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

% Judgment delivered on: 07.06.2024

+ **BAIL APPLN. 2024/2024**

AMIT KATYAL

..... Petitioner

Through: Mr. Kapil Sibal, Mr. Vikas Pahwa,
Sr. Advs. with Ms. Bina Gupta, Mr.
Gurpreet Singh, Mr. Bakul Jain, Mr.
Shiv Vinayak Gupta, Mr. Jatin Sethi,
Ms. Sheena Taqui, Ms. Akansha
Saini and Ms. Rupali Samuel, Advs.

versus

DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA

..... Respondent

Through: Mr. Zoheb Hossain, Special Counsel
with Mr. Vivek Gurnani, Adv.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

Crl.M.(Bail) 977/2024

1. The present application has been filed by the present petitioner seeking the following relief:

“Pass ex-parte ad interim orders for releasing him on bail in ECIR/31/DLZO/2022 against the Petitioner;”

2. *Vide* order dated 03.06.2024, notice was issued in the application of the petitioner seeking interim bail and the respondent was directed to file a



Status Report. The respondent/ED has filed a Status Report dated 07.06.2024, which has been handed over in Court and is taken on record. Similarly, Medical Status Report dated 06.06.2024 has been filed by the Jail Superintendent, which also forms part of the record. The Medical Status Report received from the Jail Superintendent reads as under:

“D.No./SMO/CJ-07/2024/1159

Dated: 05-06-2024

Sub: Medical Status Report of Amit Katyal S/o Om Prakash Katyal.

As per the Medical Documents submitted, the inmate patient is an operated case of Bariatric Sleeve Gastrectomy on 09/04/2024 and is on Specified Diet Plan since 23/04/2024, with history of Coronary Artery Disease, Obstructive Sleep Apnoea, Diabetes and Syncope. He was re-lodged in CJ07 on 01/05/2024.

The recommended diet chart was forwarded to the Jail Superintendent for necessary action. (Annexure A1 & A2).

On 03/05/2024, scheduled OPD was cancelled as he submitted an application complaining of multiple episodes of vomiting along with pain in the chest.

Subsequently in the evening the inmate visited jail dispensary with the complaint of Vomiting and Ghabarat after telephonic discussion with doctor he was provided with medication accordingly.

On 06/05/2024, the inmate patient visited the jail dispensary with the complaint of vomiting and acidity along with pain in the operated site. He was examined and was provided with medicines.

On 10/05/2024, the inmate patient visited jail dispensary with complaint for blood tinged vomiting along with pain abdomen for which he was given medication and was advised medication. The patient was not relieved after which he was advised intravenous injectable.

On 11/05/2024, the inmate patient visited jail dispensary for the complaint of severe pain in lower abdomen for which he was referred to DDU Hospital Emergency. He was examined and ultrasonography was done which was suggestive of Grade 2 fatty Liver with Hepatomegaly. Further he was advised to continue the diet as



advised after bariatric surgery. (Annexure A3)

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

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

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

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

This is for your information and onward submission.”

3. Praying for the release of the petitioner on humanitarian and medical grounds, Mr. Kapil Sibal and Mr. Vikas Pahwa, learned senior counsels, at the outset, submit that the health condition of the petitioner is precarious and requires urgent medical treatment. He submits that the authorities have not been able to provide the requisite medical treatment and diet which is immediately warranted given the fact that the petitioner underwent bariatric surgery at Medanta in April, 2024 and was discharged on 11.04.2024.

4. Elaborating on the aforesaid submission, the attention of the Court was drawn to the order dated 05.02.2024 to submit that the petitioner was previously granted interim bail from 06.02.2024 to 04.03.2024 by the



learned Special Judge (PC Act), CBI-24, RADC, New Delhi taking into account the Medical Reports from government hospital/jail medical facility and it was held that the petitioner required an urgent cardiac procedure, as well as, bariatric surgery in view of his morbid obesity.

5. As the condition of the petitioner was still precarious, he moved another application for extension of medical bail on 25.02.2024 alleging that the petitioner had been diagnosed by the doctors of Apollo and Medanta hospitals for depression metabolic syndrome, Sleep Apnea, Insomnia, Dementia, no motion of left side, numbness, chest pain, heart issues, morbid obesity. Accordingly, the interim bail granted to the petitioner *vide* order dated 05.02.2024 was extended from time to time upto 01.05.2024, when he finally surrendered.

