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

% ***Date of decision:18th July, 2024***

+ **CRL.M.C. 5116/2024**

ARVIND KEJRIWAL

.....Petitioners

Through: Mr. Ramesh Gupta, Sr. Advocate
with Mr. Vivek Jain, Mohd. Irshad,
Mr. Rajat Bhardwaj, Mr. Karan
Sharma, Mr. Sadiq Noor, Mr. Mohit
Siwach, Mr. Rajat Jain & Mr.
Rishikesh Kumar, Advocates.

versus

DEPARTMENT OF DELHI PRISONS AND ANR.

.....Respondents

Through: Mr. Amit Ahlawat, APP for
State/R-1.
Mr. Zoheb Hossain, Special Counsel
with Mr. Vivek Gurnani, Mr. Kartik
Sabharwal, Ms. Abhipriya Rai, Mr.
Vivek Gaurav & Mr. Dipanshu Gaba,
Advocates for ED.
Mr. Abhijit Shankar, Law Officer,
Tihar Jail, New Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Petition under Section 482 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking to set aside or quash the Orders dated 10.04.2024 and 01.07.2024 passed by the learned Special Judge (PC Act), CBI-09, MPs/MLAs Cases), Rouse Avenue



District Court, New Delhi in I.A. 59/2024 seeking direction to Jail Authority for allowing the applicant to have five weekly meetings with his Lawyers and I.A. 100/2024 seeking directions to the Jail Authority for allowing the applicant to have additional two meetings with his Lawyers respectively in ECIR/HIU-II/14/2022, have been dismissed.

2. It is submitted that the petitioner was shown to have been arrested in purported exercise of power under Section 19 of the Prevention of Money Laundering Act, 2002 (*hereinafter referred to as "PMLA, 2002"*). The petitioner was produced before the Special Judge, PMLA on 22.03.2024 and he was remanded to custody for 10 days. Thereafter, from time to time, the petitioner was remanded to the judicial custody.

3. It is submitted that the petitioner is facing litigation in Courts of Punjab, Gujarat, Uttar Pradesh, Bihar, Goa, Assam and Delhi and he requires thorough legal consultation with his Lawyers.

4. The petitioner moved the *Application bearing I.A. No. 59/2024* seeking direction to Jail Authority for allowing the applicant *to have five weekly meetings with his Lawyers*. The respondents opposed the said application by way of their Reply. The learned Special Judge, PMLA without there being any proof of misuse of the said meetings and without giving any reason dismissed the said application of the petitioner *vide* Order dated 10.04.2024.

5. In the interregnum, the petitioner got interim bail on 10.05.2024 by the Order of the Apex Court with directions to surrender on 02.06.2024. The petitioner after availing the interim bail surrendered himself before the Jail Authority on 02.06.2024 in accordance with the directions of the Apex Court.



6. On 25.06.2024, the petitioner preferred another *Application bearing I.A. 100/2024* seeking directions to the Jail Authority for allowing the applicant *to have additional two video conference meetings with his Lawyers*. However, the said application has also been dismissed by the learned Special Judge *vide* Order dated 01.07.2024 by observing that no changed circumstances have been pleaded by the applicant.

7. The petitioner has submitted that subsequent Order dated 01.07.2024 passed in I.A. 100/2024 is without application of mind, for the simple reason that in the first Application bearing No. 59/2024, the petitioner had sought direction to Jail Authority for allowing the applicant to have five weekly meetings with his Lawyers, while in the second Application bearing I.A. 100/2024, he had sought directions to the Jail Authority for allowing the applicant to have additional two meetings through *video conference* with his Lawyers.

8. The two impugned Orders dated 10.04.2024 and 01.07.2024 have been challenged by way of present petition on the grounds that a similar application was filed by the co-accused/Sanjay Singh and the said application had been allowed *vide* Order dated 22.02.2024 in I.A. 34/2024 in ECIR/HIU/14/2022, whereby he had been allowed an additional weekly meetings with his Lawyer by the Special Judge. The said Order has not been challenged by either party and the same has attained finality.

