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

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Reserved on: 04.03.2024
Pronounced on: 19.03.2024

+ **CRL.M.C. 1727/2024 & CRL.M.A. 6619/2024**

DIRECTORATE OF ENFORCEMENTPetitioner

Through: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani, Mr. Pranjal Tripathi, Ms. Kanishk Mawya and Mr. Lokesh Hossain, Advocates

versus

AMIT KATYAL Respondent

Through: Mr. Kapil Sibbal and Mr. Vikas Pahwa, Sr. Advocates with Ms. Bina Gupta, Mr. Gurpreet Singh, Mr. Jatin Sethi, Ms. Namishal Jain, Ms. Nancy, Ms. Sheen Tauqi, Ms. Anamika, Mr. Shiv Gupta and Mr. Bakul Jain, Advocates

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present petition filed under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C. '), the



petitioner i.e. Directorate of Enforcement seeks setting aside of impugned order dated 05.02.2024 passed by learned Special Judge (PC Act) (CBI-24), Rouse Avenue Court, New Delhi in ECIR/31/DLZO-I/2022 *vide* which the respondent was granted interim bail for a period of four weeks.

2. Facts of the case, which are relevant for deciding the present petition for cancellation of bail, are that the respondent/accused was arrested in the present ECIR on 11.11.2023 and was sent to judicial custody by the learned Trial Court *vide* order dated 22.11.2023. On 16.12.2023, the respondent had filed a regular bail application before the learned Trial Court, which is yet to be adjudicated upon. As per records, the first medical report of the respondent was received from the Medical Officer, In-charge, Central Jail, Tihar, on 05.01.2024 and the second medical report was received on 29.01.2024. In the meantime, the prosecution complaint was filed on 08.01.2024 and cognizance of the same was taken *vide* order dated 27.01.2024. The accused/respondent had thereafter preferred an application seeking grant of interim bail on medical grounds on 31.01.2024 and after hearing arguments from both the sides, the learned Trial Court had granted interim bail to the accused/respondent for a period of four weeks *vide* order dated 05.02.2024. The present petition, thus, has been preferred on behalf of Directorate of Enforcement, seeking setting aside of the impugned order granting interim bail to the respondent on medical grounds.



3. Learned Special Counsel appearing on behalf of Directorate of Enforcement argues that the learned Trial Court has committed an error by granting interim bail for a period of four weeks to the respondent without considering the law on point, which mandates that interim bail, in cases where rigours of Section 45 of PMLA would apply, should be granted only when there are compelling reasons which would justify and require the grant of interim bail. It is argued that the learned Trial Court has erred in granting interim bail to the respondent without considering the decision rendered by this Court in case of *Sameer Mahandru v. Directorate of Enforcement* 2023 SCC Online Del 6680 wherein it was held that the prospect of seeking bail on medical grounds would arise when the prison authorities are incapable of providing the required care treatment essential for the accused including the referral hospitals, and the sickness should be of such a nature that if the accused is not released on bail, he cannot be ensured proper treatment for his ailments. It is also argued that there is no right of treatment in a private hospital in cases where treatment to an accused can be very well provided in custody. It is further submitted that if medical treatment can be provided by prison authorities or in the jail referral hospitals, bail or interim bail on medical grounds should not be granted by the Courts. It is further submitted that for the proviso of Section 45 of PMLA to be applicable, the 'sickness' or 'infirmity' should mean sickness of a serious and life threatening nature, which is not present in the instant case. It is further pointed out that the learned Trial Court has failed to



consider the arguments of the petitioner regarding formation of a medical board at AIIMS, New Delhi for obtaining an independent opinion regarding the medical condition of the accused. Learned Special Counsel further submits that after the respondent was enlarged on interim bail, the petitioner had sought an independent opinion regarding medical condition of the respondent from Ram Manohar Lohia (RML) Hospital, New Delhi, wherein the concerned doctor has opined as follows: “After going through all the available records the opinion for his cardiology problems is as under: a) The patient is suffering from chronic stable angina and with proper medical treatment and adequately controlled risk factors the condition should not be life threatening; b) Treatment is possible in all govt, hospitals having interventional cardiology facility like RML Hospital, GB Pant hospital”.

