

**IN THE COURT OF SH. M. K. NAGPAL  
SPECIAL JUDGE (PC ACT), CBI-09 (MPs/MLAs CASES)  
ROUSE AVENUE DISTRICT COURT, NEW DELHI**

**Ct. Case No. 31/2022  
CNR No.DLCT11-000747-2022  
ECIR/HIU-II/14/2022  
U/S 3 & 4 of the PMLA  
Directorate of Enforcement (DoE/ED) Vs. Sameer Mahandru  
and Ors.**

**ORDER ON APPLICATION DATED 23.01.2023 MOVED ON  
BEHALF OF THE ACCUSED AMIT ARORA SEEKING  
INTERIM BAIL**

**30.01.2023**

1. By this order, I shall dispose of an application dated 23.01.2023 filed U/S 439 Cr.P.C. (Code of Criminal Procedure, 1973) read with Sections 45 and 65 of the PMLA (Prevention of Money Laundering Act, 2002) seeking his interim bail for a period of eight weeks on humanitarian grounds in the present case registered vide no. ECIR/HIU-II/14/2022 by the Directorate of Enforcement (DoE/ED).

2. The contents of application, as well as of the reply dated 28.01.2023 filed thereto on behalf of ED, along with record of the case, have been perused and the arguments advanced by Sh. Sushil Bajaj, Ld. Counsel, assisted by Sh. Ujjawal Anand Sharma, Sh. Mohammed Shahrukh and Sh. Surya Kiran Singh Advocates, representing the applicant and Sh. Zoheb Hossain, Ld. Special

Counsel and Sh. N. K. Matta, Ld. SPP, assisted by Sh. Mohd. Faizan Khan Advocate, appearing on behalf of the ED, have been heard and considered.

3. Interim bail of the applicant has been sought on ground that his wife Smt. Jyoti Midha is suffering from Cholelithiasis i.e. gallstones since long and she requires surgery for removal thereof. The medical record of patient filed in support of the application stands already verified by the investigation officer (IO).

4. It is necessary to mention here that this is second application filed by the accused seeking his interim bail on the same ground and his first application dated 09.01.2023 filed for this purpose was dismissed by this court vide order dated 19.01.2023 as by that time, no date for proposed surgery of wife of the applicant was taken from any hospital and during the course of verification of the medical documents of patient, it was reported that though the patient required a surgery for removal of her gallbladder stones, but there was no urgency for the surgery and it has to be planned by the patient.

5. However, now, as per the medical documents of patient filed with this application, the patient is planned to be admitted in a local clinic situated in Sector 51, Gurugram, Haryana, named 'MEDHARBOUR - HOSPITAL & WELLNESS' tomorrow i.e. on 31.01.2023 and her surgery is scheduled to be performed on

01.02.2023 by Dr. Shalabh Mohan. It has further been mentioned in the consultation slip dated 21.01.2023 issued by the above doctor that period of hospitalization of the patient for this planned surgery is of 2/3 days and the expected time for recovery of the patient post surgery period is of 7 days.

6. This application moved by the accused has been opposed and it is the contention of Ld. Special Counsel and Ld. SPP representing the ED that keeping in view the twin conditions contained U/S 45 of the PMLA, there is no ground made out for grant of interim bail to the applicant in the present case. It is also their submission that though the interim bail on humanitarian grounds can be granted to an accused even in a case under the PMLA, but it has to be granted only when some exceptional and extraordinary circumstances to justify the grant of interim bail are there and the case of applicant is not of the nature to warrant his release on interim bail. Apprehensions of tampering with evidence and influencing witnesses of the case by the applicant have also been expressed, in the eventuality of his being released on interim bail for the above said purpose. It is further an alternate submission of Ld. Special Counsel and Ld. SPP for ED that if this court comes to a conclusion that interim bail is to be granted to the applicant for the above said purpose, then it has to be for the minimal duration as per advise given by the concerned doctor. The judgments in cases of **State of Maharashtra Vs. Vinod Sabaji Loke, 1995 SCC OnLine Bom 388; Athar Pervej Vs. State, Crl. Ref. No. 01/2015**

**decided on 26.02.2016 and Shivender Mohan Singh Vs. State of NCT of Delhi & Anr., Special Leave to Appeal (Crl.) No. 5596/2021 decided on 16.03.2022** have also been referred to and relied upon by Ld. Special Counsel and Ld. SPP representing the ED.

7. Though, from above order of the Hon'ble Supreme Court dated 16.03.2022 passed in case of **Shivender Mohan Singh (Supra)**, the offence for which the accused of said case was confined in jail is not clear, but the other two judgments being relied upon on behalf of the ED have been given with reference to interpretation of provisions of Section 37 of the NDPS Act (Narcotic Drugs and Psychotropic Substances Act, 1985), which contains similar conditions restricting the right of an accused to claim bail in certain cases under the said Act as are contained in Section 45 of the PMLA. Section 45 of the PMLA lays down, inter-alia, that an accused of the offence of money laundering under the said Act shall not be released on bail by a court unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

8. However, with the passage of time, it has since been held by the Hon'ble Supreme Court as well as by the Hon'ble High Courts in a number of judgments that despite such conditions contained in cases of grave and serious offences committed under the

enactments like the NDPS Act, MCOCA (Maharashtra Control of Organised Crime Act, 1999), UAPA (Unlawful Activities [Prevention] Act) and the PMLA etc., interim bail to an accused can be granted on humanitarian grounds if the facts and circumstances of a particular case warrant so. However, it has to be given while keeping the purpose of incorporation of the above stringent conditions in mind and only when the interests of justice require the release of an accused on interim bail in view of the compelling and peculiar circumstances of a particular case.