9. The petitioner has claimed the Special Judge has ignored the fact that the similar relief had been granted to co-accused/Sanjay Singh and it ought to have been treated as a precedent to grant the said relief, and denial of similar relief to the petitioner is unprecedented and without any reason.

10. It is further submitted on behalf of the petitioner that the Reply of



respondent No. 2 was based on assumptions and non-applicability of legal principles. It is submitted that there is no proof of any kind for misuse by the petitioner and no valid reason has been given by the learned Special Judge in Order dated 10.04.2024, being the similar relief to the petitioner.

11. *The second Application bearing No. I.A. 100/2024* has also been wrongly dismissed because the relief claimed in the said application was different from the first application. The petitioner had limited his relief to claim two legal meetings with his Lawyers through videoconferencing, while first Application was for additional physical Meetings.

12. The petitioner has further contended that Article 22(1) of the Constitution of India provides for the right to consult and to be defended by a legal practitioner of his choice, and by denying such right of consultation, his Fundamental Right is being breached.

13. Learned Senior Advocate on behalf of the petitioner has placed reliance on the decision in *M.H. Hoskot vs. State of Maharashtra*, (1978) 3 SCC 544 to submit that the right to legal representation and fair trial are a cornerstone of the Constitution. For this proposition, learned Senior Advocate on behalf of the petitioner has also placed reliance on the decisions in *Zahira Habibullah Sheikh (5) vs. State of Gujarat*, (2006) 3 SCC 374, *Mohd. Sukur Ali vs. State of Assam*, (2011) 4 SCC 729, *Khatri vs. State of Bihar*, (1981) 1 SCC 627 and *Mohd. Hussain vs. State (Govt. of NCT of Delhi)*, (2012) 2 SCC 584.

14. The right of fair trial is a Fundamental Right of every citizen as enshrined in the Constitution of India and reiterated and upheld by the Apex Court in the case of *Husainera Khatoon and Others vs. Home Secretary, State of Bihar*, AIR 1973 SC 1369 and *Moti Lal Saraf vs. Union of India*,



2007 (1) SCC Cri. 180.

15. Learned Senior Advocate on behalf of the petitioner has further asserted that the Special Judge has wrongly placed reliance on the judgment of this Court in Amanatullah Khan vs. Directorate of Enforcement, decided *vide* BAIL APPLN. 795/2024, as the facts of the present case are distinguishable. The petitioner owing to multiple litigation against him, requires considerable time with his Lawyers to discuss the strategies involved in defending the different cases. The assertion of the respondents that the petitioner would misuse his extra legal meetings if granted to him, is not only absurd but bereft of any merits or logic.

16. It is submitted that the unequal cannot be treated equally. In Manish Kumar vs. Union of India (UOI) and Ors., 2021 (14) SCR 895, the Apex Court had observed that it is only equals who have been treated equally. What constitutes reasonable classification, would depend on facts of each case. Similar observations had been made in the case of Venkateshwara Theatre vs. State of A.P., 1993 (3) SCR (616).

17. The petitioner has further asserted that unwarranted remarks have been made by the Special Judge in Order dated 10.04.2024 *qua* the petitioner while denying the additional legal meetings. A doubt has been cast upon the petitioner in regard to his Fundamental Right to consult with his Lawyers. Moreover, there is no statutory bar and impediment under law on the petitioner which is present or has been cited by the respondents which would lead the learned Special Judge to make such remarks against the petitioner.

18. It is, therefore, submitted that the two impugned Orders dated 10.04.2024 and 01.07.2024 are liable to be set aside.



19. **Learned special counsel for the respondent No. 2 has contested the present petition by way of a detailed Reply**, wherein it is submitted that the present petition is nothing but a whimsical attempt by the petitioner to seek special treatment contrary to the prescribed rules that govern all under trial prisoners equally.

