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

Judgment reserved on : 24.02.2023

Judgment pronounced on: 17.03.2023

+ **BAIL APPLN. 3575/2022**

KEWAL KRISHAN KUMAR

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. Vikas Arora, Mr. Amit Bhatia, Ms. Radhika Arora, Mr. Siddharth Singh, Mr. Abhay Sachan, Advs.

versus

ENFORCEMENT DIRECTORATE

..... Respondent

Through: Mr. Zoheb Hossain, Special Counsel for E.D. with Mr. Vivek Gurnani, Mr. Kalp Samaiya, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

JASMEET SINGH, J

1. This is an application seeking bail in CC No.20/2021 in ECIR No. 12/DLZO/I/2021, PS Enforcement Directorate under section 3 & 4 of Prevention of Money Laundering Act, 2002 ("PMLA").
2. It is stated that the Applicant is 70 years of age and has a chronic medical history having undergone bariatric surgery and is a chronic case of varicose veins and is functioning with 20% stomach capacity due to bariatric surgery. In addition, he has gall bladder stones

(Cholelithiasis). The Applicant is also suffering from seizure and behavioural disorders and hypertension.

Brief Facts:

3. The Applicant was arrested in the present case on 04.07.2021. He was on interim bail for a period of 31 days from 10.06.2022 to 11.07.2022 on medical grounds. The application for extension of interim bail was rejected and pursuant thereto, the Applicant surrendered.
4. As per the allegations levelled in ECIR, on 31.12.2020, CBI registered an FIR bearing R.C. No. 0742020E0014 u/s 120B r/w 420, 476, 468, 471, 13(2) r/w 13(1)(d), PC Act on the complaint of State Bank of India against the Applicant and other Accused Persons regarding bank fraud committed during 2013-2017.
5. The allegations are that Shakti Bhog Foods Limited (SBFL), where the Applicant was one of the directors, promoter and guarantor and had availed of various loan facilities from a consortium of banks led by State Bank of India from 2006 onwards, and in order to acquire more loan funds from Banks, the company resorted to round tripping and money laundering using its various group companies as platforms. SBFL had rotated its funds to group companies in the form of share investment, share application money, share premium, inter corporate deposits, compulsory convertible debentures, loans and advances and inter group purchases with the sole intent to launder and change colour of these loan funds from liabilities to assets.
6. The role ascribed to the Applicant in the prosecution complaint is that

the Applicant was a director, guarantor and promoter of SBFL. The Applicant in cohorts with other accused persons generated and acquired proceeds of crime by availing loan from a consortium of banks after submitting fake invoices of shell companies, fake transport documents for LC payments, forged and inflated financials and Monthly Stock Statements/ DP Statements. He knowingly and deliberately concealed the actual financial condition of the group companies from lending banks and misled them to sanction credit facilities and loans.

7. He diverted the funds released by the banks to group companies and the disbursed funds were utilised for purposes other than for which it was sanctioned, thereby cheating the banks. He was also instrumental in routing and re-routing the borrowed funds through group companies and shell companies and ultimately used for purchasing of various assets. The complaint states that the Applicant was a master of the entire scheme to dupe the banks of public money. He is a direct beneficiary of the proceeds of crime and therefore, liable of the offence under section 3 PMLA.
8. In the present case, the grounds of bail urged before me is with regards to the proviso to section 45(1) PMLA that the Applicant is sick and infirm. The Applicant is not resting his bail application on the merits of the case but only on proviso to section 45(1) PMLA.
9. The limited point before this court is whether the Applicant is “sick or infirm” in terms of the proviso under section 45(1) PMLA. Thus, I am not required to deal with the merits of the allegations in the ECIR regarding money laundering.

Submissions on behalf of the Applicant :

10. Mr. Mathur, learned senior counsel has argued the following:

- (i) He states that while in judicial custody, due to gallbladder stone, varicose vein and due to lack of proper care and treatment, the Applicant is suffering immensely. He submits that the Applicant falls within the category of sick and infirm person, and hence, is entitled to bail under Proviso to Section 45(1) of the PMLA.
- (ii) He draws my attention to the ailments suffered by the Applicant which are as follows:

- A) episodes of seizure and mouth fogging,
- B) super morbid obesity,
- C) Gallbladder stone,
- D) hernia,
- E) hyper tension,
- F) diabetes mellitus,
- G) osteoarthritis of knee,
- H) obstructive sleep apnea,
- I) benign prostatic hyperplasia,
- J) varicose veins because of which his legs are largely swollen.
- K) undergone bariatric fusion surgery because of which 80% of his stomach had been removed.

- (iii) He states the Applicant is suffering from various ailments and his

condition is deteriorating due to old age. He states that there is no definition of "sick or infirm" under PMLA. The law provides that the twin condition of Section 45(1) PMLA may not apply to a person who is sick or infirm. The Applicant due to his old age as well as numerous ailments falls within the category of sick and infirm person and is therefore, entitled to bail.

