

**IN THE COURT OF MS. KAVERI BAWEJA,
SPECIAL JUDGE (PC ACT), CBI-09 (MPs/MLAs CASES),
ROUSE AVENUE DISTRICT COURT, NEW DELHI.**

IA No.91/2024

in ECIR/HIU-II/14/2022

U/S 3 & 4 of the PMLA

**Directorate of Enforcement/Enforcement Directorate
(DoE/ED) Vs. Arvind Kejriwal**

ORDER

05.06.2024

1. This order deals with an application being IA No.91/2024 filed by the Accused/Applicant Sh.Arvind Kejriwal seeking interim Bail.
2. Brief facts of the case are that, the present case was registered by ED vide No. ECIR/HIU-II/14/2022 dated 22.08.2023 U/S 3/4 of the PMLA, 2002 and it has been registered in respect to the scheduled offences case of CBI registered vide FIR No. RC0032022A0053 dated 17.08.2022, PS CBI, ACB, New Delhi for commission of the offence of criminal conspiracy punishable U/S 120B read with 477A IPC and Section 7 of the PC Act as well as substantive offences thereof. The above case of CBI was registered in relation to irregularities committed in framing and implementation of excise policy of the Government of NCT of Delhi (GNCTD) for the year 2021-2022.
3. The above named Applicant was arrested in the present case on 21.03.2024. He was remanded to the custody of Directorate of Enforcement (DoE/ED) from 21.03.2024 till 01.04.2024 and thereafter he was remanded to Judicial Custody vide order dated

01.04.2024.

4. Vide order dated 10.05.2024 in CrI.Appeal No.2493/2024, the Hon'ble Supreme Court of India directed release of the applicant on interim bail till 01.06.2024, so that he could participate in the political process and campaign for his party in the 18th Lok Sabha General Elections. It is not disputed that in terms of the aforesaid order of the Hon'ble Supreme Court the applicant was required to surrender on 02.06.2024.

5. The application under consideration has been filed by the above named Applicant with the following prayer:-

“Grant the interim bail to the Applicant in ECIR No.HIU-II/14/2022 dated 22.08.2022 by one week for medical reasons/investigations and allow the Applicant to surrender on 09.06.2024.”

6. A detailed reply was filed by DoE to the application under consideration, copy whereof has been supplied to learned counsel for the applicant.

7. Sh.N.Hariharan, Learned Sr. Advocate with Sh.Vivek Jain, Advocate for Accused/Applicant as well as Sh.Tushar Mehta, Learned Solicitor General of India and Sh.S.V.Raju, learned Additional Solicitor General, with Sh.Zoheb Hossain, learned Special Counsel appearing on behalf of DoE/ED advanced arguments at length and the same have been considered.

8. Learned Senior Counsel for the Applicant submitted that the applicant is the Chief Minister of Delhi and the National Convenor of one of the six National political parties of India.

9. Further the Applicant is stated to be suffering from an

aggressive form of Diabetes Milletus and it is stated that he undergoes episodes of hyperglycemia as well as hypoglycemia. It is further stated that during the period of his incarceration from 21.03.2024 till 10.05.2024, the applicant lost around 6-7 Kgs of weight which he has not been able to regain even after his release of interim bail.

10. Learned Senior Counsel for the Applicant also submitted that the Applicant has developed unusually high blood glucose levels and high keton levels which could result in kidney related complications and in this regard, he relied on a urine test report of the applicant dated 20.05.2024. Scanned copy of urine test report is being reproduced as follows:-

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SANT PARMANAND HOSPITAL
A Unit of Sant Parmanand Blind Relief Mission

ANNEXURE A-2

DEPARTMENT OF LABORATORY MEDICINE

Patient Name	Mr. ARVIND KEJRIWAL	LAB No.	LAB1388847
Age/Sex	56 Yrs/M	Reg. No.	OP2518869
Consultant InCh.	Dr. OUTSIDE CONSULTANT	Date	20/May/2024 08:53
UHID No.	PI266952	Sample Collected On	20/May/2024 08:56
Status	FINAL	Sample received On	20/May/2024 09:18
		Report Released On	20/May/2024 09:49

