

**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/Enforcement Directorate  
(DoE/ED) Vs. Sameer Mahandru & Ors.**

**ORDER ON APPLICATION OF ACCUSED VIJAY NAIR  
(A-6) FOR GRANT OF INTERIM BAIL ON HIS MEDICAL  
GROUNDS.**

**19.01.2024**

**At 4pm**

1. By this order, I shall dispose of an application dated 15.01.2024 filed on behalf of accused Vijay Nair (A-6) U/S 439 Cr.P.C. r/w Section 65 of the PMLA, 2002 seeking his interim bail for a period of eight weeks on medical grounds.

2. The contents of application as well as of the reply thereto dated 17.01.2024 filed on behalf of ED have been perused, along with record of the case, and submissions as made by Ms. Rebecca Mammen John, Ld. Senior Counsel, assisted by Sh. Samudra Sarangi, Ms. Alisha Luthra, Ms. Nitya Jain, Sh. Akash Jainia, Sh. Tanay Chaturvedi and Sh. Pravir Singh Advocates, for the applicant and Sh. Zoheb Hossain, Ld. Special Counsel and

Sh. N. K. Matta, Ld. SPP appearing on behalf of ED have been heard and considered. The medical report of accused received from the Jail Superintendent concerned has also been perused. It has been observed that in title of the reply being filed by ED, due to some typographical/clerical mistake it is found stated that it is reply to interim bail application of accused Sameer Mahandru.

3. The applicant is one of chargsheeted accused in the present case registered by ED vide No. ECIR/HIU-II/14/2022 dated 22.08.2022 for the offences U/S 3/4 of the PMLA, 2002 and it has been registered in relation to scheduled offences case of CBI, which was registered vide FIR No. RC0032022A0053 dated 17.08.2022 of PS CBI, ACB, New Delhi for commission of the offence of criminal conspiracy punishable U/S 120B r/w 477A IPC and Section 7 of the PC Act, 1988 as well as the substantive offences thereof. The scheduled offences case of CBI has been registered in respect to irregularities committed in framing and implementation of excise policy of the Government of NCT of Delhi (GNCTD) for the year 2021-22 and payment of some bribe or advance kickbacks in relation thereto.

4. The applicant was arrested in this case by ED on 13.11.2022 and since then he is running in custody. His regular bail application stands already dismissed by this court vide order dated 16.02.2023 and it was even dismissed by the Hon'ble High Court vide judgment dated 03.07.2023. It has been observed

from record that even the application filed by him seeking his default bail under the provisions of Section 167(2) Cr.P.C. was dismissed by this court later on vide order dated 27.07.2023.

5. The applicant was one of the named accused in above scheduled offences case of CBI and he was even arrested in the said case on 27.09.2022, but was directed to be released on bail by this court vide order dated 14.11.2022. The said order of court is stated to be under challenge before the Hon'ble High Court. However, despite the grant of bail in above said case of CBI by this court, the applicant could not be actually released from custody because one day prior to passing of the said order by this court i.e. on 13.11.2022, he stood arrested by ED in the present case.

6. Interim bail of accused through the present application is being sought on ground that he has recently been diagnosed to be suffering from Grade-III hemorrhoids and has been advised surgery for removal thereof, which is a major surgery and has to be performed under General Anesthesia. It has been submitted in application that prolonged pre-trial custody of the accused had a serious impact on his health and it has resulted in various medical issues leading to his deteriorating health condition.

7. It is submitted that the applicant had been suffering from constipation since long and it got aggravated due to his

continuous incarceration and there is a tissue growth in and around his anus, which medical condition is known as piles. It has further been submitted that the applicant earlier had small hemorrhoids, but despite taking all precautions and treatment in custody, the same have increased in size and have been causing significant pain, discomfort and loss of blood to him. It is also submitted that due to the acute pain and blood loss caused because of above problem, the applicant is not able to follow or continue even his daily routine and a surgery for removal thereof has become must and the applicant has already been advised for undergoing the said surgery.

8. It has further been specifically submitted in application that it is not possible for the accused to undergo said surgery from judicial custody as he will require the presence and care of his family members and also their constant support at the time of surgery and even for his speedy recovery after surgery. It is also submitted that since the above surgery is sensitive in nature and can even have some post surgical effects resulting in pain, bleeding, infection, fecal incontinence and soreness in anal region etc., it is required that the surgery is not conducted in judicial custody and the applicant is granted interim bail for the aforesaid period for undergoing the surgery from some good private hospital. It has further been submitted during the course of arguments that the applicant intends to undergo the said surgery at Mumbai, Maharashtra as he is permanent resident of

Mumbai and has no house or family members in Delhi.

9. The request for grant of interim bail to the applicant has been strongly opposed on behalf of ED on grounds that the above surgery is not a life threatening surgery and it can well be performed in any of the referral hospitals in judicial custody. It has also been submitted in reply filed by ED that a bare perusal of the medical report of accused received from jail will show that he is being provided adequate treatment, care and supervision for all his ailments in jail and thus, there are no grounds or compelling reasons or necessity to enlarge him on interim bail for the above said purpose.

