

**IN THE COURT OF NIYAY BINDU, VACATION JUDGE  
(PC ACT) CBI-13, ROUSE AVENUE DISTRICT COURT,  
NEW DELHI**

IA No. 92/2024

CT. Case No. 31/2022

ECIR/HIU-II/14/2022

Arvind Kejriwal Vs. Directorate of Enforcement.

20.06.2024

**ORDER**

1. Vide this order, I shall dispose off the application of the applicant/accused Sh. Arvind Kejriwal moved under section 439 of The Code Of Criminal Procedure, 1973 read with section 45 of The Prevention Of Money Laundering Act, 2002 for grant of bail.
2. **CONTENTS OF THE APPLICATION:-**
  - (i.) It is submitted in the application that the same has been moved in view of the liberty given by Hon'ble Supreme Court in Criminal Appeal No. 2493 of 2024 in the order dated 17.05.2024 wherein the illegal arrest of the applicant has been challenged and that interim bail was also granted to the applicant.
  - (ii.) It is contented that applicant was not named in the ECIR dated 22.08.2022 or CBI FIR dated 17.08.2022 and there have been no prima facie allegations against the applicant. It is further stated that the applicant is a Ramon Megsaysay Awardee, a reputed and respected Indian politician and a sitting Chief Minister of the State of NCT of Delhi and the national convener of a National Political Party namely Aam Aadmi Party. It is also



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contented that the arrest of the applicant seriously prejudiced the governance and public interest of the residents of Delhi as the applicant is an innocent citizen and was never alleged in an offence.

(iii.) It is stated that no offence is made out against the applicant under Section 3 of PMLA Act in any manner whatsoever and the applicant was illegally arrested in purported exercise of powers under section 19 (1) of Prevention Of Money Laundering Act of 21.03.2024.

(iv.) It is stated that there are reasonable grounds believing the the accused is not guilty of any offence and there is no ground to show his involvement in the activity related to POC.

(v.) It is stated that the applicant is neither a suspect nor an accused and even after filing of one main chargesheet and two supplementary chargesheets, there is no involvement shown of the applicant till date.

(vi.) It is stated that in the statements of the respective co-accused namely Raghav Magunta, Buchi Babu, Abhishek Boinpally, P. Sarath Chandra Reddy and Vijay Nair recorded on different dates, nothing incriminating was alleged against the applicant/accused and some of those co-accused have been granted the regular bail in the CBI matter (predicate offence).

(vii.) It is stated that on 14.04.2023, the applicant received summons under section 160 CrPC in response to which the applicant presented himself before CBI on 16.04.2023 wherein he was being questioned for nine to ten hours.

(viii.) It is contended that co-accused P. Sarath Chandra Reddy

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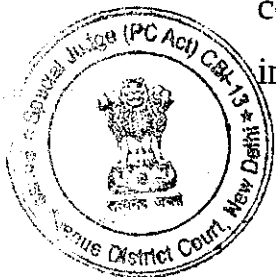


and Magunta Sreenivasulu Reddy father of co-accused Raghav Magunta recorded further statements which were contrary to their earlier statements and do not relate to any offence under Section 3 of The PMLA Act. In rest of the submissions, the date wise noting is being given in respect of the investigations conducted in the present matter which are not required to be reproduced herein.

(ix.) It is further contended that the circumstances in which the statements of co-accused were recorded, indicate serious concerns about the integrity and lack of voluntariness of the statements made against the applicant and also that the same are clearly hit by Section 4 of The Evidence Act as the same cannot be converted into admissible evidence. It is also stated that the said statements of co-accused do not corroborate with the particulars and are contradictory to the statements made by the other accused. It is also contended that after recording of their statements, such co-accused have turned approver and their statements were relied upon for arrest of the applicant and also that there is infact no statement of approver as yet in the matter.