(iv) He has stated that Section 45(1) of PMLA carves out an exception for sick and infirm. He states the following:

- a. Infirmary is the frailty and feebleness that comes mostly with advanced age/rare disorders/auto immune diseases/social factors like malnutrition/lack of healthcare/premature birth.
- b. On the other hand, sickness is quality of having a definite disease/sickness that may be medically diagnosed and has a prescribed course of action based on known/available modes of treatment and dependent on medical interference.
- c. He states that sickness and infirmity does not denote and can never mean to be complete disability.
- d. He further states that it is the fundamental right of every undertrial prisoner whether sick or infirm or both to avail every available medical facility at his own expense in order to prevent further deterioration of health.
- e. He states that right to live with dignity and good health is the fundamental right to life under Article 21 of the Constitution.
- f. He states that the applicant seeking bail on medical grounds need not be on his deathbed or ailing/unwell to be at a point of no return, in order for him to avail extraordinary private treatment.

- (v) Mr. Mathur has taken me through the dictionary meaning of ‘sick’ and ‘infirm’.
- (vi) He states that etymology of *sick* reveals it is derived the Old English word *seoc* and Middle English *sik* meaning “*ill, unwell, diseased, feeble, weak; corrupt, sad, troubled, deeply affected by strong feeling*”. He further states that the lexicon meaning of sick as per **Merriam Webster** is “*1. Affected with disease or ill health : AILING; 2. Mentally or emotionally unsound or disordered : MORBID; 3. Lacking vigor : SICKLY*”.
- (vii) He has also drawn my attention to the meaning ascribed to sick in **Cambridge Dictionary** i.e., “*physically or mentally ill; not well or healthy*” and in **Black Law’s Dictionary, Edition 4**, which defines sick as “*affected with disease, ill, indisposed.*”
- (viii) He states that the co-accused Devki Nandan Garg has been granted bail by this Court on account of being sick and infirm under section 45(1) PMLA proviso. The learned counsel has relied on **Devki Nandan Garg v. Directorate of Enforcement 2022 SCC OnLine Del 3086** wherein this Court has held as under:

“40. Prisons provide medical facilities but the services are not comparable to or equivalent to the level of treatment and care one can avail from private hospitals. The facilities in the jail are of a general nature and character which is inadequate to monitor proper health of the applicant who is suffering from multiple serious ailments. The jail is not equipped to provide special and intensive treatment and care that the applicant is in need of.

...

44. *The fact that the applicant is suffering from these ailments from the year 2001 is also not of much help to the respondents' as it is a given fact that ailments aggravate with age. In 2001, which is 21 years ago, the applicant would have been younger, healthier and in a better position to meet the requirements of his frail health. With age, the response, the resistance, the resilience and the capacity of the body to fight ailments and recuperate efficaciously, decreases. I have already discussed that ailments which, coupled with old age brings the applicant within the purview of "infirm person". The level of care, attention, minute to minute monitoring, emergent response which the applicant can get from a hospital cannot be provided at the jail.*

...

46. *The applicant continues to suffers from serious co-morbidities, including but not limited to a serious heart condition and a non-functional kidney, with the other working in a compromised position. Considering that the applicant is aged, sick and infirm, who is suffering from various complicated diseases, the application needs to be allowed."*

(ix) He has further relied upon the following judgments:

a. ***Radhika Kapoor v State and Ors 2016 SCC OnLine Del 6652*** while defining 'infirm' has observed as under:

“5. To understand as to who can be termed mentally infirm, a reference to the definition of the word ‘infirm’ which finds mention in several dictionaries is apposite. In Collins, the word ‘infirm’ has been defined as weak or ill and usually old’. The Concise Oxford Dictionary refers to the word ‘infirm’ as ‘a person who is not physically strong, especially due to age’. In Black's Law Dictionary, the word ‘infirm’ has been defined as ‘weak, feeble, lacking moral character or weak of health’. In Webster's New World Law Dictionary, the word, ‘infirm’ has been defined as “Debility caused by ill health or advanced age”. The American Heritage Dictionary of the English Language defines infirmity’ as “the condition of being infirm, often as associated with old age; weakness or frailty; the infirmity brought on by the disease”.

...

10. In the case of Jai Prakash Goel (supra), relying on the decision of the Supreme Court in the case of Kasturibai (supra), it was held that even if a person is not adjudged to be of unsound mind, but on inquiry by the court found to be incapable of protecting his interest when suing or being sued for reasons of mental inability and infirmity, appropriate order thereunder can be passed under Rule 15 of Order XXXII. The Court had laid emphasis on the parameters of evaluating the mental condition of the concerned party and had observed that the court would be competent to pass an order upon it being

satisfied with regard to the party's mental competence.

...

14. Coming to the case in hand, the respondent No. 3 has presented himself before the court and during its interaction with him, posed several questions about his routine life, his family members and work and other aspects. He has stated that he had a major road accident in the year 1999, and had suffered serious brain damage as a result whereof, he has lost the ability to read and write. Though he understands the questions being posed to him, his answers are found to be rather stilted and disjointed and shows a vacillating state of mind. That apart, it is noticed that the respondent No. 3 is irresolute, wavering and repetitive. Although he states that he is a Chartered Accountant by profession, he is unable to furnish the address where his office is situated or the names of any of his clients. He has taken quite a while to recollect the names of his two daughters. The respondent No. 2 is the younger sister of the respondent No. 3, and is present in Court, but he has not been able to identify her.”

