 02.05.2024 reflects that the Bombay High Court has considered that the Lilavati Hospital has opined that hospitalisation is not required but he can be treated on follow up basis in OPD. The Bombay High Court also referred the report prepared by AIIMS, Delhi which had visited the Lilavati Hospital for their own assessment and opined the hospitalisation is not required but the applicant can be treated on follow up basis in OPD and by way of physiotherapy but the Bombay High Court had extended the hospitalisation of the applicant. The Bombay High Court also observed that the respondent/CBI did not dispute the ailments of the applicant. The Bombay High Court also referred the para no.69 of **Satender Kumar Antil V CBI**, (2022) 10 SCC 51 whereby a duty was cast on the court to satisfy whether the accused is sick or not. It was further opined that the Supreme Court in **Satender Kumar Antil V CBI** has not indicated that in every case, the bail has to be granted when sickness is taken as a ground which depends upon



the facts and circumstances of the case. The Bombay High Court also referred the decision of this court in **Devki Nandan Garg V Directorate of Enforcement**, 2022 SCC OnLine Delhi 3086 to define the word of meaning “Sick”. The Bombay High Court has also considered the various issued related to the medical condition of the applicant. The relevant portion of the order dated 02.05.2024 is reproduced as under: -

24. Considering all above circumstances, I feel that it will not be advisable to send the Applicant to jail one discharged from the hospital. But his prayer for medical bail need to be considered. It is matter of the record that he is suffering from various ailments.

25. Considering all the situation, I do not think that follow-up can be arranged from jail and that too, in case of emergency. So best way available is to grant him medical bail.

26. In view of that I am inclined to allow the application.

6. The trial court passed the impugned order dated 24.05.2024 whereby the prayer of the applicant for grant of bail on medical ground was rejected. The perusal of the impugned order dated 24.05.2024 reflects that the trial court has preferred not to discuss the merit of the case since the applicant sought the bail on medical ground. The trial court has also observed that grant of bail to sick is



not compulsory in all situation and referred the judgment of this court passed in **Devki Nandan V Directorate of Enforcement**, (2022) SCC Online Del 3086, wherein it was defined that who is and infirm person.

6.1 The trial court has also observed that a prisoner has right to get medical treatment but he cannot claim as a matter of right that he needs treatment only from a particular doctor or particular hospital or at particular place. The trial court has also observed that word “may” used in the first proviso of section 437 (1) of the Code which indicates that the court has discretion to grant bail to sick person only when he cannot provide sufficient medical facilities either in jail or in nearby government hospital. The trial court also discussed the present medical position of the applicant and referred the discharge summary issued by the Lilavati Hospital which reflects that the applicant was not well and had undergone some surgery but now he has recovered from illness and need only OPD consultation from time to time and the regular physiotherapy etc. The trial court ultimately observed that the sickness of applicant come to an end and has already recovered from his illness during the period of interim bail granted by the



Bombay High Court since 08.12.2023. The trial court has also observed that the physiotherapy as required by the applicant can be provided either in the jail hospital or at least in the government hospitals. It was further observed that DDO hospital which is a multiple speciality hospital is situated less than 03 km from Tihar jail where all follow up action as required by the applicant can be provided and in case of need he can be taken to other hospital. The relevant paras of the impugned order are reproduced as under: -

12) Record point out that if the accused was falling within the definition of 'sick' at one time but his sickness had come to an end now. He has already recovered from his illness/diseases during the period of interim bail as granted by Hon'ble Mumbai High Court with effect from 8-12-2023. Lilavati Hospital started sending reports to Hon'ble Mumbai High Court since 2-4-2024 that he has to be taken out from hospital and need only OPD treatment and certain follow ups as mentioned above.

13) The above mentioned follow up advices and physiotherapy as required can be provided either in Jail Hospital or atleast govt. hospitals. DDU hospital, a multi speciality hospital is situated less than a distance of 3 km from Tihar Jail where all follow up as required can be provided. In case of need, accused can be taken to multi speciality hospitals such as G.B. Pant, RML, Safdarjang and AIIMS. His adamant attitude that he needs only treatment from his doctors of Lilavati Hospital cannot be approved when no one can dispute that doctors in big Delhi hospitals are also equally competent and qualified. The arguments advanced that when accused himself is ready to



pay all the expenses of private hospital, then why govt. exchequer should be burdened cannot be accepted as it is the duty of the State and Jail Authorities to provide free treatment to the prisoner at any cost. Even if the Lilavati Hospital has prescribed certain particular follow up treatment and physiotherapy, then the State and Jail Authorities shall provide the same until the other competent and well qualified doctors/hospital gave different opinion and change the line of treatment.

14) AIIMS hospital is considered as best medical institute in India providing best medical facilities where even VVIP and higher dignitaries gets treatment. Accused if needed can be referred to this hospital also by other referral hospitals or Jail Hospital. Even Hon'ble Supreme Court in its order passed in case of Asharam Bapu vs. State of Rajasthan MANU/SC/ 0370/2015 highly appreciated the opinions of doctors of AIIMS hospital being the best institute in India.

15) Record shows that previously also accused was examined twice by medical board of doctors of AIIMS who submitted reports dated 9-11-2022 and 7-2-2024 that medical condition of the accused as projected does not require any hospitalisation and his treatment as an OPD patient can be done effectively. Thus, when the accused has already recovered from his problems and his medical conditions are improved to a great extent which leads to the conclusion that he does not fall under the category of 'sick' now, then his bail can be refused on medical grounds and he can be taken care of in jail itself by Jail Authorities as an OPD patient.

6.2 The trial court in the impugned order also discussed the previous conduct of the applicant and observed that the applicant was not having interest to take care his own health or his medical problems. It



was further observed by the trial court that the applicant during the stay in Lilavati Hospital has involved in other criminal activity and misused his private hospitalisation. The trial court also discussed the judicial decisions regarding grant and decline of bail to the accused on medical ground. The trial court also discussed the principle of comity of courts and rules of forum shopping. The trial court also counter the arguments advanced on behalf of the applicant that once the applicant was granted medical bail vide order dated 02.05.2024 passed by the Bombay High Court, in that eventuality, the trial court should have followed the same view and to release the applicant on bail. The trial court in the impugned order also observed that the Bombay High Court in order dated 02.05.2024 has not discussed previous conduct of the applicant regarding his activities, misdeeds and attempt to tamper with the evidence and to destroy/conceal the evidence. The trial court also opined that the order dated 02.05.2024 was passed apparently keeping in view the facts that the applicant/accused was lodged in Taloja Jail, Mumbai at relevant time which was situated at the distance of 30 km from Mumbai and even the appropriate follow up facilities required by applicant were not



there. The relevant portion of the impugned order is reproduced as under: -

38) Secondly para no. 17 of the order dated 2-5-2024 itself shows that no fresh report of Jail Authorities i.e. Taloja Central Jail had come before the Hon'ble Mumbai High Court in respect of the availability of facilities of treatment in that jail. Hon'ble Mumbai High Court in para no. 17 and 20 of its order discussed the various previous orders passed by it in the case of accused as well as of another case and found that that the proper and well equipped medical facilities are not available in Taloja Jail. It is thus clear, that the order dated 2-5-2024 was passed apparently keeping in view the fact that accused was lodged in Taloja Jail in, Mumbai case at the relevant time which is situated at a distance of about 30 km from Mumbai and even appropriate follow up facilities as required by accused were not available there. Moreover, Taloja Jail is comparatively small in comparison to Tihar Jail which is the biggest jail in India. The medical facilities in Tihar Jail are much better than any other jail. Moreover, Tihar Jail is situated almost within the heart of Delhi and assessable to different big hospitals at a short time specially multi specialty DDU hospital within 5 minutes in case of emergency being situated in less than 3 km distance. Thus, the grant of bail in Mumbai case by Hon'ble Mumbai High Court in case pending before Mumbai Trial Court was given in different situation.