(x.) It is further contended that the statements of co-accused recorded by ED under Section 50 of The PMLA Act has no credibility as the same should have been followed by the statutory memorandum signed by the Magistrate as provided under section 164 (4) CrPC.

(xi.) It is also contended that the evidentiary value of the confession of the co-accused, although, is used as evidence but infact the same is not evidence as defined under section 3 of The



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Indian Evidence Act, 1872 and the same can only be used as supporting material to corroborate existing evidence against the accused.

(xii.) It is contended that no money trail is identified against the applicant for section 3 of PMLA Act as the exact quantum of alleged proceeds of the crime was neither identified nor available and it was in the realm of speculation as the expression 'approximately' has been employed.

(xiii.) It is stated that the 'Proceeds of the Crime' is sine qua non for commission of the offence of Money Laundering but respondent has failed to produce any incriminating information/evidence to determine the applicant's involvement in any activity pertaining to the proceeds of the crime.

(xiv.) It is stated that there is no proof of cash payment nor any material demonstrating that AAP received funds or advance kickbacks from the South Group as alleged by the investigating agency and the same are vague allegations.

(xv.) It is further stated that the self serving statements of hawala dealers about alleged cash transfer without any corroboration or links with the facts of the present case, do not establish any case under PMLA and there is absolutely no evidence about receiving of the alleged amount of Rs. 45 Crores from the South Group and utilization of the same by AAP in Goa Elections.

(xvi.) It is contended that ED cannot investigate predicate offence but in the present case, the allegations are in respect of criminal conspiracy which inter alia is a predicate offence and certain citations are also being quoted in this regard on behalf of the



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applicant.

(xvii.) It is further stated that the material relied upon by ED was available since long but the same was not adequate to implicate the applicant and they chose to arrest the applicant just before the Lok Sabha elections with malafide intention.

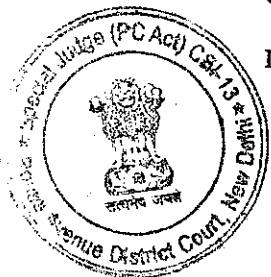
(xviii.) It is stated that so far as the allegation about Vijay Nair occupying a guest room at the residence of Sh. Kailash Gehlot, in his statement dated 18.11.2022, Vijay Nair himself has stated that he reported to Ms. Atishi and Mr. Saurabh Bhardwaj but ED is still presuming that he worked on direct instructions of the applicant.

(xix.) It is further contended that neither the applicant is likely to flee from the course of justice nor he is in a position to influence the course of investigation as the alleged incriminating material has already been seized and investigation stands concluded.

(xx.) It is stated that accused undertakes to abide by all the conditions which may be imposed by the court and also undertakes to continue co-operating with the investigation in the matter. It is also stated that the personal liberty of an individual must be in accordance with Article 21 of The Constitution.

(xxi.) It is stated that incarceration of the applicant will have great prejudicial implications as well as severe reputational damage as the applicant is having deep roots in the society and is not a flight risk as he is holding a Constitutional seat.

**3. PRAYER OF THE APPLICATION:-** On the basis of the above contentions, the applicant has prayed for regular bail in the matter i.e. ECIR No. ECIR/HIU-II/14/2022 registered under



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Section 3 and 4 of the Prevention of Money Laundering Act, 2002.

4. **REPLY OF DIRECTORATE OF ENFORCEMENT:-** A detailed reply comprising of 182 pages has been filed by ED in respect of the bail application of the accused, relevant portions of which are hereby referred to for consideration.

(i.) It is alleged that the assertions of the applicant are completely misconceived and are liable to be rejected on the very threshold as the bail in PMLA cases is required to be decided under the twin conditions laid down in section 45 of The PMLA.

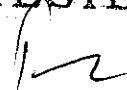
(ii.) It is alleged that applicant being Chief Minister in Government of NCT of Delhi is highly influential and having potential to tamper with the evidences and influence the witnesses.