CLINICAL PATHOLOGY

Test Name	Result	Units	Bio. Ref. Interval
URINE ANALYSIS			
PHYSICAL EXAMINATION			
VOLUME	20	ML	
Methodology: Manually			
COLOUR	P.YELLOW		(PALE YELLOW)
Methodology: Physical			
TRANSPARENCY	CLEAR		
Methodology: Manually			
SPEC. GRAVITY	1.015		(1.010-1.030)
Methodology: Refractometric Method			
PH	5.0		(5.0-6.5)
Methodology: Double Indicator Principle			
CHEMICAL EXAMINATION			
ALBUMIN	NIL		(NIL)
Methodology: Protein Error			
SUGAR	++++		(NIL)
Methodology: Glucose-Oxidase / Peroxidase Reaction			
KETONE	+ (15 Mg/dl)		(NEGATIVE)
Methodology: Sodium Nitroprusside Reaction			
UROBILINOGEN	NIL	mmol/L	(UPTO-0.2)
Methodology: Modified Ehrlich's Reaction			
BILIRUBIN	NIL		(NEGATIVE)
Methodology: Azo - Coupling Reaction			
NITRITE	NIL		(NEGATIVE)
Methodology: Diazotization Reaction Of Nitrite			
MICROSCOPIC EXAM.			
RBC CELLS	1-2	/HPF	(1-2)
WBC CELLS	NIL	/HPF	
EP CELLS	1-2	/HPF	(1-2)
CASTS	NIL		
CRYSTALS	NIL		
BACTERIA	NIL		
OTHERS	NIL		
Methodology - Automated Strip Test, Microscopy			

---End Of Report---

Interim By: GEETA KAUSIK


DR. NIDHI SHARMA
 (DIRECTOR LAB)
 MBBS, MD (PATH)

- Clinical Laboratory - Not Valid For Medical Legal Purposes
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11. In the course of his arguments, Learned Senior Counsel for the Applicant urged that the Applicant utilized the period of interim bail only for the purposes of campaigning, for which he travelled widely across the nation and accordingly he only had time for his health check up at home and consulted a senior physician of Max Hospital, who on 25.05.2024 advised the Applicant to undergo various tests. It is further submitted that the said tests are to be done in a particular sequence and 5-7 days are required for this purpose.

12. The typed/legible copy of the prescription dated 25.05.2024 of Doctor of Max Hospital annexed with the application is as follows:-

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MAX@Home

Patient Name: MR. ARVIND KEJRIWAL
Age: 56 Year Gender: M` Date 25/5/24

K/C/O- Diabetes Mellitus
Type-2 Since 2003

Weight- 64 Kg	On treatment
BP- 100/70 mm Kg	• Inj. Novorapid- 4-6-6 unit
PR- 80/min	Before meals
RBS- 204 mg/dl	• T. Istamet & T. Diamicron
	After B/F & After Dinner
	• T. Polybion & OXRA – After Lunch

As per Patient observation and statement Pt. has lost around 6-7 Kg weight in last 2 months.

Yo- Lethargy, weakness, Giddiness
Vitals, mentioned above
Palpitation on and off

Sd/-
Dr. Dhananjay Kumar
MD Physician, MPH-(USA), MBA-(FMS)
DGM-Clinical Ops., MS
Max@Home
A Division of Max Healthcare Institute
Limited

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Page 1

Age: 56 Year Gender: M Date 25/5/24

Adv:

CBC
LFT
KFT
Vitamins B12 & D3
Thyroid Profile
Urine
Lipid Profile
USG: Whole Abdomen
CEA
Ca- 15.3
Ca- 19.9—19.9
Calcitonin
S.P.S.A.
Pct CT Scan of full body
(After KFT Report)
Cxrax xhest
HbAc
Fasting & P.P. Sugar
EcHO
72 HB. HOLTER

Sd/-
Dr. Dhananjay Kumar
MD Physician, MPH-(USA), MBA-(FMS)
DGM-Clinical Ops., MS
Max@Home
A Division of Max Healthcare Institute Limited

13. It is further the plea of the applicant that on the evening of 25.05.2024 itself he had to leave for Punjab for campaigning as his party is contesting elections from there and the voting was scheduled for 01.06.2024.