- b. Reliance is also placed on Punjab and Haryana High Court judgment of ***Lalit Goyal vs Directorate Of Enforcement CRM-M-7039-2022*** decided on 8 April, 2022 wherein it was held:

“It may be noticed that from both the sides, some of the judgments have been cited with regard to twin conditions laid down under Section 45 of PMLA as well as judgments of the

various High Courts either granting or declining to grant bail, however, for the sake of brevity, same are not reproduced here, as case of the petitioner is considered on the ground of 18 of 19 his health conditions, which suggest his permanent multiple ailments and continuous treatment from specialized doctors. After hearing learned counsel for the parties and going through the medical record of the petitioner, which is based on a report of Medical Board comprising of seven doctors, constituted by Civil Surgeon, Ambala, I find that case of the petitioner would be covered under proviso to Section 45(i) of PMLA as he is a sick person requiring urgent medical treatment, especially in view of the fact that while in custody for a period of about 03 months, he was repeatedly advised medical care, as noticed in earlier part of this order.”

Submissions on behalf of the Respondent:

11. On the other hand, Mr. Hossain, learned counsel for the ED has stated that:-
 - a. if the requisite medical treatment can be provided by prison authorities, bail on medical ground should not be granted;
 - b. if the person is found to be stable, he should not be enlarged on medical bail.
12. He further states contends the following:
 - (i) He states that bail should be exercised in a sparing and cautious manner and every nature of sickness should not entitle an accused to

be released on bail. The level of sickness should involve risk or danger to the life of an accused person for him to be granted bail on medical grounds.

- (ii) Mr. Hossain has drawn an analogy between Section 45 (1) proviso PMLA to Section 437 CrPC.
- (iii) He places reliance on ***Mahendra Manilal Shah v. Rashmikan Mansukhlal Shah***, 2009 SCC OnLine Bom 2095 to contend that bail on the ground of sickness should be granted in a cautious manner only where it is demonstrated that the nature of sickness is such that if the accused is not released, he cannot avail proper treatment. Below are the relevant extracts of the aforesaid judgment:

“47. I have considered the submissions advanced by the Learned Advocates for the parties before me and have also considered the case law on the subject. Under Section 437(1)(i) Cr. P.C. the Magistrate is not empowered to grant bail in respect of serious offences. Similarly, the Magistrate is not empowered to grant bail in respect of habitual offenders as defined u/s. 437(1)(ii) Cr. P.C. However, on humanitarian grounds and keeping in mind the principles enshrined in Article 21 of the Constitution of India, namely, protection of life and liberty of an individual the Legislature has carved out an exception to the rule whereunder a Magistrate is empowered to grant bail irrespective of the bar under Section 437(1)(i) and (ii) Cr. P.C. in cases where the accused is a woman, is sick, infirm or is a child under the age of 16 years. This power

*reposed in the Magistrate, under the proviso is discretionary in nature, as is indicated by use of the word may. Consequently, such a power has to be exercised in a judicial manner and in accordance with well settled judicial principles. **The same is to be exercised in a sparing and cautious manner, under necessary circumstances and after satisfying the judicial conscience as to its proper use.** The aspect of sickness when used as a ground to release the accused under the proviso to Section 437(1) Cr. P.C., has been examined by the Hon'ble Supreme Court and various High Courts as can be seen from the following decisions:*

(1) Pawan alias Tamatar v. Ramprakash Pandey ((2002) 9 SCC 166 : AIR 2002 SC 2224) (supra). In this case the Hon'ble Supreme Court has set aside the order of the Allahabad High Court granting bail to the accused inter alia on the ground that the allegation of ailment of the applicant is not specifically denied. The Hon'ble Supreme Court was of the view that the ailment of the accused was not of such a nature as to require him to be released on bail. It was observed that the accused can always apply to the jail authorities to see that he gets the required treatment. It was observed that in the application, the applicant had not stated that he still needs medical treatment or that he has not received proper medical treatment from the jail authorities.

.....

50. *As observed in the various judgments cited above, mere*

admission of an accused to a hospital for medical treatment does not entitle an accused to obtain bail under the proviso to Section 437(1) Cr. P.C. In fact as observed earlier the said proviso cannot be resorted to in all cases of sickness. The Court must assess the nature of sickness and whether the sickness can be treated whilst in the custody or in government hospitals. The Court should also be satisfied that a case is made out by the Respondent Accused by himself or through the doctors attending to him that the treatment required to be administered to the Respondent Accused, considering the nature of his ailment cannot be adequately or efficiently be administered in the hospital in which he is at present and that he needs a better equipped or a speciality hospital. No such case inquiries are made or such a case made out in the present bail application. In the present case as set out earlier even the basic inquiry as to the nature of sickness is not made prior to grant of bail, more so when the Bail Application was also silent on this aspect. In the absence of any such material before the Ld. Magistrate, he ought not to have granted bail to the accused u/s. 437(1) proviso only on the ground that admittedly the accused is under medical treatment. If such orders are allowed to be passed it would open flood gates for such applications to be made in serious non-bailable cases, only on the pretext of the accused being on medical treatment. In my view the Ld. Magistrate by granting bail to the accused only on the ground of him being under medical treatment at the hospital exhibits a totally casual

approach in granting bail to an accused u/s. 437(1) proviso which is a discretionary power required to be exercised in a judicial manner and on well settled judicial principles. Also in my view the Ld. Magistrate by not taking into account the relevant circumstances like the nature of sickness, the medical facilities/treatment available at the existing hospital, etc. and by granting bail only on the ground of the Respondent Accused taking medical treatment in hospital amounts to granting of bail under Section 437(1) proviso under irrelevant circumstances.”