10. It is also the contention of Ld. Special Counsel and Ld. SPP for ED that stringent twin conditions contained in Section 45 of the PMLA do not permit even the grant of interim bail to an accused on such a ground as the ailments from which he is stated to be suffering do not make him a 'sick' or 'infirm' person within the meaning of that Section, so as to entitle him to seek his bail under the above provisions on medical grounds and by relaxation of the conditions contained therein.

11. It is further their submission that since as per above medical report, the medical condition of applicant is stable and there are no exceptional circumstances or grounds for releasing him on interim bail, the present application is liable to be

dismissed. It is further their submission that even on the principle of equality of applicant with other inmates, the instant application is liable to be dismissed as the accused does not deserve any special privilege or treatment of his choice simply because of the fact that he can afford it.

12. Around 35 judgments and the orders passed by the Hon'ble Supreme Court, the Hon'ble High Court as well as by this court have been referred to and relied upon on behalf of ED in support of the above submissions being made and contentions raised by Ld. Special Counsel and Ld. SPP in opposition to the plea for grant of interim bail to accused and few judgments and orders have also been relied upon on behalf of accused to counter these submissions and contentions. Some of these judgments and orders being quoted from both sides pertain to this very case and the same were passed while allowing or dismissing the interim bail applications of some other co-accused, which are found to have been moved by them either on the ground of their own medical conditions or the medical conditions of their family members or some other humanitarian grounds.

13. It is a matter of record that the co-accused Sammer Mahadru, P. Sarath Chandra Reddy, Benoy Babu, Amit Arora, Raghav Magunta and Arun Ramchandran Pillai etc. have all been earlier granted interim bail in this case, either by this court or by the Hon'ble High Court, on different grounds and these grounds

were mainly related to their own medical conditions or the medical conditions of their immediate family members. While disposing of these bail applications filed by the other co-accused, it has been consistently observed by court that the bar and rigors of Section 45 of the PMLA are not applicable for granting interim bail to an accused on such medical grounds or even on the other humanitarian grounds. It has further been observed in some of these orders passed in respect to the other co-accused that an accused is not required to be declared a 'sick' or 'infirm' person in terms of provisions contained in Section 45 of the PMLA for granting interim bail to him on medical grounds as this may be required only when he is seeking his regular bail in the case on medical grounds.

14. It is observed that even recently, the co-accused Arun Ramchandran Pillai and Sameer Mahandru have been granted interim bail for a period of two weeks each vide orders dated 18.12.2023 and 05.01.2024 respectively of this court on grounds that their wives were scheduled to undergo some surgery. It is also a matter of record that the interim bail granted to co-accused Arun Ramchandran Pillai vide order dated 18.12.2023 of this court has subsequently been extended by the Hon'ble High Court and the said accused has now been directed to surrender to custody on 20.01.2024 vide order dated 12.01.2024 of the Hon'ble High Court. Even the interim bail granted to other co-accused Sameer Mahandru has been extended by this court for

the time being till 22.01.2024 vide order dated 18.01.2024 due to some subsequent facts and circumstances.

15. Hence, in considered opinion of this court, the question of grant of interim bail to an accused in such a case is required to be considered only in view of the grounds taken by said accused and the other attending facts and circumstances of the case as may be applicable for disposal of the said plea of accused and no other judgment, order or case law can serve as binding precedent to this effect.

16. Coming to the instant application, as stated above, the interim bail is being sought by accused on ground that he has to undergo a surgery for removal of Grade-III hemorrhoids present in his anal area and this surgery is a major surgery, which is to be performed under General Anesthesia. The medical report of accused received from jail concerned confirms this fact and it shows that he is having Grade-II and III internal hemorrhoids at 3, 7 & 11'o clock position and he has frequently been complaining of pain and bleeding per rectum due to the above and he has already been advised to undergo a surgery by the Department of Surgery, Deen Dayal Upadhyay (DDU) Hospital, Delhi. The contents of above medical report of accused are being reproduced herein below :-

**“Subject: Medical status report of inmate patient Vijay Nair s/o Swami Nath Nair.**

With references to the order of **Hon'ble Judge, Sh. M.K.**



**Nagpal, Special Judge (PC Act) (CBI-09), (MP's/MLA cases), Rouse Avenue District Courts, New Delhi** seeking medical report of aforesaid inmate patient to be submitted as per date given.

In continuation of the previous medical report vide letter no: **MOI.C/CJ-04/2022/2242, Dated 22/08/2023.**

Thereafter on 29.08.2023 inmate patient was seen by doctor on duty for the complaint of throat pain, fever, cold, for which he was advised appropriate treatment accordingly.

Thereafter on 04.09.2023 inmate patient was reviewed by jail visiting Medicine SR as a follow-up case of dyslipidemia, for which he was treated accordingly.

Thereafter on 09/10/2023 inmate patient was reviewed by jail visiting Skin SR as a case of seborrheic Dermatitis, for which he was advised appropriate treatment accordingly.