14. Learned Senior Counsel for the Applicant argued that Article 21 guarantees the protection of life and personal liberty to every person and the right to choose one's medical treatment is an integral part of the right to personal liberty.

15. In the light of the aforesaid submissions, the Applicant prays for grant of interim bail for enabling him to get the prescribed tests done and obtain results thereof. It is submitted that the Applicant will get all the medical tests done in the working week from

03.06.2024 (Monday) to 07.06.2024 (Friday) and then surrender on the weekend i.e. 09.06.2024.

16. *Per contra*, Learned Solicitor General and learned ASG appearing on behalf of DoE, at the outset, raised certain preliminary objections as to the very maintainability of this application. It was vehemently urged that since admittedly the Hon'ble Supreme Court had directed the applicant to surrender on 02.06.2024, which order has admittedly not been modified, the applicant could not have moved this application *vide* which in fact, he is asking for extension of interim bail granted by the Hon'ble Supreme Court, which cannot be permitted by this court.

17. It is further submitted that though the applicant was granted liberty to apply for bail vide order dated 17.05.2024 passed by the Hon'ble Supreme Court in CrI.Appel No.2493/2024, the said liberty was of a limited nature and the applicant is not entitled to seek extension of interim bail which he has in fact been done by this application under the garb of seeking the above noted interim relief.

18. Learned Solicitor General and Learned Additional Solicitor General further submitted that since the Applicant was not in custody on the date of filing the application for interim relief, the application itself is liable to be rejected, it being not maintainable. In this regard, reliance was placed on the following judgments :-

(i) ***Sunita Devi vs. State of Bihar & Another, (2005) 1 SCC 608*** and

(ii) ***Nirmaljeet Kaur vs. State of M.P. & Another, (2004) 7 SCC 558***

19. The next preliminary objection as to the maintainability of

this application is that in view of the mandatory twin condition of Section 45 of Prevention of Money Laundering Act, 2002 (PMLA) the relief prayed for cannot be granted unless the applicant crosses the threshold of Section 45 PMLA.

20. It is further submitted that although the Hon'ble High Court, in exercise of concurrent jurisdiction under Section 439 Cr.PC could have granted the relief sought under Article 226 of the Constitution or Section 482 Cr.PC, this court however, is not empowered to exercise its discretion in order to grant the relief prayed for without considering the mandatory provision of Section 45 PMLA.

21. The Investigating Agency further vociferously argued that the applicant is not entitled to the relief claimed as he is guilty of suppression of the following material facts:-

i) After the Hon'ble Supreme Court reserved the judgment in SLP (Crl.) No.5154/2024 (Converted to Crl. Appeal No.2493/2024) arising out of the impugned judgment and order dated 09.04.2024 passed by the Hon'ble High Court in WP(Crl.) No.985/2024 titled as "Arvind Kejriwal vs. Directorate of Enforcement", the Applicant herein again approached the Hon'ble Supreme Court by way of IA No.126329/2024 seeking an extension of interim bail by one week on purported medical grounds.

ii) The said application was orally mentioned and the Vacation Bench of Hon'ble Supreme Court directed the application to be placed before the Hon'ble Chief Justice of India vide order dated 28.05.2024.

iii) The application filed before the Hon'ble Supreme Court has been disposed of by the Registry, which is evident from the status in the case history on the website of the Hon'ble Supreme Court of India.