(emphasis supplied)

- (iv) Mr. Hossain also relies on the judgment of ***State v. Sardool Singh, 1975 SCC OnLine J&K 27*** to argue that the proviso contemplates a level of sickness that involves a risk or danger to the life of an accused person. The relevant paras read as under:

*“5. I now proceed to the consideration of the second contention of Mr. Sethi regarding the standard for determining the sickness of an accused person. On a true construction of the proviso to sub-section (1) of S. 497 of the Code of Criminal Procedure, it appears to me that it is not every sickness that entitles an accused person to the grant of bail. **The sickness contemplated by the proviso is a sickness which involves a risk or danger to the life of the accused person.** I am fortified in this view by a decision of the Hyderabad High Court reported as AIR 1952 Hyd 30 : (1952 Cri LJ 873).*

6. In the instant case although the Medical Board has, no doubt, stated that Bhagwan Singh respondent is a patient of epilepsy it has categorically opined that his continuance in Jail under medical treatment will not be harmful to his health. I am, therefore, of the view that the sickness from which Bhagwan Singh respondent is suffering is not of the kind envisaged by the aforesaid provision of law.”(emphasis supplied)

- (v) He has also drawn my attention to the judgment of ***Sridhar Vandayar & Anr. v. The State rep. by Inspector of Police, CB-CID, Cuddalore, Chidambaram Police Station 2000 SCC OnLine Mad 45***. The relevant paras read as under:

“11. The petitioners pleaded illness. According to them, the second petitioner is a heart-patient, who has undergone bye-pass surgery. On a true construction of proviso to sub-section (1) of Section 437 of Cr.P.C., it appears, it is not that every sickness will entitle the accused persons to grant bail. The sickness contemplated by the proviso is a sickness which involves a risk or danger to the life of the accused person. The second petitioner is said to have undergone bye-pass surgery about four years back. But, absolutely, no medical evidence or certificate is produced to show that as to what sort of heart-ailment he is presently suffering with and whether his illness was so grave in nature and he requires treatment by a higher institution. Heart ailments have become common. Now-a-days

necessary medical treatment and reasonable amenities are available in the jail hospital and in the Government Head-quarter Hospital where the petitioner has kept in. It is not as if the illness of the second petitioner could not be taken care of at the hospitals maintained by the State Government.” (emphasis supplied)

- (vi) Mr. Hossain, learned counsel argues that the Applicant is not infirm either as infirmity requires inability to carry out daily chores and functions due to irreparable body organ. He relies on the judgment of ***Emperor v. Anis Beg Criminal Appeal No. 619 of 1923*** wherein, the court has culled out the meaning of infirmity as:

“Infirmity” has been defined by one another as inability of an organ to perform its normal function which may either be temporary or permanent.”

- (vii) He states that mere old age does not make a person infirm and hence, the Applicant cannot claim infirmity only because is 70 years old. The same has to be supported by incapacity to perform daily routine activities which the Applicant can perform since he is not suffering from life threatening, serious diseases and can be treated in jail.
- (viii) Mr. Hossain further argues that it is a settled principle of law that if medical treatment can be provided by prison authorities, bail on medical grounds should not be granted. He has emphatically stated that the Applicant in the instant case can be adequately treated in jail.

In this regard, he has drawn my attention to ***State v Jaspal Singh*** (1984) 3 SCC 555 where it is held as under:

“11. In the circumstances, I am of the view that the High Court should not have enlarged the respondent on bail in the larger interests of the State. It is urged that the respondent is a person who has undergone a cardiac operation and needs constant medical attention. I am sure that the prison authorities will arrange for proper treatment of the respondent whenever the need for it arises.”

- (ix) The Learned counsel for the respondent also argues that the Applicant is found to be stable, therefore he should not be enlarged on medical bail. He places reliance on the following judgments:

a. ***Surjeet v. State (Govt. of NCT of Delhi)*** 2021 SCC OnLine Del 228

b. ***Karim Morani v. Central Bureau of Investigation*** 2011 SCC OnLine Del 2967

- (x) Mr. Hossain lastly contends that section 45 PMLA is a mandatory provision and cannot be dispensed with in the present case. He draws my attention to the landmark judgment of ***Vijay Madanlal Choudhary and Ors v. Union of India and Others*** 2022 SCC OnLine SC 929 wherein the Hon'ble Supreme Court held as under:

“398. Thus, it is well settled by the various decisions of this Court and policy of the State as also the view of international

community that the offence of money-laundering is committed by an individual with a deliberate design with the motive to enhance his gains, disregarding the interests of nation and society as a whole and which by no stretch of imagination can be termed as offence of trivial nature. Thus, it is in the interest of the State that law enforcement agencies should be provided with a proportionate effective mechanism so as to deal with these types of offences as the wealth of the nation is to be safeguarded from these dreaded criminals. As discussed above, the conspiracy of money-laundering, which is a three-staged process, is hatched in secrecy and executed in darkness, thus, it becomes imperative for the State to frame such a stringent law, which not only punishes the offender proportionately, but also helps in preventing the offence and creating a deterrent effect.

399. In the case of the 2002 Act, the Parliament had no reservation to reckon the offence of money-laundering as a serious threat to the financial systems of our country, including to its sovereignty and integrity. Therefore, the observations and in particular in paragraph 47 of Nimesh Tarachand Shah⁶³³, are in the nature of doubting the perception of the Parliament in that regard, which is beyond the scope of judicial review. That cannot be the basis to declare the law manifestly arbitrary.”