6. It is submitted that it is also not in dispute that the Medical Status Report records that the petitioner is suffering from coronary artery disease, diabetes, mellitus, obstructive Sleep Apnea, Hepatomegaly and Syncope with normal blood pressure & pulse and raised sugar levels and the same cannot be effectively managed in jail.

7. Accordingly, it is submitted that the health condition of an individual is of paramount importance and every person has a right to get himself adequately and effectively treated especially when the individual is suffering from serious co-morbidities leaving him in a compromised position. Reliance in this regard is placed by the learned senior counsels on the judgments of this Court *Devki Nanadan Garg v. Directorate of Enforcement*, 2022 SCC Online Del 3086; *Vijay Agrawal v. Directorate of Enforcement*, 2022 SCC Online Del 4494 and *Kewal Krishan Kumar v.*



Enforcement of Directorate, 2023 SCC Online Del 1547.

8. Further referring to the Medical Status Report of the petitioner, it is submitted that it is borne from the records of the case that the petitioner is not keeping well and is sick and infirm. It is submitted that the petitioner has undergone bariatric surgery in April, 2024 and requires a specialized diet and proper care for his recovery. It is further submitted that the petitioner has been vomiting continuously and thus his energy is low at all times and he is unable to perform his daily needs and the same is also borne out from the Medical Status Report.

9. *Per contra*, Mr. Zoheb Hossain, learned Special Counsel appearing for the Enforcement Directorate submits that the medical ailments of the petitioner are not serious and the requisite medical attention is being provided to the petitioner in the jail premises.

10. It is further submitted by the learned Special Counsel that the conduct of the petitioner disentitles him from any relief inasmuch as before the Trial Court, the respondent obtained an independent medical opinion on the condition of the petitioner, when he sought extension of the interim bail, from Ram Manohar Lohia Hospital and Deen Dayal Hospital, Delhi to submit that the petitioner was hiding his actual medical condition. Letter received from RML Hospital and Medical Report dated 15.02.2024 is annexed as Annexure R-5 to the Status Report whereas independent opinion provided by the DDU Hospital is annexed as Annexure R-6.

11. He further submits that it is not in dispute that the petitioner had undergone bariatric surgery from Medanta Hospital and was discharged from the hospital on 11.04.2024. Further, angiography of Amit Katyal was



also carried out at Apollo Hospital, the reports of which came out to be normal.

12. It is also submitted by the learned special counsel for the respondent that while disposing of the application of the petitioner seeking extension of interim bail on 30.04.2024 the learned Special Judge observed that the accused has been permitted normal activity and he has recovered from the bariatric surgery conducted upon him. As a *sequitor*, he submits that the order dated 30.04.2024 has not been challenged by the petitioner and has attained finality. He also points out that certain reliefs and facilities in the form of prescribed medications, prescribed diet and consultation with his doctors *via* video conferencing at Medanta – Medicity were allowed to petitioner *vide* order dated 01.05.2024.

13. In respect of the Medical Status Report filed by the Jail Superintendent, it is submitted by the learned Special Counsel that the same only records the complaints of the petitioner and does not corroborate the alleged ailments of the petition.

14. Lastly, Mr. Hossain also relied upon the decision of the Supreme Court in *Pawan Alias Tamatar v. Ram Prakash Pandey*, (2002) 9 SCC 166, to contend that the discretion vested in Courts to grant bail on medical grounds should be exercised in a sparing and cautious manner and every nature of sickness will not entitle the accused to be released on bail unless it is demonstrated that the sickness is of such a nature that if the accused is not released, he cannot get proper treatment. Further placing reliance upon the decision of a Co-ordinate Bench of this Court in *Directorate of*



*Enforcement v. Raj Singh Gehlot*¹, the learned Special Counsel urges that in the absence of compelling reasons warranting grant of interim bail on medical grounds, the Courts shall not exercise their discretion in granting bail to the accused.

15. I have heard the learned Senior Counsel for the petitioner, as well as, the learned special counsel for the Directorate of Enforcement and have also perused the record.

16. The short question to be decided at this stage is whether the petitioner, who is in custody, is entitled to interim bail on medical grounds.