6.3 The trial court regarding the allegation of forum shopping observed that the judicial proprietary demands that once there is decision of our own High Court then it has to be followed up instead of decision of any other High Court on the similar facts and



circumstances which has only persuasive value. The bail application filed by the applicant by the trial court on the medical ground was rejected vide order dated 08.02.2024 and subsequent petition before the High Court to challenge the order dated 08.02.2024 was ordered to be withdrawn on 23.04.2024 meaning thereby the order dated 08.02.2024 declining the medical bail has become final. The trial court has also observed that the respondent/CBI has not disputed the medical condition of the accused existing at one time but opposed the further hospitalisation of the applicant after receipt of various reports from Lilavati Hospital. The trial court has also discussed in para no.43 of the impugned order regarding the prevailing conditions of Tihar jail. The trial court after considering all facts dismissed the bail application filed by the applicant on medical ground vide the impugned order dated 24.05.2024.

7. It is important to refer the Report dated 09.11.2022 submitted by the Medical Board constituted at AIIMS for medical examination of the applicant in pursuance of order dated 03.11.2022 passed by the Supreme Court in IA no.80949/2022 in Criminal Appeal nos.701-702/2020 titled as **Enforcement Directorate Govt. of India V Kapil**



Wadhwan & another. The perusal of the Report dated 09.11.2022 reflects that the meeting of the Board was held on 04.11.2022 in AIIMS Hospital, New Delhi and applicant was brought by the jail authorities before the Medical Board along with medical reports. The applicant was examined by the Board Members and the blood and imaging investigations of the applicant was done 05.11.2022 and 07.11.2022. The Board also observed that the applicant is known to have Obesity, Hypertension for past 03 years, Obstructive sleep apnea requiring CPAP, prolapsed intervertebral disc and lumbar canal stenosis, chronic peptic ulcer, anxiety, depression, history of pleural effusion on right side in 2019, recent urinary tract infection and renal calculus. The Medical Board gave the final opinion which reproduced as under: -

Opinion: At the point of current assessment, Mr. Dheeraj Wadhwan requires regular, periodic follow up with the respective specialists on an outpatient basis for his ongoing conditions and can be treated in Jail. There is no indication for his hospitalization as on date.

8. The applicant was also examined by the Medical Board constituted at AIIMS in pursuance of the order dated 30.01.2024 passed by the trial court in I.A.no.24/2024. The perusal of the Report dated



06.02.2024 reflects that the Board prescribed medicine the applicant which is reproduced as under:-

Medicine: The patient complained of fatigue with both upper and lower abdominal pain for several weeks. The patient's vitals were within normal limits and clinical examination was unremarkable. His investigations revealed mildly elevated pancreatic enzymes, creatinine and mildly reduced serum potassium levels. He is presently being treated for hypertension, chronic kidney disease, obstructive sleep apnea, depression and hypokalemia. There are at present no medical issues necessitating continued hospitalization.

9. Lilavati Hospital in Report dated 17.04.2024 prepared under the signature of Dr. Vinod Agrawal mentioned that the applicant was under medical care for multiple medical issues including back pain, cardiac, renal, medical and urological and other conditions. The applicant has progressed well and can be discharged from Lilavati Hospital & Research Centre, Mumbai. It was opined that the applicant can be managed on outpatient basis. The applicant was advised daily institutional physiotherapy and regular outpatient follow-up with doctor twice a week due to fluctuating serum creatinine; for cardiac issues due to irregular pulse and blood pressure; for back pain; for sleep apnea and respiratory issues. The



applicant was also advised regular outpatient follow up for psychiatric medical evaluation and obesity medicine evaluation.

9.1 The perusal of Discharge Summary dated 02.05.2024 reflects that the applicant was diagnosed with following diseases;-

**DIAGNOSIS - L4-L5 AND L5-S1 LUMBAR
DISCECTOMY
ISCHEMIC HEART DISEASE
RECENT DVT
CKD WITH ACUTE EXCERBATION
MODERATE RESTRICTIVE AIRWAY DISEASE
SEVERE OSA
SMOKERS LUNG
MORBID OBESITY, ESSENTIAL HTN
DEPRESSION, NEUROGENIC BLADDER**

The applicant besides prescription of large number of medicines was advised to follow up treatment as outpatient with different doctors.

10. Sh. Vikas Pahwa, the learned Senior Counsel for the applicant advanced oral arguments and written submissions were also submitted on behalf of the applicant. Sh. Pahwa besides referring the factual background of the case as referred herein above referred the medical condition of the applicant to reflect that the applicant is sick. The applicant has multiple co-morbidities and chronic ailments including Ischemic Heart Disease, Chronic Kidney Disease,



hypertension, obstructive sleep apnea etc. It is further stated that the applicant prior to arrest 26.04.2020 in another FIR registered at Mumbai had undergone emergency angioplasty whereby the stents were put in his heart and two arteries were found to be more than 80% blocked. The applicant during the custody over the past 04 years had visited the various hospitals on more than 50 occasions with multiple periods of hospitalisation. The applicant is having issues with kidney, spine and heart. The applicant had undergone 08 surgeries during his custody from the period with effect from 2021 to March, 2024. The applicant after release on interim bail vide order dated 18.12.2023 granted by the Bombay High Court was admitted in Lilavati Hospital on 12.12.2023 where he underwent a high risk Grade 5 spine surgery on 03.01.2024. The applicant during the extended interim medical bail in terms of the order dated 22.02.2024 passed by the Bombay High Court underwent the Grade 7 surgery on 01.03.2024. Sh. Pahwa further argued that the Bombay High Court vide order dated 02.05.2024 observed that the applicant requires constant monitoring and follow up which cannot be arranged in case of emergency. Sh. Pahwa also referred the discharge summary



prepared by Lilavati Hospital and stated that the applicant was prescribed with various follow ups under specialists which may not be arranged in Tihar Jail. The Bombay High Court vide order dated 22.02.2024 after considering the report dated 07.02.2024 prepared by the Medical Board constituted at AIIMS extended the interim bail of the applicant. The Medical Board constituted at AIIMS does not take care of the renal issues of the applicant. Sh. Pahwa argued that the respondent/CBI also did not dispute the sickness of the applicant which was also observed by the Bombay High Court in order dated 02.05.2024.

10.1 Sh. Pahwa also addressed arguments on the issue of the principle of the medical bail under proviso to section 437 of the Code. He argued that the proviso to section 437 of the Code provides that a person may be released on bail if he is sick or infirm and this proviso does not provide that if an accused cannot be treated in jail, only then, he should be granted medical bail. If the vitals of the applicant are stated to be stable and he does not require hospitalisation, it does not mean that the applicant is not sick and in support of his arguments cited **Satender Kumar Antil V CBI**,



(2022) 10 SCC 51 and **Devki Nandan Garg V Directorate of Enforcement**, 2022 SCC OnLine Del 3086. The applicant cannot be treated in Tihar Jail as per the required monitoring mentioned in the discharge summary of Lilavati Hospital. It was also stated that in Tihar Jail, the medical facilities are inadequate and there is no proper facilities of physiotherapy and creatinine monitoring. Sh. Pahwa referred **Delhi High Court Legal Services Committee V Govt. of NCT of Delhi**, W.P.(C)16679/2022 decided by the Division Bench of this Court vide order dated 23.08.2023 to highlight the prevailing conditions in Tihar Jail wherein it was observed that the inmates of the Tihar Jail are bereft of essential amenities included drinking water and functional toilet and argued that Right to Life stands paramount amongst the human rights even for persons under trial.