Analysis :

13. I have heard learned counsel for the parties.

14. Section 45(1) of PMLA reads as under:

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

(1) ¹[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence ²[under this Act] shall be released on bail or on his own bond unless--]

(i) the Public Prosecutor has been given a 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, ³[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: ...”

15. The limited point before this court is whether the Applicant is “*sick or infirm*” in terms of the proviso to section 45(1) PMLA.

16. To interpret sick and infirm as contemplated in the statute, the

legislative intent behind inclusion of proviso to section 45(1) PMLA needs to be seen.

17. I have previously in *Devki Nandan Garg (supra)* observed:

“32. At this juncture, it is imperative to have an overview of the Statement of Objects and Reasons of PMLA, 2002 with respect to “sick and infirm” which reads as under:

*“In addition to above recommendations of the standing committee the Central Government proposes to (a) relax the conditions prescribed for grant of bail so that the Court **may** grant bail to a person who is below sixteen years of age, or woman, or sick or infirm...”*

*33. A bare perusal of the Statement of Objects and Reasons of PMLA goes to show that inclusion of the above conditions for grant of bail as a proviso to section 45(1) of PMLA elucidates the legislature’s intent to incorporate relaxations for persons below sixteen years of age; a woman; or one who is **sick or infirm.**”*

18. The relevant clauses of the Finance Bill introduced on 1st February, 2018 for amending Section 45 of the PMLA reads as under :-

“Clauses 204 and 205 of the Bill seeks to amend certain provisions of the Prevention of Money laundering Act, 2002, which include the following, namely:-

-x-x-x-x-

*(v) to amend section 45 of the Act relating to offences to be cognizable and non-bailable and to amend sub-section (1) of section 45 to substitute the words “punishable for a term of imprisonment of more than three years under Part A of the Schedule” by the words “under this Act” so as to take a step further towards delinking the Scheduled offence and money laundering offence. Further, it seeks to amend the proviso in subsection (1) by inserting the words “or is accused either on his own or along with other co-accused of money laundering a sum of less than Rupees one crore”, after the words “sick or infirm” **to allow the Court to apply lenient bail provisions** in case of money laundering offence is not grave in nature.”*

19. The 2018 Finance Bill gives an insight into the bail provisions stating that the inclusion of “*sixteen years; woman; sick or infirm*” along with the addition of “*or is accused either on his own or along with other co-accused of money laundering a sum of less than Rupees one crore*” is a lenient bail provision encapsulated in PMLA.
20. In view of the above, a purposive interpretation of the proviso to section 45(1) shows that it has been incorporated as a lenient provision or to afford ‘*relaxation*’ to a sick or infirm person as noted in the Statement of Objects and Reasons to PMLA.
21. Proviso to Section 45(1) PMLA is analogous to the proviso to section 437 CrPC.
22. Report No. 268 of the Law Commission of India (“LCI”) on bail

reforms titled ‘Amendments to Criminal Procedure Code, 1973 - Provisions Relating To Bail’ discusses the intent behind inclusion of the proviso in section 437 CrPC. The relevant extract of Report 268, LCI reads as under:

“L. Exceptions

11.34 Absolute restriction on granting of bail would undermine the right to liberty of the person accused of an offence. Therefore, when certain supervening and inexorable circumstances exist, bail must be allowed. If the person accused of an offence is suffering from serious life-threatening ailment and requires medical help which may not be available in jail hospitals, then the bail shall be granted.”

23. The Apex Court in ***Satender Kumar Antil v. Central Bureau Of Investigation & Anr. (2022) 10 SCC 51*** has described the proviso to section 437 CrPC as a welfare legislation and carved out the purpose of the said proviso by stating the following:

“78. Section 437 of the Code empowers the Magistrate to deal with all the offenses while considering an application for bail with the exception of an offense punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first proviso facilitates a court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This

being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437, while exercising the power under Section 439. While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors.” (emphasis supplied)

24. The next question before me is – What is that level of sickness or infirmity that brings an Accused within the parameters of “*sick or infirm*” as envisaged in the proviso to section 45(1) PMLA?
25. I am of the opinion that when the sickness or infirmity is of such a nature that it is life-threatening and requires medical assistance that cannot be provided in penitentiary hospitals, then the accused should be granted bail under the proviso to section 45(1) PMLA.
26. The Hon’ble Supreme Court in ***Pawan alias Tamatar v. Ramprakash Pandey (2002) 9 SCC 166*** and the Bombay High Court in ***Mahendra***

Manilal Shah (supra) have noted that every sickness does not *ipso facto* entitle an accused to medical bail.

27. The Court in *Mahendra Manilal Shah (supra)* whilst noting the Apex Court's decision in *Pawan alias Tamatar (supra)* observed as under:

“47....(1) Pawan alias Tamatar v. Ramprakash Pandey ((2002) 9 SCC 166 : AIR 2002 SC 2224) (supra). In this case the Hon'ble Supreme Court has set aside the order of the Allahabad High Court granting bail to the accused inter alia on the ground that the allegation of ailment of the applicant is not specifically denied. The Hon'ble Supreme Court was of the view that the ailment of the accused was not of such a nature as to require him to be released on bail. It was observed that the accused can always apply to the jail authorities to see that he gets the required treatment. It was observed that in the application, the applicant had not stated that he still needs medical treatment or that he has not received proper medical treatment from the jail authorities.

