



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

% **Reserved on: 7th June, 2023**
Pronounced on: 12th June, 2023

+ CRL. M.A. 10859/2023 in BAIL APPLN. 1343/2023

SAMEER MAHANDRU Petitioner
Through: Mr.Vikas Pahwa, Senior Advocate
with Mr.Dhruv Gupta, Mr.Manik
Dhingra and Mr.Prabhav Palli,
Advocates

versus

DIRECTORATE OF ENFORCEMENT Respondent
Through: Mr.Zoheb Hossain with Mr.Ankit
Bhatia, Mr.Vivek Gurnani,
Mr.Kartik Sabharwal, Advocates
with Ms.Bhanu Priya, Jogender
(IOs)

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

CRL. M.A. 10859/2023

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") read with Sections 45 and 65 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA") has been filed by the applicant/petitioner seeking interim bail for the petitioner in relation to ECIR/HIU-II/14/2022 registered under Sections 3 and 4 of the PMLA, at PS CBI.



FACTUAL MATRIX

2. The petitioner formed a Partnership Firm “Indo Spirits” with one Arun Ramachandran Pillai and one Prem Rahul Manduri for the wholesale L-1 license under the Delhi Excise Policy, 2021-22. As per the license, the company of the petitioner i.e., Indospirit Distribution Limited (wherein the petitioner had 38.27% shareholding) got 35% in the said firm, Arun Ramachandran Pillai got 32.5% and Prem Rahul Manduri got 32.5%. On 29th October 2021, the ‘Indo Spirits’ applied for the Wholesale L-1 License, and was granted the same on 8th November 2021, by Delhi Excise Department. The firm then commenced its business operations from 17th November 2021 in terms of Excise Policy 2021-22. During this period, several manufacturers appointed the Firm, Indo Spirits, as their Wholesale Distributor in Delhi under the new Excise Policy. The New Excise Policy, 2021-22 came to be challenged on various grounds.

3. Subsequently, on 17th August 2022, CBI registered FIR No. RC0032022A0053 under Sections 120B and 477A of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “PCA”) on the complaint of the Lt. Governor, Government of National Capital Territory of Delhi (GNCTD) against the petitioner and other accused persons regarding irregularities committed in the framing and implementation of the excise policy of the GNCTD for the year 2021-22.

4. The CBI conducted searches on several premises in Delhi and across the Country, including the residential and business premises of the



petitioner, which also led to seizures of the assets of the petitioner. Consequently, the Directorate of Enforcement (hereinafter referred to as “ED”) registered an ECIR bearing No. ECIR/HIU-II/14/2022.

5. The role ascribed to the petitioner in the Prosecution Complaint is that there are advance kickbacks of around Rs. 100 crores that were paid to the public servants in this conspiracy between the political persons, and Government officers/officials causing a total loss of Rs. 2873 cores to the exchequer of GNCTD and the petitioner along with other accused have key roles in the commission of the offence of money laundering as they were involved directly or indirectly, in the process or activities relating to the above proceeds of crime or its concealment, possession, acquisition, use, and projections or claiming it to be untainted property.

6. The petitioner was arrested in the present case on 28th September 2022. The Ld. Trial Court took cognizance of the predicate offences vide its Order dated 15th December 2022 and of the offences alleged under the ECIR vide order dated 20th December 2022.

7. During the pendency of the Trial of matter arising out of the ECIR, the petitioner sought and was granted interim bail on 28th February 2023 on medical grounds for undertaking surgery for removal of gall bladder stones and for the treatment of his back pain and other ailments. Since the petitioner was advised to undergo another surgery for his lower back, he sought an extension of interim medical bail and the same was granted by the Ld. Trial Court vide order dated 18th April 2023 till 1st May 2023. The petitioner is on interim bail since 28th February 2023 yet in constructive judicial custody and by way of the instant application, he is seeking



extension of his interim bail on account of his deteriorating medical condition.