(iii.) It is alleged that further investigation is going on to trace out the proceeds of crime and role of various persons and if the applicant is enlarged on bail, there is a reasonable apprehension of crucial evidence being destroyed.

(iv.) It is further stated that the IO has reasons to believe under Section 19 of PMLA that the petitioner/accused is guilty of the offence of money laundering. It is also stated that the IO has taken abundant caution even before arresting the accused and interim relief has already been denied to the applicant by the Hon'ble High Court in respect of taking coercive steps by the investigating agency against the accused.

(v.) It is alleged that despite giving multiple opportunities the applicant did not co-operate with the investigation on flimsy

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grounds and thereafter only he was being arrested by the investigating agency.

(vi.) It is alleged that being politician, the applicant cannot take this plea that he shall be treated differently from an ordinary criminal in the matter of arrest as the same would violate the "rule of law" and also the basic structure of the Constitution.

(vii.) It is alleged that in the given case, large scale destruction of evidence including the mobile phone has already taken place.

(viii.) It is stated that the validity of the statements recorded by the investigating agency under Section of 50 of PMLA are very much admissible and citations are being quoted in this regard. So far as the statements of approvers are concerned, the same cannot be disregarded at this stage.

(ix.) It is further contended that the offence of money laundering is an independent offence and it is not necessary that the accused of the offence of money laundering shall also be accused of the predicate offence.

(x.) It is further contended that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. It is alleged that the accused cannot be released on mere routine conditions as he can exercise influence to remove money trails using the technology to make the investigation and trial infructuous.

(xi.) It is stated that prima facie offence is being established under PMLA, cognizance of which has already been taken by the Court and co-accused have been summoned on the basis of five supplementary complaints and one main complaint in this case.



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(xii.) Various bail applications have already been rejected by applying the mandatory twin conditions u/s 45 of PMLA.

(xii.) It is alleged that the FIR was registered on the directions of competent authority for enquiring into the matter of irregularities in framing and implementation of excise policy of GNCT of Delhi for the year 2021-22. It is alleged that the OM discloses that the applicant, Deputy Chief Minister, Mr. Arva Gopi Krishna, the then Commissioner (Excise), Anand Tiwari, the then Deputy Commissioner (Excise) and Pankaj Bhatnagar, Assistant Commissioner (Excise), GNCT of Delhi were instrumental in recommending and taking decisions pertaining to excise policy for the year 2021-22 without approval of competent authority.

(xiii.) It is alleged that since Section 120-B IPC, 1860 and section 7 of Prevention of Corruption Act, 1988 are scheduled offences under PMLA 2002, the Directorate of Enforcement has initiated investigation for tracing out proceeds of crime generated and laundered due to the alleged irregularities in the formulation and implementation of the excise policy 2021-22. It is stated that CBI has provisionally attached properties to the tune of Rs.244 Crores approx. vide PAOs dated 24.01.2023, 03.07.2023 and 03.05.2024.

(xiv.) It is alleged that the applicant Sh. Arvind Kejriwal is responsible for a policy drafted by various accused persons with a sole intent of establishing an apparatus to continuously generate and launder proceeds of crime. It is alleged that Sh. Arvind Kejriwal along with other leaders of AAP received 100 Crores kickbacks in advance from the south group through various



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persons working for him.

(xv.) It is alleged that investigation of the trail of this kickbacks so far has revealed that part of these funds were used in the election campaign for the AAP for Goa Assembly Elections, 2022 and proceeds of crime/cash to the tune of Rs. 45 Crores was sent to Goa through Hawala.

(xvi.) In respect of the role of present applicant, it is submitted that he is the kingpin and key conspirator of the Delhi Excise Scam in collusion with Ministers of Delhi Government, AAP Leaders and other persons. It is also alleged that he is having close association with Vijay Nair who has played a key role in respect of the said scam. Screen-shots of certain WhatsApp chats have also been produced in the reply by ED.