22. Learned Solicitor General and Learned Additional Solicitor General placed reliance on a recent pronouncement in the case of *Kusha Duruka vs. The State of Odisha in Criminal Appeal No.303/2024*, where the practice of suppressing the material fact regarding earlier bail applications has been deprecated. It was urged that the Hon'ble Supreme Court noted in para-8 of the above judgment that in '*Saumya Chaurasia vs. Directorate of Enforcement*', 2023 INSC 1073, that "every party approaching the court seeking justice is expected justice is expected to make full and correct disclosure of material facts". It was submitted that suppression of material facts amounts to playing a fraud on the judicial process, which cannot be permitted and the application merits dismissal on this score itself.

23. Ld. Addl. Solicitor General further submitted that the reasons for suppression of the aforementioned material facts appear to be that from 24.05.2024 even after the application for the extension of interim bail was drafted on behalf of the Applicant for filing in the Hon'ble Supreme Court, the Applicant, despite raising medical grounds seeking interim bail, continued to travel widely and conducted multiple road shows and rallies across various cities instead of getting the medical tests done for which he seeks interim bail now. It is further argued that the conduct of the Applicant reveals that he is neither sick nor needs such specialized medical care, which is not available in Jail Hospital.

24. Learned ASG further argued that the Applicant could have very well undergone all the tests which he is citing in his application seeking interim bail, at any time between 10.05.2024 to 01.06.2024,

however, he chose to avoid the same leaving it for the last minute when his interim bail was due to expire on 01.06.2024. It is further submitted that said medical tests of the Applicant, can be got conducted by the jail authorities while in judicial custody from any referral hospital, in accordance with the referral policy of Jail Authorities.

25. Learned ASG also contended that the Applicant's contention that he has suffered unexplained weight loss is also false and appears to be a concocted story for the reason that as per the medical documents submitted by him, it is revealed that as on 25.05.2024 his body weight was 64 kg. Further, as per the medical records of the Jail, when the Applicant was sent to Judicial Custody on 01.04.2024, his weight was 65 kg and on 08.04.2024, his body weight was recorded as 66 kg. It is further submitted that as per the National Institute of Health, the weight of 64 kgs is the normal weight for a person with height of 5 feet 5 inches.

26. While highlighting the campaigning schedule of Accused/Applicant w.e.f. 10.05.2024 till 30.05.2024 (copy of which was annexed with the reply), Learned ASG further argued that it is evident that the Applicant does not suffer from any ailment which is so life endangering or life threatening that it warrants interim bail, as he has been conducting various election related meetings and campaigning for and wide.

27. He relied on the judgment of *Kewal Krishna Kumar vs. Enforcement Directorate, (2023) SCC OnLine Del 1547* and submitted that the proviso to Section 45 Prevention of Money Laundering Act (PMLA) can only be invoked in cases where the

sickness suffered by the Applicant is so serious and life endangering that it cannot be taken care of by jail hospitals, which is not the case with the Applicant.

28. Further he relied upon *Pawan @ Tamatar vs. Ramprakash Pandey, (2002) 9 SCC 166* and *Mahendra Manilal Shah vs. Rashmikant Mansukhlal Shah & Anr. (2009) SCC Online Bom 2095*, and submitted that every sickness does not *ipso facto* entitle an accused to medical bail.

29. Learned ASG further argued that the high ketone levels in Urine Test Report, could also be caused due to other reasons including Urinary Test Infection (UTI) and may not be due to any kidney related issues, as being projected.

30. Learned ASG representing DoE also invited the attention of the court to the prescription dated 25.05.2024 and argued that as per the said medical advise the Applicant also needs to undergo 'Echo' and '72 hrs Holter test', which the doctor of Max Hospital has prescribed vide prescription dated 25.05.2024. However, 'Echo' and 'Holter Test' are generally prescribed for heart related ailments and not for Diabetes Milletus, nor is there any requirement to undergo these tests on account of high ketone levels. He urged that the falsity of plea of the Applicant is thus writ large.