9. In the case of **Athar Pervez (Supra)** being relied upon on behalf of ED, a Division Bench of the Hon'ble High Court of Delhi on a reference had considered the question of grant of interim bail to an accused under the NDPS Act, where he was not entitled to be released on regular bail in view of the bar and restrictions contained U/S 37 of the said Act. Their Lordships had made the following observations :-

**“[1] The trial or the appellate Courts after conviction are entitled to grant "interim" bail to the accused/ convict when exceptional and extra-ordinary circumstances would justify this indulgence. The power is to be sparingly used, when intolerable grief and suffering in the given facts may justify temporary release.**

**[2] While rejecting or accepting an application for grant of "interim" bail, the trial / appellate Courts will keep in mind the strict provisions of Section 37/32A of the NDPS Act and only when there are compelling reasons which would justify and require the grant of "interim" bail, should the application be allowed. The Court must take into account whether or not the accused/convict is likely to commit or indulge in similar violations.**

**[3] While examining the question of grant of "interim" bail, the Court would consider whether sending accused / convict in police custody would be suffice and meets the ends of justice, keeping in view the nature of the offence with which the accused is charged or/and the past conduct of the accused.**

**[4] Where "interim" bail should be given, it would be granted for minimal time deservedly necessary and can be subject to certain conditions. Interim bail is interim or for a short duration."**

10. Coming back to the facts and circumstances of the present case, as already discussed, it stands verified that wife of the applicant is suffering from Cholelithiasis and she is required to undergo a surgery for the said purpose, which now stands scheduled to be performed in a local hospital at Gurugram on 01.02.2023, after she is admitted there on 31.01.2023, as it is stated that the applicant with his family was residing at Gurugram, Haryana. The family of applicant consists of his wife and four minor children i.e. two daughters studying in 10<sup>th</sup> and 7<sup>th</sup> standards respectively and two infant sons, aged around 2 years and 8 months only. It has been submitted that the applicant is head of his family and also its sole bread earner as his parents stand already expired. Even his father-in-law stands expired and his mother-in-law is stated to be aged around 72 years. Hence, the court is satisfied that the family and wife of the applicant will certainly require the presence and care of the applicant during this critical time as the surgery for removal of gallbladder stones is a major surgery and though not generally life threatening, but to be performed after administration of general anesthesia.

11. Though, it has been reported by the IO, and also submitted by the Ld. Special Counsel and Ld. SPP appearing on behalf of the ED, that as per investigation carried out, the applicant's family is a close knit family and some cousin brothers of the applicant are also residing at Gurugram, but they cannot take the place of applicant and cannot also be expected to remain with wife or children of the applicant during this critical time, while leaving apart their own affairs and families. The judgments in cases **State of Maharashtra (Supra)** and **Shivender Mohan Singh (Supra)** being referred to and relied upon on behalf of the ED cannot be applied to the facts and circumstances of this case and rather, the judgments in cases **Rohit Tandon Vs. Directorate of Enforcement, 2017 SCC OnLine Del 11786; Pankaj Sehrawat Vs. State (NCT of Delhi), 2020 SCC OnLine Del 2346** and **Amit Vs. State, 2020 SCC OnLine Del 2456** being referred to and relied upon by Ld. Counsel for the applicant are found more appropriate for application in the present case. The case of **Rohit Tandon (Supra)** was a case under the PMLA itself and the accused was granted interim bail in the said case to take care of his ailing mother who had suffered a fracture due to fall and in case of **Pankaj Sehrawat (Supra)** under the MCOCA, interim bail was granted to an accused under similar circumstances as his wife had to undergo a major surgery. Even in the case of **Amit (Supra)** being relied upon by the Ld. Counsel for the applicant, though it was U/S 302 IPC, but interim bail was permitted to an accused on humanitarian grounds as his wife was to

undergo the same surgery for removal of gallbladder stones.

12. Therefore, keeping in view the above discussion and totality of facts and circumstances, this application is allowed and the accused Amit Arora is granted interim bail for two weeks subject to the following terms and conditions :-

- i) that he shall furnish before this court a personal bond in the sum of Rs. 2 Lakh with one surety in the like amount;
- ii) that he shall not leave the limits of Delhi NCR, unless and until the same is necessary in connection with treatment of his wife;
- iii) that he shall keep his mobile phone and its location on at all times and in case he is required to leave the Delhi NCR area for the above said purpose, he shall inform the IO about it in advance;
- iv) that he shall not destroy or tamper with the evidence of this case and shall not influence any witness of the case nor he shall even make any attempt to do so;
- v) that he shall not indulge in any criminal activities or commission of any offence of whatsoever nature and he shall not abuse the interim bail granted to him for any purposes;
- vi) that he shall not seek any extension of his interim bail on any ground and if due to medical complications of his wife or any other reason the proposed surgery of his wife does not take place on 01.02.2023 or at the most, on next following date, then he shall surrender before the Jail Superintendent concerned by 6 pm on 02.02.2023 and will seek his interim bail afresh from this court after re-scheduling of the surgery;
- vii) that otherwise, in case of surgery of his wife being



performed as per the schedule or given planning, he shall surrender before the Jail Superintendent concerned by 6 pm on 13.02.2023; and

viii) that he shall also surrender his original passport in the court along with the personal and surety bond and in case the same has been seized in this case or in any other case, then he shall furnish an affidavit to this effect.

13. The interim bail application of accused Amit Arora, thus, stands disposed off accordingly. A copy of this order may be taken dasti by the parties, if desired, and a copy of the order be also sent to the Jail Superintendent concerned, along with release warrant of the accused, for his information, compliance and records.

**Announced in the open court  
on 30.01.2023**

**(M. K. Nagpal)  
Special Judge (PC Act)  
CBI-09 (MPs/MLAs Cases)  
RADC, New Delhi.**