10.2 Sh. Pahwa on the issue of Principle of Comity of Courts argued that this principle entails mutual respect for a decision of a court and since the Bombay High Court being a Constitutional Court after considering medical condition of the applicant has granted medical bail to the applicant then judicial propriety and Principle of Comity of Courts requires that the trial court should follow and



respect the decision vide order dated 02.05.2024 passed by the Bombay High Court. Sh. Pahwa in support of his arguments cited **Surya Vadanam V State of Tamil Nadu**, (2015) 5 SCC 450 and **Tamilnad Mercantile Bank V S. C. Sekar**, (2009) 2 SCC 784. Sh. Pahwa further argued that the dismissal of the bail application on medical ground by the trial court vide order dated 24.05.2024 was in complete disregard of the Principle of Comity of Courts and the trial court sat as an appellate court over the finding of the Bombay High Court vide order dated 02.05.2024. The trial court has wrongly denied the benefit of Principle of Comity of Courts as the trial court found the applicant indulgent in forum shopping.

10.3 Sh. Pahwa regarding the allegations of misuse of liberty against the applicant argued that these allegations have been levelled only to create prejudice against the applicant and should not have been considered by this Court. There is no specific allegation against the applicant regarding the tampering with evidence and his past antecedents do not have any relevance in context of the present bail application which is filed on medical ground and not on merits. He further argued that the trial court has erred in rejecting the medical



bail application of the applicant once it was granted by the Constitutional Court i.e. the Bombay High Court on medical ground. The respondent/CBI has not disputed the medical condition of the applicant but the trial court without any justified reasons has raised doubts on the ailments of the applicant. It was further argued that the trial court has erred in holding that the applicant has already recovered from his illness which is not supported by any medical report. The applicant is still sick and the legal provisions as per the proviso to section 437 of the Code are applicable to the applicant. The applicant has a right to be treated from the doctor of his choice. Sh. Pahwa further argued that the respondent/CBI has cited about 650 witnesses in the charge-sheet and the documents are running over 10 lakhs pages and the accused which are named in the charge-sheet are more than 100. The trial is not likely to be completed in near future and in support of his claim cited **Manish Sisodia V Directorate of Enforcement**, 2024 SCC Online SC 1920. Sh. Pahwa argued that the present petition be allowed and the applicant be released on medical bail after setting aside the impugned order passed by the trial court.



11. Sh. Anupam Sharma, the SPP for the respondent/CBI advanced oral arguments and also submitted written submissions. It is stated that M/s DHFL through its promoters i.e., Kapil Wadhawan and Dheeraj Wadhawan i.e. the applicant took loans and credit facilities from consortium of seventeen banks and misappropriated Rs. 34,926.77 crores (approx.) by forming 87 shell companies in the name of their employees, associates, relatives and friends and the funds were diverted from M/s DHFL to these shell companies without any documentation. The respondent/CBI after completion of investigation filed report under section 173 of the code on 15.10.2022 against 18 individuals including the applicant and 57 companies/entities for commission of offences punishable under section 120B read with sections 206/409/411/420/424/465/468/477A IPC and under section 13(2) read with section 13(1) (d) of the Prevention of Corruption Act, 1988 and substantive offences thereof. The respondent/CBI subsequently filed a supplementary charge sheet against 22 individuals including the applicant and 12 companies/entities. The Supreme Court vide judgment dated 24.01.2024 pertaining to RC bearing no. 2242022A0001 titled as



CBI V Kapil Wadhawan & another directed that the applicant and the co-accused Kapil Wadhawan be taken into custody.

11.1 The applicant is seeking grant of bail on medical grounds which was declined by the trial court vide the impugned order dated 25.05.2024. The trial court vide order dated 30.01.2024 directed for constitution of a Medical Board of AIIMS, New Delhi for physical examination of the applicant and submitted Report dated 06.02.2024 wherein it was opined that the applicant required to follow up on out-patient basis and the trial court after considering said Report dismissed the application for grant of bail on medical grounds vide order dated 08.02.2024. The applicant challenged said order before this court vide CrI. MC bearing no. 1137/2024 titled as **Dheeraj Wadhawan V CBI** but the applicant was not granted any relief and respondent/CBI was not restrained from arresting the applicant. However Bombay High Court on 19.04.2024 directed the respondent/CBI not to take the applicant into custody without its permission despite the pendency of the CrI. MC bearing no. 1137/2024 before this court and as such the applicant indulged in forum shopping. The applicant after grant of interim order from the



Bombay High court which had no jurisdiction withdrew the Crl. MC bearing no. 1137 of 2024 pending before this court on 23.04.2024. The Bombay High court was having knowledge about the fact that this court at Delhi was having jurisdictional authority to deal with the said issue of the applicant and the applicant was not given any relief. The applicant again sought bail under section 439 of the Code read with section 437 of the Code and proviso to section 437 of the Code on medical ground which was dismissed vide order dated 10.05.2024 and the applicant challenged said order by filing Crl. MC bearing no 3849 of 2024 before this court but no interim relief was granted to the applicant. The applicant withdrew Crl. MC 3849 of 2024 on 17.05.2024. The applicant was arrested on 13.05.2024 in present case and filed bail application under section 439 of the Code read with section 437 of the Code and proviso to section 437(1) of the Code which was dismissed vide impugned order dated 24.05.2024. The applicant withdrew petitions bearing no 1137 of 2024 and 3849 of 2024 and as such present petition which is filed on similar grounds is not maintainable.



11.2 Sh. Sharma regarding Principle of Comity of Courts argued that the applicant has raised this issue only to eclipse mischief played by him before different courts having different jurisdiction. The Principle of Comity of Courts is only a self-imposed restraint and is not a rule of law and **State of Gujarat V Gordhan Keshavji Gandhi and another**, AIR 1965 SC 745 was referred. It was further argued that Bombay High Court did not follow self-restraint and did not extend any civility to the courts at Delhi. The Bombay High court did not follow the Principle of Comity of Courts but grant protection to the applicant by restraining the respondent/CBI from taking the applicant into custody in present case. The Special Prosecutor for the respondent/CBI relied upon **Arun Kumar Singh V State (NCT of Delhi)**, 1999 CrI. L J. 4021. The Supreme court had already given direction to take the applicant into custody while cancelling default bail vide order dated 24.01.2024 and Bombay High Court despite specific directions of the Supreme court did not follow the Principle of Comity of Courts and restrain the respondent/CBI Delhi from taking the applicant into custody which was against the judicial discipline. Sh. Sharma further argued that the Bombay High Court



did not follow the Principle of Comity of Courts in respect of the Reports of Medical Boards of AIIMS board which were constituted as per the directions of the Supreme Court and the trial court which clearly indicated that the applicant can be managed on Out Patient basis. Sh. Sharma also argued that the applicant is seeking bail on medical grounds by claiming parity with order dated 02.05.2024 passed by the Bombay High Court but said order does not contain any finding that the applicant is sick or infirm and the Bombay High Court granted bail merely on ground that medical facilities at Tajola Jail were not satisfactory. Sh. Sharma referred the medical facilities available at Tihar Jail and stated that Tihar Jail is equipped with better medical facilities and the applicant can be referred to hospitals situated in nearby vicinity of Tihar Jail. Sh. Sharma further argued that the trial court has passed orders regarding medical follow up of the applicant and lodging of the applicant in a separate cell with his brother. The applicant never complained regarding any lapse in his medical treatment. Sh. Sharma referred **Vikas Yadav V State of UP and others**, MANU/DE/294/2015 wherein it was observed by the Division Bench of this court that all medical facilities are available at



Tihar Jail. Sh. Sharma argued that the applicant under given facts and circumstances of case cannot claim any parity or comity with order passed by the Bombay High Court. Sh. Sharma also during arguments also informed that respondent/CBI has initiated process for filing SLP against order dated 02.05.2024 passed by the Bombay High Court.