4. Controverting the submissions made on behalf of petitioner, learned Senior Counsels appearing on behalf of the respondent argue that the respondent was granted interim bail vide detailed order dated 05.02.2024, and he was released from jail on 06.02.2024 for a period of four weeks, which expire on 04.03.2024. Therefore, at the outset, it is submitted that there is no urgency nor there is any information or cause for challenging this and order and, thus, the present petition has already become infructuous. It is also argued that considering the observations of Hon’ble Apex Court in case of *Satyendra Kumar Jain v. Directorate of Enforcement SLP (Crl.) 6561/2023*, there is no reason to disbelieve the report of GB Pant Hospital. It is



vehemently argued on behalf of respondent that the petitioner, solely with the aim of securing cancellation of bail of the respondent, has gone to the extent of obtaining an opinion of RML Hospital, which is not even a jail referral hospital as per their own rules and guidelines. It is further stated that the conduct of the agency seems more suspicious since it has filed the opinion obtained from RML Hospital on record, but has deliberately not placed on record the communication via which the alleged opinion was sought from the RML Hospital and, thus, the respondent is unaware as to what was the query before the doctors of RML Hospital and what documents were examined by them before forming the opinion, which has been placed on record by the petitioner. It is also argued that it appears that only the first medical report dated 05.01.2024 of the applicant was placed before the doctors at RML Hospital and the subsequent report of 29.01.2024 was not placed before them. It is further contended that respondent's early diagnosis at GB Pant Hospital shows that he is a follow-up case and is suffering from morbid obesity, low backache with Radiculopathy, and Coronary Artery Disease with advised Angiography, Bariatric surgery, MRI LS Spine, MRI along with cardiology, endocrinology, neuro-surgery opinion. It is further stated that petitioner weights above 125 kgs and has a severe BMI of 41.6 and, thus, requires Bariatric surgery. It is therefore prayed that the present petition be dismissed.

5. In rebuttal, learned Special Counsel for the Directorate of Enforcement argues that they have placed an additional affidavit on



record whereby it has been mentioned that the Directorate of Enforcement had sent a letter dated 01.03.2024 to the Medical Director, RML Hospital, for seeking a clarification as to whether both the reports dated 05.01.2024 and 29.01.2024, pertaining to the applicant were sent by the Department to the Hospital and whether the opinion given by the doctors at RML Hospital was based on both these reports. It is submitted that in response to the said letter, RML Hospital has sent a letter dated 02.03.2024 clarifying that both the reports of the jail were received in the Hospital along with the letter of Enforcement Directorate and the opinion was, thus, formed on the basis of both the reports. Learned Special Counsel, in conclusion, submits that considering the divergent reports of GB Pant Hospital and RML Hospital, this Court should direct an independent medical investigation by ordering that the accused/respondent be medically examined at AIIMS, and the report which will be submitted by the AIIMS may be considered by the Courts for the purpose of adjudicating either extension of interim bail or fresh interim bail applications of the respondent.

6. On the aforesaid argument, learned Senior Counsels for the respondent submit that there is no occasion to order formation of any board at AIIMS since the Medical reports submitted by the jail authorities, on the basis of evaluation of the respondent conducted at GB Pant Hospital, are sufficient to point out the serious medical condition of the accused/respondent. Therefore, it is prayed that the present petition be dismissed.



7. This Court has heard arguments addressed by learned Special counsel for the Directorate of Enforcement as well as learned Senior Counsels for the respondent, and has gone through the material placed on record.

8. The Directorate of Enforcement, by way of present petition, has assailed the impugned order dated 05.02.2024 on the ground that the same was passed contrary to the settled law on grant of interim bail on medical grounds in cases under PMLA, and the medical condition of the applicant was not of such nature that he was required to be enlarged on interim bail.

9. In this regard, this Court notes that the learned Trial Court had enlarged the accused/ respondent on interim bail for a period of four weeks, after observing that the respondent comes forth as requiring an urgent cardiac procedure and bariatric surgery and the morbid obesity suffered by him and the nature of risk associated with heart ailment presents a prospect of a life threatening outcome visiting him, if not addressed with urgency. The opinion so formed by the learned Trial Court was on the basis of medical reports dated 05.01.2024 and 29.01.2024 forwarded by the Medical Officer In-charge, Dispensary, CJ-07, Tihar, in which the details of the medical treatment afforded to the respondent during the period of his judicial custody were mentioned.