.....

50. *As observed in the various judgments cited above, mere admission of an accused to a hospital for medical treatment does not entitle an accused to obtain bail under the proviso to Section 437(1) Cr. P.C. In fact as observed earlier the said proviso cannot be resorted to in all cases of sickness. The Court must assess the nature of sickness and whether the sickness can be treated whilst in the custody or in government*

hospitals. The Court should also be satisfied that a case is made out by the Respondent Accused by himself or through the doctors attending to him that the treatment required to be administered to the Respondent Accused, considering the nature of his ailment cannot be adequately or efficiently be administered in the hospital in which he is at present and that he needs a better equipped or a speciality hospital....”
(emphasis supplied)

28. The court in **Sardool Singh** (*supra*) held, “*The sickness contemplated by the proviso is a sickness which involves a risk or danger to the life of the accused person*”.
29. A combined reading of the PMLA Objects and Reasons, Finance Bill, 2018, the 268th LCI Report and above mentioned precedents indicates that the proviso to Section 45(1) PMLA is a relaxation for sick or infirm persons provided their sickness or infirmity is so grave that it is life endangering and cannot be treated by jail hospitals.
30. 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.
31. Having said that, in the present case, I cannot sit in appeal of the opinion of the medical board. Courts do not possess medical expertise

and each case is decided on the peculiar facts and circumstances involved. Judges are not and cannot be experts in medical fields, and an opinion of doctors who are experts cannot be supplanted by a court overstepping its jurisdiction.

32. A division bench of this court in ***Sandeep Aggarwal v. Priyanka Aggarwal MAT. APP. (F.C.) 142/2020*** has held :

“30. At the outset, we may state that Judges are not medical professionals or experts, and acquire limited knowledge based on the arguments of the parties, and the medical literature produced before them; the testimonies of expert witnesses produced in Court, and; the submissions advanced before the Court. The Courts, to be able to decide such issues, needs expert opinion from credible persons in the field.....”

33. Support is also drawn from the decision of the Supreme Court in ***Union of India and Others v. Brigadier Javed Iqbal 2022 SCC OnLine SC 633*** has held:

“16. As noted, the learned ASG disputed the same by referring to the treatment and follow up booklet which is produced along with the additional documents by the respondent himself to indicate that the observation recorded in the chart as, - ‘not on medication’ on various dates is based only on the oral statement of respondent made to the doctor which cannot be given credence. On this aspect, it is necessary to note that the

medical records are of the 'Command Hospital' itself and not of a private practitioner. The first date on which it is recorded as, - 'not on medication' is on 25.06.2020 and the same is continued thereafter. The observations extracted above would indicate that the doctor has categorically recorded that the blood pressure has been controlled with lifestyle modification and the BP control remains adequate. When the opinion has been tendered by the competent medical experts, merely because the Military Secretary is not satisfied with the same will not entail either the AFT or this court to sit as a medical expert and reassess the opinion given by the Medical Board."
(emphasis supplied)

34. In the present case, as per the medical report of the applicant dated 05.01.2023, it has been opined as under:

"On 05/12/2022, the inmate patient was admitted at DDU Hospital surgery dept. for the complaint of pain abdomen. Diagnosed as a case of acute cholecystitis with Hypertension with epilepsy with varicose veins thereafter was discharged on oral medication on 08/12/2022.

On 19/12/2022, the inmate patient was referred on emergency to DDU Hospital in view of raised blood pressure wherein he was examined and was advised medicine accordingly.

On 04/1/2023, the inmate patient was referred to GB Pant hospital GI Surgery dept. wherein he was advised blood

investigation, plan lap. Cholecystectomy, review PAC and review after getting fitness and clearance.

At present, the inmate patient is stable and all the medicines are being provided from jail Dispensary.”

35. The medical report dated 13.02.2023 reads as under:-

“

कार्यालय वरिष्ठ चिकित्सा अधिकारी
OFFICE OF THE SENIOR MEDICAL OFFICER
डिस्पेसरी, केन्द्रीय कारागार संख्या 07 तिहाड़, नई दिल्ली-110064
DISPENSARY, CENTRAL JAIL NO.07 TIHAR, NEW DELHI-
110064

D.No./SMO/CJ-07/2023/0319
2023

Date: 13-02-

Sub: Medical Report of inmate patient Kewal Krishan Kumar
S/o Jugal Kishore,

In continuation with the previous medical report submitted on 28/01/2023 vide letter no. D.No./SMO/CJ-07/2023/0212, as per the available medical records it is to be submitted that inmate patient is a follow up case of seizure disorder, essential hypertension, cholelithiasis (gall stone diseases), varicose vein with history of bariatric surgery for obesity in 2019 and history of surgery of varicose vein in 2017-18. He is also taking medication for B/L knee pain with lumbar spondylosis. The inmate patient is also diagnosed with abnormal behaviour with disturb sleep, irrelevant talks and aggressiveness and he is under psychiatric evaluation. The inmate patient has been followed up in DDU hospital, GB Pant hospital and Safdarjung hospital.

The medical management for the patient is being given from the jail dispensary. The inmate patient is planned for Laparoscopic cholecystectomy surgery from GB Pant hospital.