(xvii.) Role of certain other accused are also being mentioned along with allegations of their association with the present applicant and various documents are attached herein in respect of the same which cannot be discussed in detail at this stage as this court is not sitting to pass an order on merits of the case. However, the respondent/investigating agency has prayed for dismissal of the application.

#### **ARGUMENTS OF THE APPLICANT:**

5. Ld. Counsel for the applicant has addressed oral arguments on behalf of the applicant in detail as under:

(i.) It is submitted that applicant has already challenged his illegal arrest before the Hon'ble Supreme Court, order on which has been reserved for later date and after completion of the period of interim bail, applicant has himself surrendered before

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the court. It is argued that applicant is not claiming any special status, but constitutional chair, he is holding, should be given due respect.


(ii.) It is argued that the CBI FIR was registered on 17.08.2022, but the applicant was not named as an accused and even he was not accused in the ED ECIR which was registered on 22.08.2022. It is also stated that in the statements of co-accused Raghav Magunta, Butchi Babu and Abhishek Boinpally, there is no allegation against the present applicant.

(iii.) It is alleged that initially, a summon was issued to the applicant as a witness and thereafter also, summons were issued time to time which were replied by the applicant and thereafter, suddenly on 21.03.2024, the applicant was arrested and he is behind the bars till date. Ld. Counsel has quoted "*Vijay Madanlal Chaudhary Vs. Union of India 2022 SCC OnLine SC 929*" in respect of examining an application for bail U/s 45(1) PMLA.

(iv.) Ld. Counsel has further argued that ED has no power to investigate into the predicate offence as ED is doing in the present case as the same is not allowed under the law. Ld. Counsel has also quoted "*Prakash Industries Ltd. Vs. Union of India, 2023 SCC OnLine Del 336*". However, Ld. Counsel has submitted that on all aspects of Section 19 PMLA, he is not going to argue before the present court as the same is pending before the Hon'ble Supreme Court.

(iv.) It is further argued that even in ED case, the bail is a rule and also that the court, at this stage, cannot go into the merits of the

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case and details of the transactions as it is a well settled principle of law that at this stage, the court cannot conduct a mini trial.

(v.) It is vehemently argued that the entire case against the applicant is based on statements of certain co-accused who are themselves tainted persons and who have later on turned into approvers and also that the statement of approver is of negligible value and even not admissible in absence of corroborative evidence to support the same. Ld. Counsel has further argued that several statements are being made by accused persons, out of which, Sarath Reddy has made eleven statements but there is no allegation against the present applicant.

(vi.) It is argued that although, ED was having material against the applicant since long, but he has been arrested just at the time when Lok Sabha Elections were announced which shows melafide on the part of investigating agency.

(v.) Ld. Counsel has also argued that investigation is an unending process and the same is the biggest instrument of operation which is causing great damage to the applicant on personal as well as political front. It is argued that in addition to the same, the applicant is suffering with various ailments which may also be taken into consideration.

(vi.) It is further argued that applicant has already satisfied the triple test as he was granted interim bail and thereafter, he surrendered before the court in compliance of the orders. It is also stated that the present applicant/accused has not been summoned as accused by the court in the matter. Still, the applicant is lying behind the bars.

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(vii.) It is argued by the Ld. Counsel that even if, a person is wishing for birthday of the applicant, in response to which, applicant is tendering thanks, cannot establish that the applicant is having any involvement in the alleged scam. Moreover, the stay of co-accused Vijay Nair at the residence of Kailash Gehlot is also not a good argument against the applicant as the same also cannot raise a presumption against the accused in respect of the present matter or his close relations with the said co-accused.

(viii.) It is also argued by the Ld. Counsel that the applicant is having clear antecedents and deep roots in society and for granting bail, the balance of probabilities has to be seen by the court.

(ix.) It is strongly argued that there is no money trail against the applicant u/s 3 of the Act. It is also stated that by surrendering himself after completion of the period of interim bail shows bonafide of the applicant.