10. However, before this Court, the petitioner i.e. Directorate of Enforcement has placed on record a medical opinion obtained from RML Hospital, New Delhi, in which it has been opined as under:



Opinion sought for Tihar Jail patient Mr. Amit Katyal.

After going through all the available records the opinion for his cardiology problems is as under:

- a) The patient is suffering from chronic stable angina and with proper medical treatment and adequately controlled risk factors the condition should not be life threatening.
- b) Treatment is possible in all govt. hospitals having interventional cardiology facility like RML Hospital, G B Pant Hospital.

11. Thus, it is now the case of Directorate of Enforcement that as opined by the doctor of RML Hospital, the respondent can be treated in all government hospitals and his condition can be managed with proper treatment and medication.

12. Though it was argued by learned Senior Counsels for the respondent that the Directorate of Enforcement may not have placed both the medical reports, dated 05.01.2024 and 29.01.2024, of the respondent before the doctors of RML Hospital, the Directorate of Enforcement has filed an additional affidavit alongwith a letter received from RML Hospital confirming that both the medical reports of the respondent were forwarded to them for the purpose of obtaining an opinion on his medical status and that the opinion given by RML Hospital be considered to have been formed on the basis of contents of both these reports as they are similar in nature.

13. However, while deciding the present petition, it is also crucial to note that when the impugned order was passed by the learned Trial Court, there was no report or medical opinion other than the reports



dated 05.01.2024 and 29.01.2024 forwarded by the Medical Officer Incharge, Central Jail, Tihar, in which the opinion given by GB Pant Hospital was mentioned. The request made on behalf of Directorate of Enforcement for formation of a medical board at AIIMS was also turned down by the learned Trial Court after taking note of the decision of Hon'ble Apex Court in case of **Satyendra Kumar Jain v. Directorate of Enforcement SLP (Crl.) 6561/2023** and since there was nothing on record to doubt the opinion given by GB Pant Hospital.

14. However, since the opinion from RML Hospital was obtained after the learned Trial Court had granted interim bail to the respondent, the Trial Court did not have the benefit of pursuing and appreciating the same and deciding as to whether there was any requirement of referring the respondent for medical examination by the medical board of AIIMS, New Delhi.

15. Also important to note is the fact that the respondent was released from judicial custody on 06.02.2024 and his interim bail was to expire on 04.03.2024, and the present petition had been filed only on 27.02.2024 i.e. when the interim bail of the respondent was about to come to an end. Learned Senior Counsels for the respondent had also drawn the attention of this Court towards the order dated 03.07.2023 passed by the Hon'ble Apex Court in **Directorate of Enforcement v. Sameer Mahandru SLP (Crl.) No. 7438/2023** wherein the Hon'ble Apex Court had refused to interfere with the judgment granting interim bail to an accused under PMLA on the



ground that the interim bail was about to expire within a short period of time.

16. This Court, having going through the reasons recorded in the impugned order as well as the medical documents pertaining to the respondent placed on record, is also of the view that the respondent was primarily granted interim bail for a period of four weeks as he was a follow-up case of coronary artery disease, morbid obesity and had been advised coronary angiography, bariatric surgery as well as some other medical procedures.

17. In these peculiar facts and circumstances, this Court does not find it fit to cancel the interim bail of four weeks granted to the respondent vide impugned order dated 05.02.2024. However, this Court was informed during the course of arguments that an application seeking extension of interim bail, filed on behalf of the respondent, is pending before the learned Trial Court. If such be the case, the Directorate of Enforcement shall be at liberty to raise before the learned Trial Court, the issue regarding subsequent medical opinion obtained from RML Hospital qua the medical condition of the applicant, in case any application for extension of interim bail or grant of interim bail on same grounds is pending or is filed by the respondent, and the same shall be considered and decided by the learned Trial Court in accordance with law.

18. With these observations, the present petition stands disposed of, along with pending application if any.



19. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 19, 2024/ZP