31. Countering the submissions of Learned Solicitor General and Learned Addl. Solicitor General in rebuttal, Learned Senior Counsel for Applicant contended that there is no reason as to why a person who is ill cannot seek interim relief. Moreover, the Applicant, on 17.05.2024, was granted liberty by the Hon'ble Apex Court to file a Bail Application and since the power to grant interim bail is

inherent in the power to grant regular bail, the application under consideration is very much maintainable and the Applicant is entitled to the relief prayer for. In support of the said submissions, he placed a reliance on *Mukesh Kishanpuria vs. State of West Bengal, (2010) 15 SCC 154*. Moreover, the Supreme Court Registry also directed the Applicant to approach this court for interim bail.

32. Extending his arguments further, learned Senior Counsel for Applicant also relied upon the judgment of *Suresh vs. State of Maharashtra, 2012 SCC OnLine Bom 2358* and submitted that since Applicant was on interim bail when the application was filed and pursued, he is in fact in constructive custody of the court, till passing of the final bail order. It is for this reason also, the Hon'ble Supreme Court granted him liberty to apply for bail.

33. Learned Senior Counsel for the Applicant also invited the attention of the court to the Medical Report of the Applicant of Max Hospital dated 25.05.2024 and submitted that the tests in question have been prescribed by a doctor and no prejudice is likely to be caused to the DoE if Applicant is permitted to undergo these tests.

34. He relied on a report published Online in the Journal of Clinical and Diagnostic Research in 01.06.2015, as per which Diabetic Ketoacidosis is a major acute metabolic complication which may occur in patients with type-2 Diabetes Mellitus and argued that the high Ketone levels as reflected in the urine test report of the Applicant dated 20.05.2024, is a possible indicator thereof.

35. Upon considering the rival submissions and after perusal of the documents produced and in the light of the relevant legal

position on the subject, the court is of the view that in so far as the maintainability of the application is concerned, keeping in view the liberty granted to the Applicant by the Hon'ble Apex Court vide order dated 17.05.2024 in CrI. Appeal No.2493/2024, the application cannot be said to be not maintainable for the reasons as argued on behalf of DoE. It would be necessary to reproduce the said order for ready reference and the same is as follows:-

“Notwithstanding the fact that we have reserved the judgment and without prejudice to the rights and contentions of the appellant – Arvind Kejriwal, the appellant may, if advised, file an application for grant of bail. If an application for grant of bail is filed, the same will be considered and decided in accordance with law.”

36. Further, the liberty to file the application seeking interim bail is also undoubtedly inherently covered in the liberty granted to the applicant by the Hon'ble Supreme Court. That being so, the plea for interim bail must now be considered on its merits.

37. The question for consideration is whether the Applicant is entitled to interim Bail on the grounds as stated in this application. In ***Sanjay Jain vs. Enforcement Directorate***, neutral citation No.2023:DHC:4092. Hon'ble High Court observed that:-

“22. Article 21 of the Constitution provides for protection of life and personal liberty. The said right cannot be curtailed "except according to procedure established by law". The liberty of a person who is accused or convicted of an offence can be curtailed according to procedure established by law. However, right to health is also recognized as an important facet of Article 21 of the Constitution. Merely because a person is an

under trial or for that matter even a convict, lodged in jail, this facet of right to life cannot be curtailed. It remains an obligation of the state to provide adequate and effective medical treatment to every person lodged in jail, whether under trial or a convict.”

38. It is an equally well settled proposition that every ailment would not entitle an Accused to be released on bail and the power to grant interim Bail on the ground of illness should be exercised in a sparing and cautious manner.

39. Before proceeding further, it would also be apt to revert to Section 45(1) PMLA, which 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:

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:”

40. Hon’ble High Court of Delhi in its order dated 05.06.2023 passed in ***Bail Application No.3807/2022 titled as Sanjay Jain vs. Enforcement Directorate*** observed as under:-

“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.”