(x.) Ld. Counsel has pointed out to the order of Hon'ble Supreme Court dated 17.05.2024 in para 15 wherein it is mentioned by the Hon'ble Supreme Court that "*If an application for grant of bail is filed, the same will be considered and decided in accordance with law*". Ld. Counsel has stated that the orders of Hon'ble Supreme Court and High Court are not pertaining to bail of the accused.

#### **ARGUMENTS OF DIRECTORATE OF ENFORCEMENT**

6. The respondent has filed a plethora of judgments along with written submissions and a detailed reply in respect of the present application and the detailed arguments have also been addressed



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by the Ld. ASG on its behalf which may be summarized as under:


(i). It is submitted that the role of the accused is very much evident from the material placed on record including the screenshots of WhatsApp chat of the applicant with co-accused and other persons as well as statements of approvers and other witnesses.

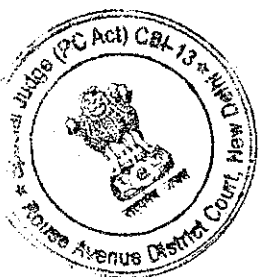
(ii.) It is argued that for granting bail in PMLA matters, it is important to satisfy the conditions laid down U/s 45 of the Act and the accused has to first establish that he is not guilty of the alleged offence and also that he will not further involve in the offence but taking in view the influential position held by the applicant, no presumption can be drawn in his favour.

(iii.) It is argued that once the cognizance of the offence is being taken by the court, it is established that the offence of money laundering has taken place and now the issue remains only with respect to the role of the applicant which can be established with the help of material on record. It is argued that the case of CBI is that the applicant demanded bribe for a sum of Rs.100 Crores.

(iv.) It is argued that lack of antecedents cannot be a ground for grant of bail as argued by the applicant. It is stated that court has to be satisfied that the person is not guilty of offence but the applicant does not demonstrate the same. It is also stated that Supreme Court ordered release of the applicant only for elections and the same was not a regular interim bail and the applicant cannot be allowed to argue about the same before the present court.

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(v.) It is argued that an approver cannot be discredited for the reason that he has been given an inducement in respect of bail or pardon. It is stated that "*investigation is an art and sometimes, an accused is given lollipop in the face of some assurance of relief so that truth can be surfaced*".

(vi.) It is further argued that the applicant is not only responsible in his personal capacity but also vicariously being the convener of his political party, who is also an accused in the matter.

(vii.) It is argued that it is established by Charanpreet Singh (co-accused) that money went through Hawala and large chunk of money was paid to AAP in cash and also that money was paid for seven star hotel stay of Kejriwal by Charanpreet Singh has also been established. It is also argued that statement of Sagar Kumar Patel also shows that he received money from Vinod Chauhan who received the currency notes from Charanpreet and WhatsApp Chat between the two is also available on record. It is also argued that applicant is having good relation with Vinod Chauhan as well from whose possession, a cash amount of Rs.1 Crore was attached.

(viii.) Ld. Counsel has also argued that present applicant is also having proximity with P. S. C. Reddy as his meeting with the applicant shows corroboration of the offence.

(ix.) Ld. Counsel has pointed out that when the applicant approached Hon'ble High Court in respect of his wrong arrest, he was declined granted interim relief by the Hon'ble Court. It is also argued that wrong arrest of accused cannot be a ground for bail.

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(x.) Ld. Counsel has also pointed out that the transaction through Hawala persons is also established from various documents and other evidence available on record which have to be taken into consideration against the present accused while deciding the application in hand.