11.3 Sh. Sharma regarding medical conditions of the applicant argued that the Supreme Court vide order dated 24.01.2024 has cancelled the default bail and ordered the applicant to be taken into custody despite fact that at that time the applicant was admitted in Lilavati Hospital. The respondent/CBI never admitted that that the applicant is sick or infirm or infirm person at any stage and respondent/CBI took constant constant stand that the applicant at one point of time was required only proper medical attention at one point of time and now the applicant is cured and at present the applicant is not sick or infirm. Lilavati Hospital on 17.04.2024 issued a certificate wherein mentioned that the medical condition of the applicant were better and he could be discharged and can be managed on out-patient basis. It was further stated that there is no contemporaneous medical record to



suggest that the applicant falls in the category of a sick or infirm person. The applicant is leading a normal life in Tihar Jail since his arrest on 13.05.2024 and never developed any medical complication and the applicant can be properly managed in Tihar Jail. The applicant during entire period of incarceration in Mumbai and Delhi never suffered any serious threat to his life. Sh. Sharma argued that the applicant is neither infirm nor sick and **Devkinandan Garg V Directorate of Enforcement** cited by the counsel for the applicant is not applicable in present case. The ailments of the applicant regarding lungs, heart and prolapsed disc were existed even before his arrest. The applicant has undergone elective surgeries which were not life threatening. The applicant despite his alleged ailments committed offences with impunity. The applicant during Covid -19 pandemic situation roamed with staff and violated lockdown conditions. The applicant during his admission in Kokilaben Hospital under judicial custody indulged in criminal activities such as fabrication of documents etc. The applicant also misused his hospitalisation at Lilavati Hospital. Sh. Sharma further argued that proviso to section 437 (1) of the Code does not mandate automatic



grant of bail to the accused and merit of the case are required to be taken into account at time of consideration of bail on medical ground.

Sh. Sharma referred **Soumya Chaurasia V Directorate of Enforcement**, AIR 2024 SC387. There is no medical record which is suggestive of that the applicant is sick or infirm.

11.4 Sh. Sharma regarding criminal conduct of the applicant stated that the court is required to enquire about the past antecedents/conduct of the accused while assessing grant of bail and in the present case the applicant is involved in 5 different cases causing a total wrongful loss of more than Rs. 40,000/- crores to the public exchequer. The Directorate of Enforcement also filed a complaint under section 45 of PMLA against the applicant and others in month of December, 2019 for commission of offence under section 3 of PMLA. If applicant is released on bail then there is propensity that the applicant will tamper with the evidence and will influence the witnesses.

11.5 Sh. Sharma to counter argument advanced on behalf of the applicant regarding delay in trial argued that a Special Court has already been constituted by this Court to exclusively conduct the trial



pertaining to the present case on a day-to-day basis and as such there is no possibility of delay in trial, and the said ground is irrelevant. The applicant has already been charge sheeted. The bail application of co-accused namely Ajay Nawandar has already been dismissed by this court vide order dated 31.05.2024 passed in bail application bearing no 353 of 2023 and said co-accused is only allowed to undergo treatment in a private hospital in judicial custody. Sh. Sharma referred **Tarun Kumar V Assistant Director Directorate of Enforcement**, AIR 2024 SC 169. It was argued and prayed that the present bail application be dismissed.

12. Issue which needs judicial consideration is that whether the applicant being a sick or infirm person is entitled for grant of bail as per proviso to section 437 (1) of the Code. Proviso to section 437 (1) of Code reads as under:-

437. WHEN BAIL MAY BE TAKEN IN CASE OF NON-BAILABLE OFFENCE.

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty



of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognisable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognisable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

12.1 The Supreme Court in **Satender Kumar Antil V CBI, (2022)10**

SCC 51 in context of section 437 of the Code observed as under:-

68. Section 437 of the Code is a provision dealing with bail in case of nonbailable offenses by a court other than the High Court or a Court of Sessions. Here again, bail is the rule but the exception would come when the court is satisfied that there are reasonable grounds that the accused has been guilty of the offense punishable either with death or imprisonment for life. Similarly, if the said person is previously convicted of an offense punishable with death or imprisonment for life or imprisonment for seven years or more or convicted previously on two or more occasions, the accused shall not be released on bail by the magistrate.

69. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm.



70. The power of a court is quite enormous while exercising the power under Section 437.

12.2 The Co-ordinate Bench of this court in **Devki Nandan Garg V Directorate of Enforcement**, 2022 SCC Online Del 3086 discussed regarding who is ‘sick’ and ‘infirm’ person and observed as under:-

Sick and infirm have not been defined under PMLA and I will have to rely on the dictionary meaning for the same. ‘Sick’ as per the Oxford English Dictionary refers to being ‘affected by illness; unwell, ailing’ and ‘infirm’ is defined as ‘not physically strong or healthy; weak or feeble, esp. through old age. According to the definition in Merriam Webster’s Dictionary, ‘sick’ means ‘affected with disease or ill health; ailing’ and ‘infirm’ means ‘of poor or deteriorated vitality especially: feeble from age.

12.3 The Supreme Court in **Kalvakuntla Kavitha V Directorate of Enforcement**, Criminal Appeal no---of 2024 (arising out of SLP (Criminal) no 10778 of 2024 vide judgment dated 27.08.2014 while deliberating section 45(1) of PMLA which is similar to proviso to section 437(1) of the Code also observed as under:-

16. A perusal of the above proviso would thus reveal that the proviso permits certain category of accused including woman to be released on bail, without the twin requirement under Section 45 of the PMLA to be satisfied. No doubt that, as argued by the learned ASG, in a given case the accused even if a woman may not be automatically entitled



to benefit of the said proviso and it would all depend upon the facts and circumstances of each case.

17. However, when a statute specifically provides a special treatment for a certain category of accused, while denying such a benefit, the Court will be required to give specific reasons as to why such a benefit is to be denied.

12.4 The trial court in impugned judgment has discussed various decisions delivered by the Superior Courts which are referred as under. The Supreme Court in **Satender Kumar Antil V CBI, 2022 (10) SCC 51** cast a duty upon the courts to mandatorily consider proviso of Section 437 (1) of the Code in case of sick person. The Supreme court in **Dipak Shubhashchandra Mehta V CBI, (2012) 4 SCC 134** observed that delay in trial is happening, the accused can be released on bail when he was also not keeping good health. The Bombay High Court in **Naresh Goyal V Directorate of Enforcement, Bail App. No. 1901/2024** decided on 06.05.2024 granted medical bail to the accused who was aged about 75 years and was suffering from duodenal cancer and was found to be sick and infirm person and in need of long hospitalisation and disease was life threatening. The Delhi High Court in **Vijay Aggarwal V Directorate of Enforcement, Bail Application no. 1762/2022** decided on 13.12.2022 granted interim bail on medical ground as accused was



having various ailments relating to spine and back for which he was under constant medical supervision.

12.5 The Supreme Court in **State V Jaspal Singh Gill**, AIR 1984 SC 1503 did not approve medical bail granted by the High Court. The accused had undergone a cardiac operation and needed constant medical attention. The prison authorities were directed to provide the proper treatment to the accused and accordingly cancelled the bail.

The Supreme Court in **Asharam Babu V State of Rajasthan**, MANU/SC/ 0370/2015 after considering the report of the medical board rejected the bail application of the accused who was found suffering from trigeminal neuralgia with degenerative disc disease of the lumbar spine with hypothyroidism and benign hyperplasia of prostate. The medical board had given opinion that none of these diseases require any surgical management but routine medical management on OPD basis will be suffice. The Supreme Court in **State of Maharashtra V Buddhikota Subha Rao**, AIR1989 SC 2292 rejected grant of medical bail to the accused who was suffering from disc prolapsed problem which was a spinal disorder but after some improvement needed only yoga exercises under expert



guidance. The Supreme Court in **State of UP V Gayatri Prasad Prajapati** AIR 2020 SC 5014 while rejecting medical bail considered the opinion of the medical board which showed that the accused was suffering from Type 2 diabetes mellitus, benign prostate enlargement, renal dysfunction, low back pain related to seronegative spondylorthropathy and he could take the treatment from the jail hospital with consultation with nephrologist and orthopedician and can control his blood-sugar under the supervision of endocrinologist. The Delhi High Court in **Thounaozam Shyamkumar Singh V State**, MANU/DE/1571/2009 did not grant bail even when the accused was suffering from hypertension, angina pectoris, diabetes mellitus, cardiac arrhythmia and depression. In **Karim Morani V CBI**, MANU/DE/2632/2011 prayer for interim bail on medical grounds was rejected after considering the opinion of medical board that the condition of the accused is stable and properly managed by medication. The Delhi High Court in **Nittin Johari V Serious Fraud Investigation officer**, MANU/DE/ 0246/2020 rejected bail application of the accused on medical ground who was suffering from diabetes and other ailments. This court observed that there was



nothing on record to show that he was not getting proper medical treatment and care in the jail and requires such treatment which can be provided only if released on bail.