17. For deciding the short question at hand, at this stage it will be apt to advert to the provision of Section 45(1) of the Prevention of Money Laundering Act, 2005, the first proviso of which provides for grant of bail on medical grounds. Section 45(1) of the Act reads as under:-

“45. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, 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:

¹CRL M.C. 3713/2022 [Date of order: 17.08.2022]



Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money laundering a sum of less than one crore rupees may be released on bail, if the special court so directs:”

18. A bare reading of the first proviso to sub-Section (1) of Section 45 of the Act makes it luminous that the said provision has been incorporated in the provision to carve out an exception which empowers the Court to grant bail to a person who is under the age of sixteen years or is a woman or is sick or infirm, without insisting upon strict compliance of twin conditions, namely, (i) there are reasonable grounds for believing that accused is not guilty of offence of money-laundering and (ii) he is not likely to commit any offence while on bail.

19. At this stage apposite it would be to refer to the decision of this Court in *Sanjay Jain (JC) v. Enforcement Directorate, 2023:DHC: 4092* wherein while deciding an application seeking interim bail on medical grounds, it was held that the right of health of an individual being a facet of right to life under Article 21 cannot be abridged without due process of law in a mechanical manner. The Court further held that the right of an individual to be released on an interim bail arises when specialized treatment and care is necessary and the same cannot be provided by the Jail Authorities. The relevant paragraphs of the judgment read as thus:

“29. The power to grant bail on medical grounds under the first proviso to Section 45(1) of the Act is discretionary, therefore, the same has to be exercised in a judicious manner guided by principles of law after recording satisfaction that necessary circumstances exist warranting exercise of such a discretion.



30. *In Pawan Alias Tamatar (supra), the High Court had granted bail to the accused merely on the pretext on the allegations of ailment were not specifically denied. The Hon'ble Supreme Court while setting aside of the order of the High Court observed that the ailment of the accused was not of such a nature requiring him to be released on bail. It was further observed that the accused can always apply to the Jail authorities to see that he gets the required treatment.*

31. *Clearly, it is not every ailment that entitles an accused for grant of bail on medical grounds. The expression used in the first proviso to Section 45 of PMLA is that a person can be released on bail if he is "sick" or "infirm".*

32. *In Kewal Krishan Kumar (supra) this Court laid down following guiding principle as to the level of sickness that will entitle a person to bail under proviso to section 45(1):-*

"Though no straight jacket formula can be laid down as to what is the level of sickness that a person is to suffer to entitle him to bail under section 45(1) proviso, the thumb rule is that the sickness should be so serious that it is life threatening and the treatment is so specialized that it cannot be provided in the jail hospital. However, this is not an exhaustive parameter and each case will depend on its own peculiar facts and circumstances."

33. *It was further observed in Kewal Krishan Kumar(supra) that for granting bail on the ground of infirmity, it must consist of a disability which incapacitates a person to perform ordinary routine activities on a day-to-day basis. The material part of the decision reads as under:-*

"Mere old age does not make a person 'infirm' to fall within section 45(1) proviso. Infirmity is defined as not something that is only relatable to age but must consist of a disability which incapacitates a person to perform ordinary routine activities on a day-to-day basis."



34. *In Vijay Aggarwal through Parokar (supra) a Coordinate Bench of this Court while granting interim bail on medical grounds in a case under PMLA, observed that the discretion for granting interim bail on medical ground may not be exercised only at a stage when the person is breathing last or is on the position that he may not survive.*

35. *Plainly, the health of the petitioner has to be given primacy and it is his fundamental right to be given adequate and effective treatment whilst in jail. However, in case specialized or sustained treatment and care is necessary, having regard to the petitioner's medical condition which is not possible whilst in jail, then the petitioner will be entitled to the benefit of interim bail in terms of the first proviso to Section 45(1) of the PMLA."*

(emphasis supplied)

20. Bearing the aforesaid in mind, it would now be apt to advert to the facts of the present case. It is not in dispute that the petitioner was granted interim bail by the Learned Special Court on 05.02.2024, noting as under:-

"40. In view of the medical reports from the government hospital/jail medical facility, the accused comes forth as requiring an urgent cardiac procedure as well as bariatric surgery. The morbid obesity suffered by him and the nature of risk associated with heart ailment does present the prospect of a life threatening outcome visiting him if not addressed with urgency. The nature of restrictions on his daily activities advised by the doctors further constitute a debilitating state of physical being. He must therefore be accorded a purposive and humane interpretation of 'sick or infirm' within the meaning of the proviso to section 45(1) PMLA. Infact, the accused can variously be described as being both sick and infirm."