### **FINDINGS**

7. Before going into the rival contentions of the parties, first of all the legal provisions pertaining to bail are required to be looked into.
8. **Section 439 CrPC reads as follows:-**
9. **(1) A High Court or Court of Session may direct-**
10. **(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section.....**
11. **Section 45 of The Prevention of Money-laundering Act, 2002 reads as follows:-**
12. **(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence (under this Act) shall be released on bail or on his own bond unless-**
13. **(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and**
14. **(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**

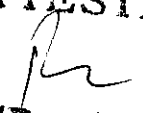


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**not likely to commit any offence while on bail:.....**

15. The spirit of the section gives discretion to the court to grant bail. However, the imposition of certain conditions and restrictions upon the accused is also on aspect of the said discretion.
16. Although, various bulky documents and citations have been filed by both the parties, most of which were not even relevant in respect of the present application but it seems that both the parties have filed the same alongwith detailed oral arguments with the apprehension as to an order may be passed in favour of the opposite party. Admittedly, the present matter is a peculiar case wherein various accused, witnesses and stake holders are involved and neither ED nor the defense wants the order to be passed in favour of the other. However, it is not possible to go through these thousands of pages of the documents at this juncture but this is the duty of the court to work upon the matter whichever comes for consideration and pass the order in accordance with the law. Although, sometimes the courts refrain from passing such orders on account of various reasons which may be having long lasting effects. But, in the recent past Hon'ble Supreme Court and Hon'ble Chief Justice of India has been encouraging the trial courts to take up the such matters and decide the same. Recently, on CBI Day Celebration, Hon'ble Chief Justice while addressing the gathering and perceiving the difficult and cumbersome task being done by the trial court Special Judges attending CBI and ED matters, passed encouraging remarks for such courts for their motivation and inspiration. This is the call of the day that the government

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authorities as well as the Hon'ble Higher Courts want to reduce the pendency of cases and to expedite the proceedings.

17. The famous saying of Benjamin Franklin cannot be ignored that *"it is better that 100 guilty persons should escape than an innocent person should suffer"*. This principle imposes a duty upon the court not only to prevent guilty individuals from escaping justice but also to ensure that no innocent should be punished. There has been thousands of cases where the accused have underwent a long lasting trial and agony resulting from the same till the date they have been acquitted by the court for being innocent. Unfortunately, the mental and physical agony of such person cannot be compensated in any manner whatsoever.
18. The beautiful phrase of Lord Chief Justice Hewart i.e. "Justice should not only be done but seen to be done" is used in common world as one of the important aspect of legal system. If an accused has underwent the atrocities of the system till his innocence is realized, then he could never be able to conceive that "JUSTICE" has actually been done in his favour.
19. Time and again, Hon'ble Apex Court as well as Hon'ble High Courts of the country have been pressing upon the trial courts to consider the constitutional rights of the under-trials. It is a known fact that various guidelines have been issued in this regard during the covid period as well in the country wherein a number of under-trials were bailed out. Now, at this instance, although, court is not to consider as to whether the alleged offence in the present case is lesser or bigger in gravity but court is under an obligation to look into the ratio of those guidelines set up by the



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Hon'ble Higher Courts of the land.

20. So far as the well settled principle of bail is concerned, several guidelines have been issued by the Hon'ble Supreme Court specifically in the celebrated judgment of Satender Kumar Antil Versus CBI & Anr. which have been enlightening the trial courts to a great extent and compliance of those guidelines have been ensured on State level as well on District level.
21. So far as the present application is concerned, the allegations and counter allegations are being leveled by both the parties wherein Ld. Counsel for the applicant has stated that the question of illegal arrest has already been challenged before Hon'ble Supreme Court and Ld. Counsel for ED has stated that the interim relief has been denied to the applicant/accused.
22. Although, this is not incorrect that holding a constitutional chair or clear antecedents may not be the only ground for bail as the gravity of alleged offence is required to be looked into. However, it has always been a helpful argument for an accused as some times the socio-economic status and the previous conduct of the accused have been considered by the courts. An important observation has been given by Hon'ble Supreme Court as pointed out by Ld. Counsel for the applicant in the order dated 10.05.2024, wherein it was observed by the Hon'ble Supreme Court that:-