13. The applicant to establish that he is a sick person pleaded that he is suffering from multiple comorbidities and chronic ailments including ischemic heart disease, chronic kidney disease, fluctuating serum creatinine levels, hypertension, obstructive sleep apnea, obesity etc. and due to various ailments visited hospitals about 50 times during custody since 26.04.2020 besides multiple hospitalisation. The applicant also stated to have undergone about 08 surgeries. It is pertinent to mention few relevant facts which are also detailed herein above that the applicant was subjected to medical examination for evaluation before Medical Board in pursuance of order dated 03.11.2022 passed by the Supreme Court passed in I.A. no.80949/2022 and criminal appeal nos.701-702/2024 titled as **Enforcement Directorate Government of India V Kapil Wadhawan & another** and as per medical opinion, there was no indication of his hospitalisation and the applicant only required periodic follow up with respective specialists on outpatient basis for



his medical condition. The applicant was also arrested in another RC 2192020E0004 in the month of April, 2022 but was released on interim bail vide order dated 08.12.2023 passed by the Bombay High Court. The applicant was order to be released on statutory bail under section 167 (2) of the Code vide order dated 03.12.2022 passed by the trial court which was upheld by this court vide judgment dated 30.05.2023 passed in CrI.MC.6544/202. Thereafter the applicant was removed to Mumbai and shifted to Lilavati Mumbai for his medical treatment. The applicant was also released on interim bail for medical treatment by the Bombay High Court vide order dated 08.12.2023 in bail application no.2471/2023 titled as **Dheeraj Wadhawan V Central Bureau of Investigation & another**. The statutory bail granted to the applicant was set aside by the Supreme Court vide order dated 24.01.2024 passed in Criminal Appeal no. 391/2024 titled as **Central Bureau of Investigation V Kapil Wadhawan & another**. The trial court during judicial proceedings in pursuance of bail application filed on 25.01.2024 by the applicant again sent the applicant to Medical Board of the doctors from AIIMS for evaluation of medical condition and said Medical Board vide Report dated



06.02.2024 opined that the applicant requires follow up with the respective specialists on an outpatient basis for his ongoing condition and there was no indication of the hospitalisation as on date. The trial court accordingly dismissed the application for grant of bail on medical ground vide order dated 08.02.2024. Lilavati Hospital on 17.04.2024 after considering the improved medical condition of the applicant decided to discharge him as he only required outpatient follow up for his medical treatment but the Bombay High Court vide order dated 07.04.2024 directed the Lilavati Hospital not to discharge the applicant without permission of the court and vide order dated 08.04.2024 also directed the respondent/CBI not to take applicant in the custody without permission of the court. The Bombay High Court granted regular bail vide order dated 02.05.2024 to the applicant and the applicant was discharged himself from the Lilavati Hospital vide discharge summary dated 02.05.2024. The trial court also dismissed bail application filed by the applicant on medical ground vide order dated 10.05.2024 and the applicant was ordered to be taken into custody in compliance of the order dated 24.01.2024 passed by the Supreme Court and was arrested on 13.05.2024. The trial court



dismissed another application for grant of bail on medical ground vide impugned order dated 24.05.2024.

14. The Bombay High Court in order dated 02.05.2024 while granting bail to the applicant considered that the Lilavati Hospital has opined that hospitalisation is not required but he can be treated on follow up basis in OPD and also referred the report prepared by AIIMS, Delhi which opined that the hospitalisation of the applicant is not required but he can be treated on follow up basis in OPD and by way of physiotherapy. The trial court in impugned order while declining medical bail to the applicant and referring **Devki Nandan V Directorate of Enforcement** observed that grant of bail to sick is not compulsory in all situations. The trial court has also observed that the court has discretion to grant bail to sick person only when he cannot provide sufficient medical facilities either in jail or in nearby government hospital. The trial court after referring the discharge summary issued by the Lilavati Hospital observed that the applicant has already recovered from his illness during the period of interim bail granted by the Bombay High Court since 08.12.2023. The trial court has also observed that the physiotherapy to the applicant can be



provided either in the jail hospital or at least in the government hospitals.

15. Sh. Pahawa in support of bail application argued that the applicant is sick and is suffering from multiple co-morbidities and chronic ailments including Ischemic Heart Disease, Chronic Kidney Disease, hypertension, obstructive sleep apnea etc. and had undergone emergency angioplasty with two arteries which were found to be more than 80% blocked. The applicant besides visiting hospitals on more than 50 occasions had undergone 08 surgeries during his custody including high risk Grade 5 spine surgery on 03.01.2024 and Grade 7 surgery on 01.03.2024. Sh. Pahwa after referring order dated 02.05.2024 passed by the Bombay High Court argued that the applicant requires constant monitoring and follow up which cannot be arranged in case of emergency. Sh. Pahwa also argued that the proviso to section 437 of the Code does not provide grant of medical bail only if an accused cannot be treated in jail and the applicant is entitled to bail even if the vitals of the applicant are stated to be stable and he does not require hospitalisation. Sh. Pahwa also stated that the applicant cannot be treated in Tihar Jail where



medical facilities are inadequate. The applicant has not recovered from his illness and the applicant is still sick and does have a right to be treated from the doctor of his choice. Sh. Sharma, the SPP for the respondent/CBI on contrary after referring Reports of Medical Boards of AIIMS which were constituted as per the directions of the Supreme Court and the trial court argued that the applicant can be managed on Out Patient basis. The order dated 02.05.2024 passed by the Bombay High Court does not contain any finding about sickness or infirmity of the applicant and granted bail merely on ground of inadequacy of medical facilities at Tajola Jail. Sh. Sharma highlighted medical facilities available at Tihar Jail which is equipped with better medical facilities and the applicant can be referred to hospitals situated in nearby vicinity of Tihar Jail. The applicant never complained regarding any lapse in his medical treatment. The applicant is now cured and at present the applicant is not sick or infirm. The applicant never developed any medical complication since his arrest on 13.05.2024 and can be properly managed in Tihar Jail. The surgeries stated to be undergone by the applicant were not life threatening.



16. It is appearing that Medical Board constituted at AIIMS in Report dated 09.11.2022 observed that the applicant is known to have Obesity, Hypertension for past 03 years, Obstructive sleep apnea requiring CPAP, prolapsed intervertebral disc and lumbar canal stenosis, chronic peptic ulcer, anxiety, depression, history of pleural effusion on right side in 2019, recent urinary tract infection and renal calculus but opined that the applicant requires regular, periodic follow up with the respective specialists on an outpatient basis for his ongoing conditions and can be treated in Jail and there is no indication for his hospitalization. The Medical Board again constituted at AIIMS in Report dated 06.02.2024 opined that vitals of the applicant were within normal limits and clinical examination was unremarkable. However, further investigation of the applicant revealed mildly elevated pancreatic enzymes, creatinine and mildly reduced serum potassium levels. The applicant was found to be treated for hypertension, chronic kidney disease, obstructive sleep apnea, depression and hypokalemia. The Medical Board finally opined that at present no medical issues necessitating continued hospitalization. Lilavati Hospital in Report dated 17.04.2024