The said surgery is to be done after PAC fitness is given from GB Pant hospital.

Currently the inmate patient is admitted in MI room of dispensary since 27/01/2023. The inmate patient is suffering from multiple diseases and requires regular medications, he had multiple episodes of seizures and requires attendant on regular basis for timely medications.

This is for your information and onward submission.”

36. This Court directed that the applicant needs to be examined by a Board of Doctors who will opine whether the applicant requires continuous psychiatric observation and medicines and whether the applicant can be provided adequate treatment from jail authorities.
37. Pursuant to the said direction, medical report dated 11.02.2023 has been given by a board of doctors consisting of a physician, neurologist, psychiatrist and surgeon wherein it has been opined as under:-

**“GOVERNMENT OF INDIA
DR. RAM MANOHAR LOHIA HOSPITAL,
ATAL BIHARI VAJPAYEE INSTITUTE OF MEDICAL
SCIENCES, NEW DELHI-110001
F. No. Add ND-11/16/2023-0/o Addl. MS(ND)-Dr. RMLH**

Inmate Kewal Krishan S/o Sh. Jugal Kishor brought by head constable Ramesh, Belt No. 7794. Was examined on 09/02/2023, 11.45 am by medical board comprising of

- | | |
|-----------------------|---------------|
| ➤ Dr. Vipin Mediratta | -Physician |
| ➤ Dr. Jyoti Garg | -Neurologist |
| ➤ Dr. R.P. Beniwal | -Psychiatrist |
| ➤ Dr. Atul Jain | - Surgeon |

After reviewing the medical records & examining the inmates it was observed that he is case of:

- Hypertension.*
- Morbid Obesity (sleeve gastrectomy done)*
- B/L varicose veins lower limbs*
- Siezure disorder*
- Mild behavioural disorder(? BPAD)*
- Cholelithiasis*

Board members are of the opinion that he is stable with the treatment for all his medical comorbidites and can be treated in Tihar Jail Hospital.

For cholelithiasis elective surgical intervention (laparoscopic cholecystectomy) can be done after PAC and fitness.

Dr. Jyoti Garg Dr. Vipin Mediratta Dr. R.P. Beniwal Dr. Atul Jain”

38. In the present case, I am of the view that the Applicant is not ‘sick’ to be granted bail under proviso to Section 45(1) PMLA. The ailments that the Applicant is suffering from are not grave or life threatening that entitle him to bail on medical grounds. I rely upon the opinion of the medical board that has opined that the Applicant is ‘stable’ and can be treated in Tihar Jail Hospital.
39. In my view, granting bail on every sickness will render the proviso to section 45(1) PMLA otiose. The proviso should only be invoked in cases where the sickness suffered by the Applicant is so serious and life endangering that it cannot be treated in jail, or the specialized treatment as required cannot be provided from jail hospitals.
40. The judgments relied upon by the learned counsel for the Applicant

present a scenario where the Applicants' therein were suffering from life threatening diseases and could not be efficaciously treated in the premises of a penitentiary.

41. It is observed that in ***Lalit Goyal (supra)***, the Applicant therein suffered from serious multiple life-threatening ailments as diagnosed by various departments viz., mixed anxiety and depressive disorder (Psychiatry Department), panic episodes with psycho social crisis at times which exacerbated for one month; bleeding per rectum and pain abdomen, Periumbilical tenderness, Internal hemorrhoid grade II (General Surgery Department); vertigo and tinnitus (ENT Department); hypertension with hypertriglyceridemia with angina (General Medicine Department); Central Serous Retinopathy (CSR) status post Photodynamic Therapy (PDT) with Laser (Eye Department); right upper limb pain (associated with paresthesia) with lower backache, Cervical Angina which is suggestive of Thoracic Outlet Syndrome (Neurosurgery Department). The Medical Reports in ***Lalit Goyal (supra)*** did not give a categorical finding that the Applicant therein is stable. Further the report opined that the Accused therein required “*further treatment and consultation at a well-equipped higher hospital/Centre.*” That is not the situation in the instant case.
42. The present case is also distinguishable from ***Devki Nandan Garg (supra)*** as the Applicant therein was suffering from serious comorbidities, surviving on one kidney which was only 30% functional, was suffering from a heart condition and hence, was on a

pacemaker and had also, contracted new diseases while being incarcerated rendering the Applicant therein sick and infirm within the meaning of the proviso to section 45(1) PMLA.

43. In the instant case, it is evident from the medical board's report that the condition of the Applicant is stable, he is not suffering from life-threatening ailments and can recuperate with the medical facilities available in jail.
44. Thus, for the aforesaid reasons, I am of the view that the Applicant cannot be termed to be '*sick*' to fall within the proviso to section 45(1) PMLA.
45. However, the legislature has carved out another category i.e., '*infirm*' in the proviso to section 45(1) PMLA.
46. Since '*sick*' and '*infirm*' are separated by '*or*', consequently, a person who, though, not sick but infirm would still be entitled to seek the benefit of the exception in the proviso to section 45(1) PMLA and *vice-versa*.
47. Mere old age does not make a person '*infirm*' to fall within section 45(1) proviso. Infirmary 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.
48. The lexicon meaning of '*infirm*' in ***Stroud's Judicial Dictionary of Words and Phrases, Eight Edition*** connotes infirmity as "*some permanent disease, accident, or something of that kind*" (per Kekewich J., *Re Buck*, 65 L.J. Ch. 884).
49. In the present case, a perusal of the Applicant's medical records show that he has had seizure disorders and mild behavioural disorder

(BPAD) which coupled with old age is a cause of concern. Requiring an attendant for quotidian activities further go to show the seriousness of the Applicant's infirmities.