21. Further an application seeking extension of the bail was filed on 25.02.2024, and while the said application was pending, the petitioner



underwent bariatric surgery. It would also be relevant to note that it is the contention of the respondent that to effectively assist the learned Special Judge to adjudicate the application for extension of interim bail, the respondent obtained independent medical opinions from RML Hospital as well as DDU Hospital to the effect that the petitioner was hiding his actual medical condition.

22. Thereafter, the petitioner was directed to surrender on 01.05.2024 *vide* order dated 30.04.2024, noting as under:-

“78. The court has, in the initial segment of this order, related to the discussion on facts, recorded that the accused has been permitted normal physical activity and sufficient time has passed after his discharge upon surgery at Medanta Hospital. He is apparently in a recovered state of health and should be required to surrender. There are no grounds to extend the interim bail of the accused any further.

79. The plea of the accused for extension of interim bail is declined.

80. The application is disposed off with direction to applicant/accused Amit Katyal to surrender before the Superintendent, Central Jail by 5:00 pm tomorrow i.e. 01.05.2024.”

23. Undisputedly, the petitioner has acquiesced to the said direction and surrendered as directed, possibly because he did not continue to be sick and infirm. Relevant to note that the petitioner did not challenge the said order either and the same has attained finality.

24. The petitioner has now approached this Court alleging that he is sick



and infirm and is not keeping well in custody. This Court to ascertain the present medical condition of the petitioner had requisitioned a Medical Status Report from Jail Superintendent. A perusal of the medical status report shows that the same does not disclose the underlying ailment from which the petitioner is stated to be suffering from, to enable this Court to arrive at a conclusion whether the petitioner requires sustained specialized treatment which cannot be provided to him whilst in custody. The Medical Status Report only records the complaints of the petitioner but not the underlying medical condition / ailment.

25. In the absence of an opinion of the experts it is difficult for this Court to come to the conclusion as to whether it is a case for grant of interim bail on the medical grounds. The Court cannot assume the role of an expert and make assessment of its own as regard the medical condition of the petitioner on the basis of medical records placed on the Court file.

26. At the same time, on humanitarian grounds, the medical condition of the petitioner as borne out from the medical status report cannot be simply brushed aside given the fact that there is material on record suggesting that the petitioner is a heart patient and has undergone bariatric surgery recently besides having other ailments.

27. In the circumstances, this Court deems it appropriate, to constitute a medical board to evaluate the medical condition of the petitioner. It is accordingly, directed as under:

- (i) The Director, All India Institute of Medical Sciences (AIIMS) is directed to immediately constitute a Medical Board of Doctors from minimum three different specialties having regard to the nature



of ailments the petitioner is stated to be suffering from, for evaluating the medical condition of the petitioner.

(ii) The Jail Superintendent is directed to furnish all medical records of the petitioner to the Medical Board of Doctors so constituted on or before 11.06.2024. The *paikar* of the petitioner is also at liberty to furnish the relevant medical records of the petitioner to the Board, with a copy thereof to the learned Special Counsel for the Directorate of Enforcement.

(iii) The Jail Superintendent shall also ensure that the petitioner is presented before the Medical Board on 11.06.2024 at the time and place indicated by the Board. If considered necessary by the Medical Board, the petitioner may be admitted in AIIMS for evaluation for a period deemed fit.

(iv) Upon evaluation of medical records and examination of the petitioner, the Medical Board shall furnish its report to this Court, on or before 14.06.2024.

(v) The report must, *inter alia*, indicate specifically – whether any single ailment of the petitioner or all the ailments taken together, warrant specialized or more sustained treatment, personal care and special diet which cannot be provided in the primary healthcare facility of Jail.

28. A copy of this order be forwarded through the *paikar* of the petitioner to the Director, AIIMS, who shall ensure compliance of this order. A copy of this order be also sent to the Jail Superintendent for necessary compliance.



2024: DHC: 4741



29. List on 17.06.2024 before the Vacation Bench.
30. Order *dasti* under the signatures of the Court Master.
31. Order be uploaded on the website of this Court.

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32. List on 03.07.2024 before the Roster Bench.

**VIKAS MAHAJAN
(VACATION JUDGE)**

JUNE 7, 2024

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