mentioned about medical care of the applicant for multiple medical issues including back pain, cardiac, renal, medical and urological and other conditions however It was opined that the applicant can be managed on outpatient basis and was advised daily institutional physiotherapy and regular outpatient follow-up with doctor twice a week due to fluctuating serum creatinine; for cardiac issues due to irregular pulse and blood pressure; for back pain; for sleep apnea and respiratory issues. It is reflecting from above medical reports that the hospitalisation of the applicant may not be required at present but undoubtedly the applicant is suffering from multiple serious ailments connected with vital organs of the body including heart, kidneys, spine, lung etc. which require constant and medical supervision under direct supervision of expert and specialists doctors. The proviso of section 437 (1) of the Code does not mandate that if any accused does not require hospitalisation and can be treated on outpatient basis cannot be granted medical bail being sick or infirm person. The court is only required to satisfy itself that the accused is either sick or infirm. The admission in hospital or hospitalisation of an accused is not a mandatory condition before an accused can be considered for



grant of medical bail as per proviso to section 437 (1) of the Code. Sh. Pahwa rightly said on basis of medical documents that the applicant is sick and is suffering from multiple co-morbidities and chronic ailments. The applicant had visited hospitals on number of occasions besides undergoing many surgeries during his custody. There is legal force in arguments advanced by Sh. Pahwa that the proviso to section 437 of the Code does not provide grant of medical bail only if an accused cannot be treated in jail and the accused does not require hospitalisation. Sh. Sharma rightly argued that the applicant can be managed on Out Patient basis and the order dated 02.05.2024 passed by the Bombay High Court does not contain any finding about sickness or infirmity of the applicant but it does not necessarily mean that the applicant was/is not suffering from various serious ailments and cannot be granted bail being a sick person.

17. The trial court in impugned order observed that every citizen including prisoner has a right to proper and good health and to get appropriate medical treatment for his diseases and physical problems but prisoner cannot claim it as a matter of right that he needs treatment only from a particular doctor or particular hospital or at



particular place. It was further observed that if better, qualified and competent doctors are available to the prisoner in jail and the prisoner can be taken to nearby multi-speciality or super speciality hospitals then request of the applicant for treatment in Lilavati Hospital in Mumbai cannot be accepted and denial of such demand by the court does not amount to violation of his right of life as enshrined under Article 21. The trial court also observed that court has discretion to grant bail to 'sick' prisoner only where he cannot be provided sufficient and required medical facilities either in jail or in nearby government hospitals. The trial court in impugned order also observed that medical documents including discharge summary issued by Lilavati Hospital show that the applicant was once not well and undergone some surgeries but now he has recovered from his illness and only need OPD consultations, regular physiotherapy etc. without further hospitalisation. The applicant can be provided follow up advices and physiotherapy either in Jail Hospital or at least in government hospitals. Sh. Sharma, SPP for the respondent/CBI also argued that there is no need to enlarge the applicant on bail when the applicant can be treated as outdoor patient and referred **Asharam**



Bapu V State of Rajasthan, MANU/SC/0370/2015. It is true that the applicant as per Reports given by Medical Boards comprising doctors from AIIMS can be treated as outdoor patient without any hospitalisation but simultaneously it is also true that the applicant is suffering from various ailments related to multiple vital organs of the body and requires constant medical attention under supervision of specialist doctors. The observation of the trial court in impugned order and argument advanced by Sh. Sharma are misconceived. The trial court laid much emphasis on providing medical treatment to the applicant either in jail hospital or government hospital including DDU, AIIMS etc. The applicant may get requisite medical treatment for various ailments but the applicant needs constant medical attention under supervision of specialist doctors and it is not mandate of the proviso to the section 437 (1) of the Code that if any accused can be treated in government hospital then the accused can never be granted medical bail in accordance with law. The Supreme Court in **Satyendra Kumar Jain V Directorate of Enforcement**, Special Leave Petition (Crl.) no 6561/2023 observed that the citizen is having a right to take treatment of his own choice, at his own expense, in a



private hospital. A Co-ordinate Bench of this court in **Kewal Krishan Kumar V Enforcement Directorate**, 2023 SCC Online Del 1547 and also cited by Sh. Pahwa observed that a person though not sick may be infirm and still entitled to seek the benefit of exception in the proviso of section 45 of PMLA which is exactly similar to proviso to section 437 (1) of the Code. If the argument advanced by Sh. Sharma, SPP that the applicant is not a sick person is accepted even then medical records established that the applicant is an infirm person. Sh. Sharma, SPP also cited **Saumya Chaurasia V Directorate of Enforcement**, 2023 SCC Online SC 1674 wherein it was held by the Supreme Court that proviso to section 45 (1) of PMLA is discretionary and cannot be construed as a mandatory or obligatory provision once a person is said to fall within either of the categories and the courts should exercise discretion judiciously using their prudence while granting the benefit of the first proviso to section 45(1) of PMLA to the category of persons mentioned therein. It was further observed that the extent of involvement of the person falling in such category in the alleged offences, the nature of



evidence collected by the investigating agency would be material consideration.

18. The trial court in impugned order also discussed prevailing conditions in Tihar Jail. The trial court observed that Tihar Jail is one of the best and biggest jail in India where better medical facilities are available. The Tihar Jail is also having transport facility to remove any patient to hospital in case of need. The trial court also referred medical facilities in DDU Hospital, a multi-speciality hospital which is situated at a distance of about 3 km from Tihar Jail and in other hospitals such as G.B. Pant, RML, Safdarjang Hospital and AIIMS which are highly reputed government hospitals and observed that any prisoner can be removed to these hospital without delay and these hospitals are operational round the day. The trial court further observed that the applicant cannot be given preferential treatment for medical attention in private hospital situated in Mumbai. The trial court also observed that the applicant can only be released on medical bail if the jail hospitals or referral hospitals are not well equipped to cater medical need of the applicant. The trial court referred decision of Division Bench of this court in **Vikas Yadav V State of UP**,



MANU/DE/0294/2015 wherein the conduct of the accused to approach the private hospital again and again for treatment was depreciated which are either available in Jail Hospital or DDU hospital or other government hospital. In said judgment the Division Bench also discussed the facilities available in Tihar Jail hospital and visits of different specialists. Sh. Sharma, SPP for the respondent/CBI also referred **Vikas Yadav V State of UP & others** and argued that all medical facilities are available at Tihar Jail and there cannot be any parity with order of bail passed by the Bombay High Court. Sh. Pahwa, the learned Senior Counsel for the applicant argued that the trial court erred in not giving primacy to the treating doctors of the applicant and the applicant has a right to get treatment from doctors of his choice. Sh. Pahwa referred **Satyendra Kumar Jain V Directorate of Enforcement**, Special Leave Petition (Crl.) no 6561 of 2023 decided by the Supreme Court vide dated 26.05.2023; **Vinod Kumar V State of Punjab**, Crl Misc. No. M-25499 of 2012 decided by the Punjab & Haryana High Court vide order dated 24.09.2012 and **Naresh Goel V Directorate of**



Enforcement, Bail Application No 1901 of 2024 decided by Bombay High Court vide order dated 06.05.2024..

18.1 The Supreme Court in **Satyendra Jain V Directorate of Enforcement** as mentioned herein above that a citizen is having a right to take treatment of his own choice. The Punjab & Haryana High Court in **Vinod Kumar V State of Punjab** also observed that every patient is entitled to treatment from a doctor of his choice and it also gives psychological satisfaction to the patient. The Bombay High Court in **Naresh Goyal V Directorate of Enforcement** observed that there is a qualitative difference between the treatment which a person gets as an under trial prisoner and as a citizen under no restraint. It was further observed that proposition once a person gets the requisite treatment, he does not deserve bail cannot be accepted as it would defeat the legislature intent of enacting the proviso and render the proviso otiose.

