

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.4233 OF 2024
IN
BAIL APPLICATION NO.4054 OF 2024

Digambar Rohidas Agawane ... Applicant
Vs.
Directorate of Enforcement and another ... Respondents

Mr. Ujwalkumar Chavhan a/w. Mr. Swapnil S. Balajiwale, Mr. Aditya A. Hire, Mr. Bhushan Yadav and Mr. Ashish Gaikwad for Applicant.

Mr. Sandesh Patil, Special Public Prosecutor a/w. Mr. Chintan Shah for Respondent No.1-ED.

Mr. Balraj B. Kulkarni, APP for Respondent No.2-State.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 24, 2024

P.C. :

. Heard Mr. Chavhan, learned counsel for the applicant and Mr. Patil, learned special public prosecutor (SPP) for respondent No.1 - Enforcement Directorate (ED).

2. In the pending bail application, the applicant has filed this application for interim bail, primarily on the ground that he desires to contest election to the Legislative Assembly of Maharashtra. The election programme has been declared, wherein the last date for filing nominations is 29.10.2024 and the election is to be completed on or before 25.11.2024. It is on this basis that the applicant prayed for urgent listing of the interim application and hence it was taken up for consideration today.

3. The learned SPP for ED submits that reply to the present application was e-filed but it appears that the same is pending and hence

it could not be shared with this Court. The original reply affidavit is tendered. The same is taken on record.

4. The learned counsel for the applicant submits that in terms of the law laid down by the Supreme Court in the case of *Arvind Kejriwal Vs. Directorate of Enforcement* [order dated **10.05.2024** passed in **Criminal Appeal arising from Special Leave Petition (Criminal) No.5154 of 2024**], the present interim application deserves to be allowed.

5. It is submitted that in the present case, the applicant was arrested on 05.01.2024 in the context of an Enforcement Case Information Report (ECIR) dated 04.05.2023 registered under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA). It is submitted that the ECIR has been registered in the context of 12 predicate offences and it can be demonstrated that all the 12 FIRs, treated as predicate offences, have been registered in a *mala fide* manner against the applicant.

6. It is alleged that the FIRs have been registered at the behest of the then Sitting Member of Parliament (MP) from Phaltan Loksabha Constituency. It is submitted that after the applicant had filed a complaint on 26.02.2022 against the said MP, whereafter he was constrained to approach the Magistrate under Section 156(3) of the Cr.P.C., wherein an order was passed for registration of FIR, in order to wreak vengeance on the applicant, the first of the 12 FIRs came to be registered on 11.04.2022. He submits that thereafter a series of FIRs were registered till 04.05.2023 (in all 12 FIRs, all at the behest of the said MP), demonstrating that the purpose of registering the said FIRs was to harass the applicant and eventually to invoke the provisions of PMLA. It is submitted that the applicant would be raising contentions on merits when the main bail application is taken up for consideration, but reference to the aforesaid facts is made in order to demonstrate that the respondent ED cannot claim that the applicant has criminal antecedents.

7. It is submitted that the applicant is entitled to being released on interim bail for a specific period of time so that he is able to submit his nomination form and to campaign and contest the election, particularly because he is a serious candidate, having secured substantial number of votes in the Assembly Elections conducted in the year 2019. On this basis, the applicant is pressing for relief in the present application.

8. On the other hand, the learned SPP appearing for ED has vehemently opposed the present application. He submits that the case of the applicant does not fit into the contours of law specified in the order passed by the Supreme Court in the case of **Arvind Kejriwal Vs. Directorate of Enforcement** (*supra*). It is submitted that the applicant has criminal antecedents and in that context, reference is made to the aforesaid 12 FIRs, treated as predicate offences for the subject ECIR. It is submitted that a bare perusal of the prosecution complaint, read with statements recorded during the course of investigation and enquiry would show that the applicant has a tendency to indulge in criminal conduct and serious offences have been registered against him, including those under the provisions of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), as also the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act), apart from serious offences under the Indian Penal Code, 1860 (IPC) and the Arms Act, 1959.

9. It is further submitted that right to contest an election is not a fundamental right and it is merely a statutory right, which is a well settled position of law, reiterated by the Supreme Court in the order passed in the case of *Vishwanath Pratap Singh Vs. Election Commission of India and another* [order dated **09.09.2022** passed in **Special Leave to Appeal (Civil) No.13013 of 2022**]. In that light, it is submitted that the present application deserves to be dismissed.

10. This Court has considered the rival submissions in the light of the material placed on record. The sheet anchor of the contentions raised on behalf of the applicant is the order passed by the Supreme Court in the case of **Arvind Kejriwal Vs. Directorate of Enforcement** (*supra*). A perusal of the said order shows that in paragraph 15, the Supreme Court has held as follows:-

“15. The prosecution has rightly pointed out that the appellant - Arvind Kejriwal had failed to appear in spite of nine (9) notices / summons, first of which was issued in October 2023. This is a negative factor, but there are several other facets which we are required to take into consideration. The appellant - Arvind Kejriwal is the Chief Minister of Delhi and a leader of one of the national parties. 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 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, once 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 18th Lok Sabha General Elections are being held.”