*“no doubt, serious accusations have been made, but he has not been convicted. He does not have any criminal antecedents. He is not a threat to the society. The investigation in the present case has remained pending*



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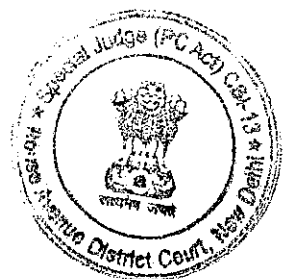
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since August 2022. Arvind Kejriwal was arrested, as noted above, on 21.03.2024. More importantly, legality and validity of the arrest itself is under challenge before this Court and we are yet to finally pronounce on the same. The fact situation cannot be compared with harvesting of crops or plea to look after business affairs. In this background, one the matter is subjudice and the questions relating to legality of arrest are under consideration, a more holistic and libertarian view is justified, in the background that the 18<sup>th</sup> Lok Sabha General Elections are being held.

23. These observations of Hon'ble Supreme Court cannot be ignored while deciding the present bail application of the present applicant. It is reiterated by Ld. Counsel for the applicant that Supreme Court has considered the antecedents of the applicant and the same cannot be denied by the court.
24. ED is taking plea that the investigation is still pending in this matter and there is a likelihood that the applicant may influence the witnesses and tamper with the evidence. On oral enquiry by the court, the IO informed that out of the total alleged amount of 100 crores, around 40 crores has been traced out in the previous months and the remaining 60 crores yet to be traced. On this aspect, ED has failed to clarify as to how much time is required for tracing out the complete money trail. Meaning thereby that until and unless this exercise of tracing out the remaining amount gets completed by ED, accused is supposed to remain behind bars that too without proper evidence against him. This is also

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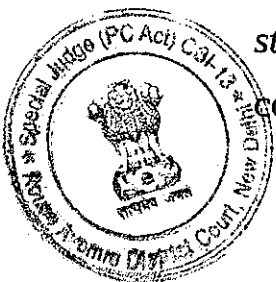


not an acceptable submission of ED.

25. ED is again and again pressing upon the twin conditions available under Section 45 of PMLA to fortify it's arguments that the aspect of bail under PMLA is altogether different from the provisions of bail under CrPC but one consideration is not being taken care of by ED that even for implicating a person as an accused in such a criminal matter is also required to be done under certain guidelines and legal procedures. Maxim of law that every person must be presumed innocent until proven guilty seems to be not applicable in the given case in respect of the present accused.
26. This is also noticeable that ED is silent about the facts as to how the proceeds of crime have been utilized in Assemble Elections at Goa by AAP as admittedly after about two years, the bigger portion of the alleged amount remains to be traced out.
27. There are certain undisputed facts as specified on behalf of the applicant that in the month of July 2022, the material was available with the ED against the accused but he was called only in August 2023 which shows malafide of ED and ED has failed to answer this objection of the applicant.
28. An important submission has been made by Ld. ASG during the arguments on behalf of ED whereby making submissions in respect of the credibility of the approvers that "*investigation is an art and sometimes one accused is given lollypop of bail and pardon and induced with some assurance to make them tell the story behind the offence*". The court has to take a pause to consider this argument which is not an potable submission that

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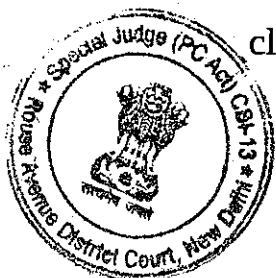


investigation is an art because if it is so, then, any person can be implicated and kept behind the bars by artistically procuring the material against him after artistically avoiding/withdrawing exculpatory material from the record. This very scenario constrains the court to draw an inference against the investigating agency that it is not acting without bias. Ld. ASG has talked about inducement to extract the truth against other accused involved in the matter but the effect of this submission goes to the conception that the complete truth cannot be revealed through the persons who have resiled from their previous statements. Rather, the complete truth shall be established on the basis of the incriminating material, if available on record for which the investigating agency is under an obligation to procure in a legal manner by following the procedural aspects as well.