Thereafter on 26/12/2023 inmate patient was seen by doctor on duty wherein he gave complaint of bleeding per rectum, for which he was thoroughly examined, prescribed appropriate treatment accordingly.

Thereafter on 27.12.2023 inmate patient was reviewed by undersigned wherein he gave complaint of bleeding per rectum, some mass coming out, for which he was advised appropriate treatment, certain investigations and surgery review at DDU Hospital accordingly.

Thereafter on 28.12.2023 inmate patient was sent to department of Surgery at DDU Hospital for the complain of bleeding per rectum with on and off burning/itching peri anal region/constipation, for which he was thoroughly examined on examination per abdomen-soft/non tender/bowel sound present.

Per Rectum Proctoscopy suggestive of -

- . No external abnormality.
- . Annal tone normal to increased
- . Grade II & III internal hemorrhoid at 3, 7 & 11'o clock position
- . No mass/feacolith
- . Prostate normal

For which he was advised appropriate treatment and also advised for surgical work-up and PAC for open/stapled Hemorrhoidectomy Surgery.

Thereafter on 30/12/2023 inmate patient was seen by doctor on duty as a follow-up case of bleeding per rectum with protruding mass per rectum and constipation, for which he was prescribed appropriate treatment accordingly.

Thereafter on 11/01/2024 inmate patient was again seen by doctor on duty as a follow-up case of bleeding per rectum, for which he was advised to continue the same treatment as advised before.

In view of the instant court order inmate patient was called before undersigned on 17/01/2024 wherein he gave complaint of bleeding per rectum, severe constipation with follow-up case of Grade-II & III internal Hemorrhoid, for which he was advised appropriate treatment and specialist review accordingly.

At present inmate patient is suffering from, Grade-II & III internal Hemorrhoid at 3, 7 & 11'o clock position with pain and bleeding per rectum (for which he is advised surgical work-up for open/stapled Hemorrhoidectomy Surgery by department of Surgery, DDUH), on and off burning/itching peri anal region, severe constipation, IBS symptoms (treatment receiving from Gastroenterology, GBPH), complaint of dyslipidemia, low platelet count, low back pain with radiculopathy, seborrheic Dermatitis for which he is receiving treatment from doctor on duty/jail visiting ortho, Medicine & Skin SR/DDU Hospital/GBPH with persisting clinical symptoms.

This is for your kind information and onwards submission to the Hon'ble Court.”

17. Thus, it is clear from the above medical report that the accused has been consistently and repeatedly complaining of pain and bleeding per rectum and he had even complained of some mass coming out of his rectum area and for off burning/itching peri anal region. The report further suggests that

though he was provided treatment in jail for his above problems, but ultimately, he was advised for surgical work-up for open/stapled Hemorrhoidectomy surgery and it has been advised by one of the jail referral hospitals i.e. DDU hospital, though his treatment for the other reported ailments like dyslipidemia, low platelet count, low back pain with radiculopathy, Seborrheic Dermatitis etc. is still continuing from jail doctors.

18. Further, as is also clear from the above report, it has been submitted in continuance of his previous medical report dated 22.08.2023, which is already a part of the record. It is found that even earlier, the accused had visited the jail dispensary or referral hospitals, i.e. DDU and GB Pant Hospitals, on various dates i.e. 24.04.2023, 09.05.2023, 11.05.2023, 13.06.2023 etc. and had undergone a proctoscopy examination suggestive of Grade-I hemorrhoids Hence, the submissions being made on behalf of accused in the instant application and findings given in his above medical report dated 17.01.2024 are even found corroborated by contents of his previous medical report 22.08.2023 that he was having Grade-I hemorrhoids in his anal region earlier, which have now increased in size and have reached at the level of Grade-III due to his persisting problem of constipation and are causing him acute pain and loss of bleeding etc. and the same are required to be attended urgently and to be removed through a surgery.

19. Therefore, keeping in view the above facts and discussion, this application is allowed and the applicant/A-6 Vijay Nair is being granted interim bail in this case for a period of two weeks from the date of his release subject to the following terms and conditions :-

i) that he shall furnish before this court a personal bond in sum of Rs. 2 Lakh with one surety in the like amount;

ii) that during the above said period, he shall not leave the limits of Mumbai;

iii) that during the above said period, he shall not destroy or tamper with evidence and shall not influence any witness of the case nor he shall even make any attempt to do so;

iv) that during the above said period, he shall not meet or talk with any co-accused, suspect or witness of this case;

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 his own treatment for any other purposes; and

vi) that he shall surrender before the Jail Superintendent concerned by 5 pm on the day on which his interim bail in terms of this order will expire.

20. The interim bail application of A-6 Vijay Nair stands disposed off accordingly. Let an e-copy of this order be given dasti to Ld. Counsel for the applicant and Ld. SPP/IO for ED

through Whatsapp/e-mail and a copy of the order be also sent to the Jail Superintendent concerned for his information, compliance and records.

**Announced in open court  
on 19.01.2024**

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