20. It is submitted that the petitioner had filed the two Applications bearing I.As. 59/2024 and 100/2024 with identical prayers seeking additional meetings with his Lawyers which have been duly considered and dismissed by the Special Judge. During the hearing of the second Application i.e., I.A. 100/2024 seeking similar prayer, an opportunity was granted by the Special Judge to the petitioner to withdraw the application and file it afresh with additional/fresh grounds, but the petitioner rather than availing that opportunity, chose to prefer the present petition which was rejected at the threshold. It is held by observed that the petition was bereft of any reason for the need to have additional meetings with the Lawyers.

21. It is further stated that the learned Special Judge in the impugned Orders dated 10.04.2024 and 01.07.2024 has rightly observed that the applications of the petitioner was bereft of any necessary details about the cases, including their actual number, the stage and nature of such cases which are pending in different courts of law across several States of India. The additional meetings were, therefore, rightly denied.

22. Learned Special Judge has also noted that the meetings given to the petitioner were misused to dictate certain directions onto the Water Minister, to one of the Lawyers during the course of a legal meeting. The Status Report submitted before the learned Special Judge by the respondents, therefore, clearly indicated that the legal interview had been misused by the



petitioner.

23. Learned special counsel for the respondent No. 2 has further asserted that normally in consonance with the Standing Order No. 53 issued by the Office of the Director General (Prisoner) Prison Headquarters Tihar, New Delhi, an Advocate is permitted one interview per week with his/her client in the jail as per the routine practice. However, legal interview in exceptional circumstances is permitted for the second time in a week with the prior approval of the Jail Authority. *Clause 8.01 of Model Prison Manual, 2016* states that the legal interviews are provided once in a fortnight. Further, the Delhi Jail Manual containing the Delhi Prisons (Prisoners Welfare Fund, Appeals, Petitions, Interviews and Communication) Rules 1988 also prescribes two visits in a week by the Legal Advisors under Rule 41.

24. Learned special counsel on behalf of the respondent No. 2 has referred to the decision of the Division Bench of this Court in *Jai A. Dehadrai and Anr. vs. Government of NCT of Delhi and Anr.*, decided on 16.02.2023 *vide* W.P.(C) 2108/2020, wherein it was held that in a matter of policy, the Court should not substitute its own conclusion with the one arrived at by the Government merely because another view is possible. Thus, the Trial Court was not inclined to pass any order permitting more than two *mulaqats* in a week.

25. The Apex Court in *Jai A. Dehadrai vs. Govt. of NCT of Delhi & Anr.*, decided on 09.01.2024 *vide* SLP (C) No. 35777/2023 refused to interfere in the Government's decision of restricting visits to jail inmates by family, friends and legal advisors, allowing only twice a week.

26. Learned special counsel for the respondent No. 2 has placed reliance



on the decision in Amanatullah Khan (supra), wherein it has been observed by this Court that undoubtedly, every such person as any other citizen of India is entitled to the protection of law; however, the law will also equally apply to him, subject to any privilege if at all, in a case applicable to him. Needless to say, the protection as per law which is available to all citizens is also available to such members and public figures. Their standing in lives or being an elected representative of the people does not create a class or elite class entitling them to different treatment being extended under the same law. The MLA or a public figure is not above the law of the land.

27. It is asserted on behalf of the respondents that the petitioner's claim of parity with co-accused/Sanjay Singh is not tenable as it was an *ex parte* order.

28. **On merits**, all the averments made in the petition are denied.

29. *Submissions addressed on behalf of the parties* which were essentially on the similar lines as their contentions made in their respective petition and the Reply.

30. However, learned special counsel for the respondent No. 2 has further contended the present petition for additional meetings has been moved under the PMLA, but the petitioner has already been granted interim bail which is unlimited till the decision on the main bail application, by the Apex Court in Arvind Kejriwal vs. Directorate of Enforcement, decided on 12.07.2024 *vide* Criminal Appeal No. 2493/2024. Once the petitioner has already been released on bail in this case, his prayer for additional meetings has become infructuous.

31. Learned Senior Advocate on behalf of the petitioner, however, has countered this argument by asserting that the petitioner continues to be in



judicial custody in the CBI matter and therefore, the relief has not become infructuous.