11. It is to be appreciated that despite taking note of the negative factors of the petitioner therein of having failed to appear though nine notices / summons were issued to him, the Supreme Court held in favour of the petitioner therein for various reasons, including the fact that the petitioner therein did not have any criminal antecedent; he was found not to be a threat to the society; the investigation in the said case had remained pending for substantial period of time from August 2022; the petitioner therein was the Sitting Chief Minister of Delhi; and he was found to be the leader of one of the national parties.

12. The material on record, in the present case, shows that the

applicant does not satisfy the aforesaid credentials, which the Supreme Court found to be in favour of the petitioner therein.

13. A perusal of the material on record shows that as many as 12 criminal cases are pending against the applicant, all of which have been treated as predicate offences for the subject ECIR. The prosecution complaint refers to the FIRs pertaining to the 12 criminal cases, which are as follows:

Sr. No.	FIR No.	Charge-sheet details
1	FIR No.892/2022 dated 13.12.2022	Charge-sheet No.85 of 2023 dated 30.04.2023
2	FIR No.582/2022 dated 15.08.2022	Charge-sheet No.244 of 2023 dated 08.12.2023
3	FIR No.218/2022 dated 11.04.2022	Charge-sheet No.28 of 2023 dated 28.02.2023
4	FIR No.387/2022 dated 08.11.2022	Charge-sheet No.130 of 2023 dated 11.12.2023
5	FIR No.673/2022 dated 29.09.2022	Charge-sheeet No.Nil dated Nil
6	FIR No.1086/2022 dated 29.09.2022	Charge-sheet yet to be filed by LEA.
7	FIR No.220/2022 dated 16.04.2022	Charge-sheet No.127 of 2023 dated 11.12.2023
8	FIR No.652/2022 dated 14.09.2022	Charge-sheet No.224 of 2022 dated 13.11.2022
9	FIR No.254/2022 dated 08.11.2022	Charge-sheet No.146 of 2022 dated 18.11.2022
10	FIR No.534/2022 dated 23.11.2022	Charge-sheet No.131 of 2023 dated 11.12.2023
11	FIR No.324/2022 dated 05.05.2022	Charge-sheet No.35 of 2023 dated 14.02.2023
12	FIR No.832/2022 dated 10.08.2022	Charge-sheet yet to be filed by LEA

14. It is significant to note that the offences registered in these 12 FIRs, include serious offences under the IPC pertaining to Sections 307,

367, 392, 394, 467, 420 amongst others. It is also pertinent to note that in the FIR No.652 of 2022 dated 14.09.2022 and FIR No.220 of 2022 dated 16.04.2022, offences have been registered under the provisions of the MPID Act and in FIR No.892 of 2022 dated 13.12.2022, provisions of the MCOCA, apart from the Arms Act have also been invoked. It is also relevant to note that the offences under the Maharashtra Money Lending (Regulation) Act, 2014 have also been registered against the applicant. In the face of such material, it cannot be said at this stage itself that the applicant does not have any criminal antecedents.

15. The contention that all the FIRs have been registered in a *mala fide* manner, at the behest of the then Sitting MP of Loksabha Constituency, Phaltan, cannot be accepted at this stage itself. It is pertinent to note that the informants in the said FIRs are public sector banks as well as individuals, who have made serious allegations of having been duped by the applicant. The prosecution complaint pertaining to the ECIR consists of statements of plethora of witnesses recorded during the course of investigation and enquiry, which would have to be gone into at the stage of hearing and deciding the main bail application.

16. Considering the fact that serious offences under the IPC, concerning bodily injuries, are registered against the applicant, coupled with the fact that offences under the MCOCA, MPID and Maharashtra Money Lending (Regulation) Act, 2014 are also registered against the applicant, at this stage itself, this Court is unable to give a finding that the applicant cannot be said to be a threat to the society. The applicant is certainly not a Sitting Chief Minister or a leader of a national party. Therefore, the applicant cannot claim relief by simply relying upon the order of the Supreme Court passed in the case of **Arvind Kejriwal Vs. Directorate of Enforcement** (*supra*).

17. Entertaining the contention pertaining to *mala fide*, at this stage itself, would not be appropriate and therefore, the main thrust of the contentions raised on behalf of the applicant is found to be without any substance.

18. As regards the contention that the applicant is a serious political candidate, suffice it to say that, contesting election is not a fundamental right and it is governed by statute. Reliance placed on behalf of the ED in this regard on the order of the Supreme Court in the case of **Vishwanath Pratap Singh Vs. Election Commission of India and another** (*supra*) is appropriate.

19. The present interim application was circulated on the ground of extreme urgency as the last date of filing nomination forms in the ensuing Assembly Election of Maharashtra is 29.10.2024. But in the light of the observations made hereinabove, this Court finds that there is no merit in the present application and it deserves to be dismissed. Accordingly, Interim Application No.4233 of 2024 is dismissed.

20. Bail Application No.4054 of 2024 shall now be listed for consideration on 18.11.2024, High on Board.

(MANISH PITALE, J.)

Minal Parab