18.2 The applicant was examined by Medical Boards on two occasions as per directions given by the Supreme Court and trial court. The Medical Board constituted as per directions given by the Supreme Court vide order dated 03.11.2022 observed that the



applicant is known to have obesity, hypertension, obstructive sleep apnea requiring CPAP, prolapsed intervertebral disc and lumbar canal stenosis, chronic peptic ulcer, anxiety, depression, history of pleural effusion on right side, urinary tract infection and renal calculas. The Medical Board from cardiovascular point of view opined that the applicant has obesity, coronary artery disease, status post-stent LAD, controlled hypertension and other problems and opined that there is no cardiovascular indication for hospitalisation at present. The Medical Board regarding urology observed that the applicant requires investigation for poor urine flow which can be done on OPD basis. The Medical Board regarding pulmonary issues observed that the applicant needs to continue using auto CPAP machine for obstructive sleep apnea. The Medical Board finally opined that the applicant requires regular, periodic follow up with the respective specialists on an outpatient basis for ongoing conditions and can be treated in jail and further there is no indication of hospitalisation of the applicant. The Medical Board comprising doctors from AIIMS constituted as per direction given by the trial court vide order dated 30.01.2024 observed that the applicant has



obesity, obstructive sleep apnea, coronary artery disease and post stent in LAD and applicant had undergone spinal surgery on 03.01.2024. The Medical Board observed that the applicant does not require further hospitalisation for cardiac side and can be followed up on OPD basis. The Medical Board also conducted CNS/Spine examination and opined that the applicant had undergone surgery for L5S1 and L4LS, prolapsed disc but the applicant has recovered and recommended that physiotherapy can be continued on OPD basis. The Medical Board also observed that vitals of the applicant were within normal limits and clinical examination was unremarkable but noticed that the applicant revealed mildly elevated pancreatic enzymes, creatinine and mildly reduced serum potassium levels and noticed that the applicant being treated for hypertension, chronic kidney disease, obstructive sleep apnea, depression and hypokalemia. The Medical Board opined that at present there is no medical issues which may require continued hospitalization. Lilavati Hospital in Report dated 17.04.2024 while discharging the applicant opined that the applicant can be managed on outpatient basis and recommended daily institutional physiotherapy and follow up for cardiac, spine and



pulmonary issues. Lilavati Hospital in Discharge Summary dated 02.05.2024 also recommended follow up with specialist doctors for various ailments related various vital organs and also prescribed heavy medication for the applicant. The medical reports submitted by Dispensary, Central Jail, Tihar are also reflecting that the applicant is suffering from various serious ailments. It may be true that at present the applicant may not be requiring hospitalisation but certainly the applicant is suffering from various serious ailments related to vital organs including kidney, lungs, heart etc. and requires constant, regular and periodic follow up and examination with heavy medication under direct supervision of expert and specialist doctors. The medical facilities required by the applicant may or may not be available in hospitals attached with Tihar Jail and other government hospitals as detailed by the trial court in impugned order. The applicant being a citizen is enjoying fundamental right to be treated for his ailments by suitable doctors and the applicant cannot be denied appropriate and required medical treatment and attention due to reason that at present the applicant does not require hospitalisation. The trial was not justified in observing that the applicant can be



treated and can provided medical treatment in government hospital. There cannot be any compromise with life of the applicant merely on basis that the applicant does not require hospitalisation and can be treated as outdoor patient. The applicant definitely requires regular and periodical medical attention. Sh. Sharma, SPP for the respondent/CBI also argued the applicant is now cured and at present the applicant is not sick or infirm and never developed any medical complication since his arrest on 13.05.2024 and can be properly managed in Tihar Jail but these arguments although appearing to be attractive but under given facts of circumstances as discussed herein above do not provide much support to the respondent. It is worth mentioning that Bombay High Court while granting medical bail to the applicant vide order dated 02.05.2024 also observed that it would not be advisable to send the applicant to jail once discharged from the hospital and his prayer for medical bail need to be considered as the applicant is suffering from various ailments. It was further observed that follow-up cannot be arranged from jail and that too in case of emergency.



19. The applicant is falling within ambit of a sick person as per legal requirement of proviso to section 437 (1) of the Code. The mere fact that at present hospitalisation of the applicant is not required and can be treated on outpatient basis does not disentitle the applicant from grant of medical bail particularly when the applicant is suffering from various serious ailments which require constant, regular and periodical medical treatment and attention under direct supervision of expert and specialist doctors. The applicant is entitled for grant of medical bail as per proviso to section 437 (1) of the Code.

20. Sh. Vikas Pahwa, the learned Senior Counsel for the applicant argued that the Bombay High Court vide order dated 02.05.2024 has granted medical bail in another FIR/RC but the trial court even after grant of medical bail by the Bombay High Court has dismissed application for grant of medical bail without following Principle of Comity of Courts. He further argued that the Principle of Comity of Courts entails mutual respect for a decision of a court and the Bombay High Court being a constitutional court after considering the medical condition of the applicant has granted bail on medical grounds then the judicial propriety and the Principle of Comity of



Courts require that the trial court should have granted medical bail to the applicant and relied on **Surya Vadanam V State of Tamil Nadu**, (2015) 5 SCC 450 and **Tamilnad Mercantile Bank v S.C. Sekar**, (2009) 2 SCC 784. Sh. Pahwa further argued that the trial court acted like an appellate court over the order dated 02.05.2024 passed by the Bombay High Court and the trial court wrongly observed that the benefit of the Principle of Comity of Courts should not be extended to the applicant as he has engaged in forum shopping.

20.1 Sh. Sharma, SPP for the respondent/CBI argued that the Principle of Comity of Courts is only a self-imposed restraint and is not a rule of law and is not any enforceable right. He attacked order dated 02.05.2024 and other orders passed by the Bombay High Court by arguing that the Bombay High Court despite having knowledge that jurisdictional and Constitutional Courts at Delhi were dealing with the issue and were not giving any relief of restraining CBI from taking the applicant did not show self-restraint and did not extend any civility or consideration to the jurisdiction of Courts at Delhi and as such the Principle of Comity of Courts was not followed by the Bombay High Court. The Bombay High Court restrained the



respondent/CBI from taking the applicant into custody despite cancellation of statutory bail by the Supreme Court vide order dated 24.01.2024 and as such did not follow the Principle of Comity of Courts and judicial discipline. Sh. Sharma also stated that the Bombay High Court did not agree with Report of Medical Board comprising doctors from AIIMS which was constituted by the directions given by the Supreme Court. The court at Delhi was not obliged to grant bail to the applicant on medical ground despite grant of medical bail by the Bombay High Court vide order dated 02.05.2024. Sh. Sharma also referred that the applicant has withdrawn CrI. M C bearing no 1137 of 2024 vide order dated 23.04.2024 and CrI. M C bearing no 3849 of 2024 vide order dated 17.05.2024 which were filed to challenge orders dated 08.02.2024 and 10.05.2024 passed by the trial court. Sh. Sharma also argued that the it was not within jurisdiction of the Bombay High Court while passing order dated 02.05.2024 to restrain the respondent/CBI from taking the applicant into custody for a period of one week from date of uploading of the order without permission of the court.



Accordingly Sh. Sharma argued that the Bombay High Court did not follow the Principle of Comity of Courts and judicial discipline.

20.2 The trial court in impugned order in respect of the Principle of Comity of Courts observed that the Bombay High Court in order dated 02.05.2024 did not discuss the previous conduct of the applicant regarding his activities, misdeeds and attempt to temper with the evidence and to destroy/conceal the evidence or may not be brought in the knowledge of the Bombay High Court. It was also observed in impugned order that fresh report regarding availability of facilities of treatment in Tajola Jail came before Bombay High Court and opined that order dated 02.05.2024 was passed apparently on fact that the applicant was lodged in Taloja Jail in Mumbai case at the relevant time which is situated at a distance of about 30 km from Mumbai and even appropriate follow up facilities as required by the applicant were not available there. The trial court also observed that judicial propriety demands that once there is a decision of own High Court then the same has to be followed instead of decision of any other High Court on similar facts and circumstances which has only persuasive value. The trial court further observed that the



applicant withdrew petition on 23.04.2024 which was filed before this court to impugn order dated 08.02.2024 whereby application filed by the applicant on medical ground was dismissed in view of Report of AIIMS Medical Board and as such order dated 08.02.2024 became final and binding. The principle of Comity of Courts as relied upon by the applicant was overshadowed by rule of Forum Shopping. The trial court in impugned order did not agree with contention of the applicant regarding the Principles of Comity of Courts rather opined that the applicant was indulged in activity of Forum Shopping.