50. In January 2023, the condition of the Applicant has worsened as he was referred to emergent medical help multiple times. On 09.01.2023, the Applicant was referred to Emergency DDU Hospital for complaint of pain in right upper abdomen and nausea. On 15.01.2023, the Applicant was again referred to emergency ward regarding the same issue. On 23.01.2023, the Applicant was brought to dispensary on the complaint of seizure (clenching of teeth and frothing from the mouth) and referred to DDU Hospital Emergency cell. The dosage of seizure medicine was increased. On 27.01.2023, the Applicant was again sent to DDU Hospital Emergency for abnormal behaviour. On 28.01.2023, the Applicant was reviewed by jail visiting Psychiatry SR for abnormal behaviour. On examination, he was described as irritable and aggressive with disturbed sleep, irrelevant talks and is presently under evaluation in the MI Room. The gall-bladder stone size has increased from 16 MM to 25.5 MM.
51. This scenario presents a grim picture. The medical report has categorically stated as under:

*“Currently the inmate patient is admitted in MI room of dispensary since 27/01/2023. The inmate patient is suffering from multiple diseases and requires regular medications, **he had multiple episodes of seizures and requires attendant on regular basis for timely medications.**” (emphasis supplied)*

52. The aforesaid shows that the Senior Medical Officer on 13.02.2023 has opined that the Applicant needs an attendant on a regular basis for timely medicines. He has suffered multiple episodes of seizures. The Medical Board has stated that the Applicant is stable with the medication.
53. The logical inference drawn from the above is that the Applicant is not in a position to take his regular dosage of medicines which is a condition precedent for his survival from the ailments. The attendant is required as the applicant has had multiple episodes of seizures and in event of a seizure, timely medication is of primary importance.
54. In the present case, it is observed that the medical report of the Applicant dated 28.01.2023 has stated as under:

"The inmate patient submitted photocopies of document related to Seizure disorder from Deep Chand Bandhu govt. Hospital / Bhagwan Mahavir Govt. Hospital /Chawla Nursing Home and Dr. Praveen Bhatia (Ganga Ram Hospital) and Medical document shows that he has suffered Episodes of convulsion outside the jail (period of interim bail). MRI suggestive of defused age related cerebral atrophy with white matter ischemic demyelination. (Copy enclosed-3)" (emphasis supplied)

55. In view of the aforesaid, a perusal of the medical records of the Applicant shows that his seizures have become more frequent than

before, that makes him more vulnerable to injuries such as hemorrhage, and for which the dosage of medication has been increased.

56. Thus, the aforementioned infirmities in a senile stage combined with constant ‘attendant’ support as noted in the report dated 13.02.2023 coupled with frequent seizures and abnormal behavioural disorder make the Applicant ‘*infirm*’ under the proviso to section 45(1) PMLA.

57. In ***Devki Nandan Garg (supra)***, I have held as under:

“35. Thus, the proviso to Section 45(1) of the PMLA carves out an exception from the rigours of Section 45 for persons who are sick or infirm. Once a person falls within the proviso of Section 45(1), he need not satisfy the twin conditions under Section 45(1) as elucidated in the dicta of Gautam Kundu case [Gautam Kundu v. Directorate of Enforcement, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603].”

58. Once the Applicant falls in the exception clause of section 45(1) proviso, as in the present case by virtue being ‘*infirm*’, the Applicant need not satisfy the twin test of section 45(1) PMLA. However, the Applicant needs to satisfy the triple test under Section 437/439 CrPC :

- i. Flight risk
- ii. Influencing any witness
- iii. Tampering with evidence

59. In the present case, the Applicant has been in custody for over 18 months. Investigation qua the Applicant is complete but no chargesheet has been filed yet. The Applicant was released on interim bail for a period of one month and after expiry of the same, he surrendered and there is no allegation of misuse of liberty by him while on bail.
60. In view of the above observations, the Applicant is entitled to grant of bail.
61. For the aforesaid reasons, the application is allowed and the Applicant is granted bail on the following terms and conditions:
- (a) The applicant shall furnish a personal bond with a surety in the sum of Rs. 1,00,000 to the satisfaction of the Trial Court;
 - (b) The applicant shall appear before the Court as and when the matter is taken up for hearing;
 - (c) The applicant shall provide his mobile number to the Investigating Officer (IO) concerned at the time of release, which shall be kept in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
 - (d) In case he changes his address, he will inform the IO concerned and this Court also;
 - (e) The applicant shall not leave the country during the bail period and surrender his passport at the time of release before the Trial Court;
 - (f) The applicant shall not indulge in any criminal activity during

the bail period;

- (g) The applicant shall not communicate with or intimidate or influence any of the prosecution witnesses or tamper with the evidence of the case.

62. The observations herein are not a reflection on the merits of the case.
63. The application is allowed and disposed of in the aforesaid terms.
64. The documents handed over in Court are taken on record.

JASMEET SINGH, J

MARCH 17th, 2023
dm/jv

[Click here to check corrigendum, if any](#)

नित्यमेव जयते