29. Ld. Counsel for the applicant states that statements of co-accused do not show any incriminating material against applicant. But, Ld. ASG stated that the statements of those co-accused/approvers is sufficient to establish the personal relation of the applicant with some of them and also the specific role and involvement of the applicant in the alleged offence. It may be possible that some known persons of the applicant are having involvement in an offence or being known to a third person, involved in the offence, but ED has failed to give any direct evidence against the applicant in respect of the proceeds of crime.
30. ED is harping upon certain contents of the chargesheet i.e. Vijay Nair stayed at the house of Kailash Gehlot and Mr. Nair is having close relations with the applicant. Secondly, that the stay of the

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applicant in seven star hotel at Goa was sponsored by co-accused Charanjeet which shows the close proximity of both of them. Thirdly, that an amount of rupees one crore was attached from the residence of a co-accused who is an associate of the applicant.

31. On the other hand, ED is silent of certain issues raised by the applicant such as that he was not named either in CBI case or in the ECIR FIR. Secondly, the allegations against the applicant have surfaced after the subsequent statements of certain co-accused. Thirdly, this is also an admitted fact that the accused has not been summoned by the court till date, yet, he is lying in the judicial custody at the instance of ED on the pretext of the investigation being still going on.
32. In addition to the same, ED has not shown anything on record that Vijay Nair was acting upon the directions of the applicant. It has also failed to establish that even if Vinod Chauhan has close relations with Charanpreet, how come the same going to help ED to establish the guilt of the applicant, even if, the applicant is having acquaintance with both of these co-accused. ED has also failed to clarify as to how it came to the conclusion that the sum of rupees one crore attached from Vinod Chauhan was the part of the proceeds of the crime. ED is also not clarifying as to how the alleged amount of rupees 40 crores being traced out during the investigation is forming a part of the proceeds of the crime. It seems that ED also believes that the evidence on record is not sufficient to proceed against the applicant and it is taking time to procure the same in any manner whatsoever to convince the court



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(Reader)



puts the accused in a situation almost equivalent to a convict without any hope to be released from the gloomy atmosphere of jail. The situation becomes more grave if later on, the accused comes out to be innocent and the agony he has underwent remains unexplained.

36. With this, most of the relevant arguments and contentions raised on behalf of both the parties are being dealt with.

**CONCLUSION:-**

37. On the basis of the above findings, the present application is allowed and the court comes to the conclusion that the applicant is entitled to be released on bail in connection with the case ECIR No. HIU-II/14/2022 dt. 22.08.2022 on the following terms and conditions:-

(a.) he shall furnish a bail bond in the sum of Rs. 1,00,000/- with one surety of the like amount to the satisfaction of the Ld. Concerned Court/Ld. Vacation Judge/Ld. Duty Judge;

(b.) he shall not leave the country without seeking permission of the court about the same;

(c.) he shall make himself available in respect of the investigation before the investigating agency or before the court as the case may be;

(d.) he shall not try to tamper with any evidence pertaining to the present case;

(e.) he will not interact with any of the witnesses and/or have access to any official files connected with the case.

38. This order shall not be treated as an expression of opinion on the merits of the case.

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- 39. Accordingly, the present application stands disposed off.
- 40. A copy of this order be given dasti to Ld. SPP for the ED as well as to Ld. Counsel for applicant.

Announced in the open court  
today i.e. 20<sup>th</sup> Day of June, 2024

*Sd/-*  
(Niyay Bindu)  
Vacation Judge (PC Act),  
CBI-13, RADC,  
New Delhi/20.06.2024  
Special Judge (PC Act) CBI-13  
Rouse Avenue District Court  
New Delhi

ATTESTED  
*[Signature]*  
(Reader)