20.3 The Supreme Court in **Surya Vadanam V Tamil Nadu & others**, (2015) 5SCC450 observed that the Principle of Comity of Courts is essentially a principle of self-restraint and there is no reason why the Principle of Comity of Courts should be jettisoned except for special and compelling reasons. The Supreme Court in **Tamilnadu Merchantile Bank Shareholders Welfare Association V S.C. Sekar & others**, (2009) 2 SCC 784 observed that the Doctrine of Comity of Courts requires that different courts exercising separate jurisdiction pass similar orders.



20.4 The Bombay High Court passed different orders pertaining to the applicant in relation to RC bearing no2192020E0004 which was registered in Mumbai and did not pass any substantial order in respect of RC 2242022A0001 which was registered by CBI at Delhi. The Bombay High Court is a constitutional court and must have passed order dated 02.05.2024 and other orders passed earlier to 02.05.2024 after considering entire relevant material. This court being a constitutional court must extend respect to orders passed by another constitution court i.e. the Bombay High Court although situated in another State/territorial jurisdiction and this court cannot sit as an appellate court over order dated 02.05.2024 passed by the Bombay High Court and as per information given by Sh. Sharma, SPP, the respondent/CBI has already in process of pursuing further remedy to impugn order dated 02.05.2024 passed by the Bombay High Court. The Bombay High Court vide order dated 02.05.2024 and previous order only directed the respondent/CBI at Delhi not to arrest the applicant for a period of one week without prior permission of the court but it does not mean necessarily that the Bombay High Court has interfered in territorial jurisdiction of courts at Delhi. The



arguments advanced by Sh. Sharma, SPP for the respondent/CBI may be good for purpose of pursuing further remedy to impugn order dated 02.05.2024 but not before this court in present petition. There is force in arguments advanced by Sh. Pahwa that the trial court must respect the order dated 02.05.2024 passed by the Bombay High Court by following Principle of Comity of Courts and should not act like an appellate court. The trial court must have shown respect to order dated 02.05.2024 passed by the Bombay High Court as matter of judicial discipline and Principle of Comity of Courts while passing the impugned order dated 24.05.2024.

21. Sh. Sharma, SPP for the respondent/CBI during arguments also highlighted previous conduct of the applicant and stated that the court is required to enquire into antecedents/conduct of the applicant while considering bail application on medical ground to ascertain whether the applicant is likely to commit serious offences, tamper with evidence or threaten witnesses while being on bail. The applicant is involved in more than five different cases causing a total wrongful loss of more than Rs.40,000 crores to the public exchequer. It was also stated that Directorate of Enforcement in December, 2019 filed a



prosecution complaint under section 45 of the PML Act against the applicant and others for commission of offence under section 3 of the PML Act before the Court of City Civil Court and Additional Sessions Judge, Greater Bombay.

21.1 The trial court in impugned judgment also discussed previous conduct of the applicant particularly when the applicant was in judicial custody in Mumbai and was admitted in hospital. The trial court after referring past activities and conduct of the applicant observed that the applicant did not have any interest to take care of his own health or medical problems. The trial court also observed that the applicant during his hospitalization in judicial custody in Mumbai met different persons in the hospital and tampered with the evidence besides transferring the properties earned from cheated amount. The applicant during stay in private hospital was also found in possession of mobile phone with dongle. The applicant during period of default bail did not make any complaint in respect of any physical problem.

21.2 This court is conscious of the fact that there are very serious allegations against the applicant and other co-accused involving



misappropriation and cheating of about Rs. 40,000 crores and the applicant is involved in number of cases. This court is dealing with consideration of bail to the applicant on medical ground as per proviso to section 437 (1) of the Code and not on merits of the case. Sh. Pahwa rightly argued that the antecedents of the applicant do not have any relevance in context of present bail application filed on medical ground and not on merit. Even otherwise also, more of the instances as referred in impugned order are pertaining to period before arrest and when the applicant was in judicial custody in case registered by CBI in Mumbai. Accordingly, past and previous conduct of the applicant does not have much relevance in context of present bail application filed on medical ground. The applicant is stated not to be in custody in any other case except the present case.

22. Sh. Pahwa, the learned Senior Counsel for the applicant also argued that the applicant is in custody for over 15 months. The respondent/CBI filed voluminous charge sheet against more than 100 accused and cited over 650 witnesses. It was further argued that conclusion of trial will not culminate in the near future and therefore bail ought to be granted. Sh. Pahwa referred **Manish Sisodia V**



Directorate of Enforcement, 2024 SCC Online SC 1920. Sh. Sharma, SPP for the respondent/CBI argued that a Special Court has already been constituted to exclusively conduct the trial of this case on a day-to-day basis and as such there is no possibility of delay in trial. However, he informed that arguments on charge have been deferred for 45 days vide order dated 20.08.2024 passed in Crl MC 6443 of 2024 titled **Kapil Wadhawan V CBI**. Sh. Sharma argued that there is no possibility of trial being delayed in the present case.

22.1 It is appearing that the applicant is in judicial custody for more than 15 months and is suffering from various ailments as detailed and discussed herein above. The trial is not expected to be concluded within reasonable time or near future as there are more than 100 accused named in charge sheet and the prosecution has cited more than 600 witnesses. In these circumstances, bail on medical ground can be considered and granted in view of various ailments suffered by the applicant. The Supreme Court in **Manish Sisodia V Directorate of Enforcement** expressed concern that by keeping under trial behind the bars for an unlimited period in the hope of speedy completion of trial would deprive his fundamental right



to liberty under Article 21 of the Constitution. It was observed as under:-

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that “bail is rule and jail is exception”.

54. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.

55. As observed by this Court in the case of Gudikanti Narasimhulu (supra), the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can



be addressed by imposing stringent conditions upon the appellant.

The Supreme Court again in **Kalvakuntla Kavitha V Directorate of Enforcement** reiterated above principles laid down in **Manish Sisodia V Directorate of Enforcement**.

23. The arguments advanced on behalf of the applicant and the respondents are considered in right perspective. The applicant is suffering from various ailments as detailed herein above and is falling under category of sick person. The applicant at present may not require hospitalisation and can be treated as outdoor patient but the applicant needs regular and periodical medical attention and treatment under direct supervision of expert and specialist doctors. If the ailments of the applicant are not properly addressed then these ailments may prove to be life threatening. The applicant is required to be treated by the suitable doctors may be at private hospitals. The applicant is entitled for grant of bail as per proviso to section 437 (1) of the Code. Accordingly, the present petition is allowed and impugned order is set aside. The applicant is admitted to bail subject to following conditions:-



- i) The applicant shall furnish personal bond in sum of Rs. 10,00,000/- with one surety of like amount to the satisfaction of the trial court.
- ii) The applicant shall surrender his passport if not already seized during investigation to the trial court and shall not leave country without prior permission of the court.
- iii) The applicant shall intimate his present address to the trial court within one week from date of release and shall intimate trial court about any change in residential address within three days.
- iv) The applicant shall not indulge in any criminal activity and shall not tamper with evidence and try to influence or threaten any witnesses.
- v) The applicant shall attend the trial regularly unless his personal attendance is exempted by the trial court. The applicant may appear through video conferencing but with the permission of the trial court.
- vi) The trial court shall also be at liberty to impose any other condition on the applicant at time of considering bail bond and thereafter under given facts and circumstances of the case.

24. The pending application if any also stands disposed of.

25. It is made clear that nothing in this order shall be taken as opinion on merit of the case.

26. The copy of order be sent to trial court for information and be also given *dasti* to the petitioner and the respondent.

DR. SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 09, 2024

J/AK/ABK