32. **Submissions heard.**

33. The right of an accused to fair trial is cornerstone of the Constitution of India and has been reiterated and reinforced time and again by the Apex Court in the judgments which have been referred above.

34. It is also not in dispute that the fair trial entails a right to legal representation which is a valuable Constitutional Right emanating from Article 22(1) of the Constitution of India which has time and again, been recognized in various judgments by the Apex Court. Every citizen of this country is recognized to have equal rights and equal protection of law under the Constitution of India.

35. It is also pertinent to refer to the decision in Amanatullah Khan, (supra), wherein the Co-ordinate Bench of this Court had observed that every citizen of this country has equal rights, irrespective of their status and privilege enjoyed by him or her. The ordinary citizen has the same privileges as the public figure or an MLA has and no one is above the law of the land.

36. This Court, therefore, in recognition of the right of equal protection of law and equality before the law which are the foundation of the rule of law, hence, considers the claim of the petitioner on merits.

37. The petitioner is seeking two additional legal meetings with his Lawyers in a week through video conferencing on the ground that he is embroiled in more than 30 cases in various States of India. It is the claim of the petitioner that even though he has been granted interim bail in this case, but his relief has not become infructuous as he still continues to be in custody in other matters.



38. *The learned Counsel for the State* has counter argued that the present petition to claim enhanced legal visitations pertains to the Orders made in the PMLA matter, wherein he has admittedly been released on interim bail and the question of having enhanced legal interview with his Lawyers, has become infructuous. The petitioner continues to be in custody in CBI matter; there is nothing which prevents him from moving a similar application in the CBI case or to file an application independently seeking enhanced legal meetings in view of the multiple pending cases in various States of this country.

39. This argument though in first instance may seem to be convincing, but on closer look, it has no merit for the simple reason that the petitioner is seeking his fundamental right of fair trial and of legal consultation while he is confined to Tihar Jail. Indisputably, he has some thirty – forty cases against him in various States and is also continues to be in custody in CBI case. To confine this fundamental right to a particular case and to insist on an independent Application in each case, is not only taking a myopic view but would result in multiplicity of similar relief being asserted in different cases; in fact it can lead to utter confusion if such relief is considered a pertaining to individual case and not individual person. To ask the petitioner to move independent Application in each case would lead to delay but may indirectly be denying him the right of effective legal help. Moving of such applications in individual case is also likely to lead to multiplicity of similar applications and in fact, can result in unnecessary delay. This is significant since the cases are pending not only in Delhi but also in various other States. This technical objection of the State, therefore holds no merit.

40. It is pertinent to observe that the Jail policy has been enacted by the



concerned Jail Authority after having due regard to all the modalities and the infrastructural capacity and number of the inmates of the jail. Therefore, generally, the courts are slow to interfere in the matters of policy. However, when balancing the policy with the fundamental rights of the jail inmate, the request of the petitioner for two additional legal meetings with his Lawyers through video conferencing, in the given circumstance of huge number of cases pending against him, cannot be termed unreasonable. The opposition that no special status can be given to the petitioner as available to other jail inmates, again has no merit because it is not a situation of seeking any special favour as it has sought to argued on behalf of the State, but it is a fundamental right which is sought to be enforced.

41. It can also not be ignored that similar relief of additional legal meetings has been allowed to co-accused/Sanjay Singh. While the Learned special counsel for the respondent No. 2 has explained that the said Order was essentially *ex parte*, is not tenable since the respondents had appeared in the end while the Order was being passed and even thereafter, it has not been challenged by the State.

42. Special situations call for special remedies. In view of the foregoing discussion, it is held that in recognition of fundamental right of fair trial and effective legal representation, the petitioner be granted two additional legal meetings with the Counsel through video conferencing in a week, till he is confined to Jail. The petition, is accordingly, allowed.

**(NEENA BANSAL KRISHNA)
JUDGE**

JULY 18, 2024/S.Sharma