41. Similar view has also been taken by the Hon’ble Supreme Court in the following cases, where it has been observed that every nature of illness would not entitle an accused to Bail unless it is demonstrated that such illness is of such a nature that if the Accused is not released, he cannot get proper treatment for his ailment:-

i) ***Mahendra Manilal Shahand etc. vs. Rashmikant Mansukhai & Anr. (2009) SCC OnLine Bom 2095;***

(ii) ***Fazal Nawaz Jung and Anr. vs. State of Hyderabad 1951 SCC OnLine Hyd 60;***

(iii) ***State vs. Gadadhar Baral, 1988 SCC OnLine Ori 281;***

(iv) ***Pawan @ Tamatar vs. Ram Prakas Pandey & Anr. (2002) 9 SCC 166;***

(v) ***Surinder Kairam & Anr. vs. State (2002) SCC OnLine Del 920.***

42. As stated earlier, it is also the plea of the Applicant that he is suffering from Diabetes Mellitus for which certain orders have also been passed by this court on earlier occasions. However, Diabetes or even type-2 Diabetes cannot be said to be so serious an ailment so as to entitle him to the relief claimed. Further, the extensive campaigning tours and related meetings/events undertaken by Sh.Arvind Kejriwal as highlighted during the course of arguments also indicate that he does not appear to be suffering from any serious or 'life threatening' ailment so as to entitle him to the beneficial provision as contained in proviso to Section 45 PMLA.

43. Further, as stated above, the prayer for release of the Applicant on interim Bail has also made on the ground of diagnosis of an illness from which he could be suffering i.e. Diabetic Ketoacidosis of which high ketone levels is stated to be an indicator. For this, a series of tests are stated to have been prescribed.

44. In my considered opinion, the ground for grant of interim bail i.e. for conducting tests in order to determine if high ketone levels or the stated weight loss could have caused Diabetic Ketoacidosis, stands on an even weaker footing than a medical ground.

45. Apparently, as per the Applicant himself, he seeks interim bail for 'diagnosis' of an **anticipated** ailment which, cannot be said to be a valid ground for the relief prayed for, particularly when this concern can be addressed while the Applicant is in custody.

46. There appears to be no reason as to why such diagnostic tests of the Applicant cannot be got conducted while he is in

custody.

47. In the light of the above discussion, no ground whatsoever is made out to grant the relief prayed for by the Applicant.

48. Hence, the prayer of the Applicant for grant of interim bail is declined.

49. However, since the health concerns of the Accused/Applicant must be addressed immediately, the Medical Board of AIIMS, which was directed to be constituted vide order dated 22.04.2024 of this court, is hereby directed to be revived and/or re-constituted, if deemed fit by the Director, AIIMS, New Delhi, having regard to the nature of ailments the Applicant is stated to be suffering from.

50. The Medical Board shall, besides complying with the earlier order dated 22.04.2024, also examine the Applicant and prescribe such diagnostic tests as deemed appropriate, within three (03) days.

51. The Jail Authorities shall ensure that the prescribed recommended tests/evaluations of the Applicant are got conducted without any delay.

52. Upon receipt of the Test Reports, the Medical Board shall prescribe the further necessary treatment as may be required and the Jail Authorities shall ensure that the treatment so prescribed by the Medical Board is provided to the Applicant forthwith, under intimation to this court.

53. Application bearing IA No.91/2024 is disposed of in the aforesaid terms.

54. Copy of this order be supplied *dasti* to the Learned Counsel for Accused/Applicant as well as to IO/Ld. SPP for ED, as

requested. A copy of this order be also sent to the concerned Jail Superintendent as well as to MS/Director, AIIMS along with the medical documents of the Applicant filed with the application under consideration, for information and necessary compliance.

(Kaveri Baweja)
Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi : 05.06.2024