SUBMISSIONS

On behalf of the petitioner

8. Mr. Vikas Pahwa, learned senior counsel appearing on behalf of the petitioner drew the attention of this Court to the ailments suffered by the petitioner by submitting a comprehensive medical note which is as follows:

- a. Petitioner has been hospitalized 5 times and has had 4 surgeries/ medical procedures in the last 60 days. He has been hospitalized 5 times in the last 8 months due to health issues including a 15-day hospitalization in Tihar jail.
- b. The petitioner is suffering from Prolapsed Inter Vertebral Disc (PIVD) of the lower back since 2020, including the under:
 - i. Multiple level disc prolapse- L3/L4, L4/L5, L5/LSI
 - ii. Severe pain in the lower back
 - iii. Bilateral Lower Limb Radiculopathy- pain radiating down both legs
 - iv. Significant nerve root impingement and a partial recovery are expected post-surgery.
 - v. Listhesis at L4-L5 level i.e., vertebra has slipped forward causing pain.
- c. He is also suffering from cervical spondylitis



- i. Prolapsed intervertebral disc at C5-C6 level
 - ii. Bilateral weakness in arms
- d. There are recurrent urinary tract infections
- e. Occasional urinary incontinence
- f. Cholecystectomy on 9th March 2023 i.e., gallbladder removal surgery due to stone formation.
- g. The petitioner has Grade 1 fatty liver
- h. Cardian arrhythmia, sinus bradycardia, ECG changes- T-wave inversion
- i. Discectomy with spinal instrumentation and stabilization surgery took place on 8th May 2023 and in the surgery, 4 titanium pedicle screws held together by 2 titanium rods have been inserted in his spinal vertebrae for which he has been advised:
- i. Bed rest for 2 months.
 - ii. Postoperative rehabilitation protocol includes physiotherapy under an expert in-house physiotherapy team and muscle rehabilitation program.
 - iii. Limited ambulation
 - iv. Avoid forward bending, prolonged sitting, twisting, and lifting of any weight.
 - v. The petitioner may require an extended period of physiotherapy and assisted care to prevent the weakened muscles around the spine, prevent increased risk of re-injury, spinal stability, and formation of scar



tissue reducing a range of motion and return of symptoms.

- j. The non-following of advice can lead to complications like loosening of the implant, infection, poor wound healing, epidural hematoma (collection of blood compressing the spinal cord and nerve roots and can result in irreversible neurological damage, loss of bowel control, paralysis, etc.)

9. It is further submitted that the petitioner is under constant consultation and treatment of specialists and is suffering from debilitating pain and serious medical conditions, most of which, if not attended to and treated properly under regular monitoring, will cause irreversible damage. Further, the petitioner must have continuity in treatment and he needs to be in constant supervision and care of his family members and requires an attendant in case he is sent back to custody, it would not be possible for him to continue with the treatment and providing with the level of care, and supervision he requires. Further, as mandated in the health advisory, the petitioner shall avoid forward bending, lifting weights, and sitting which would not be possible to prevent if he is sent back to custody.

10. The learned senior counsel further submitted that the petitioner has a precarious health condition, is sick and infirm and dependent on specialized medical treatment for his well-being.

11. The learned senior counsel for the petitioner for strengthening his arguments has relied upon the following judgments:



- a. A Coordinate Bench of this Court in ***Kewal Krishna Kumar v. Enforcement Directorate, 2023 SCC OnLine Del 1547*** while granting bail after perusing the medical records and the need for an attendant has observed as under:

“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.”

- b. The Punjab and Haryana High Court in ***Pranjil Batra v. Directorate of Enforcement, CRM-M-23705-2022 (O&M)*** vide order dated 4th November 2022, granted bail to the accused having multiple ailments and requirement of monitoring, care, and attention which ordinarily is not available in the jail. The court held that:

“21. Obesity, as in the case of the petitioner, who weighs 153 kilograms is not just a symptom but is itself a disease which becomes root-cause of several other diseases. With such co-morbidities, the response, the resistance, the resilience and the capacity of the body to fight ailments and recuperate efficaciously, decreases substantially. The jail doctor or for that matter, a civil hospital may not be fully equipped to handle a patient having multiple ailments who apart from medical treatment may require a certain level of monitoring, care and attention which ordinarily is not available in jail. Considering the co-morbidities of the petitioner, it can safely be said that he falls in the exception of being "sick" as carved out in Section 45 of the Act, so as to be entitled to be released on bail. The petitioner, otherwise



has been behind bars since the last about 8 months. Supplementary complaint already stands presented against him. There is no occasion for his custodial KAMAL KUMAR 2022.11.07 13:25 I attest to the accuracy and authenticity of this document 13 CRM-M-23705-2022 (O&M) interrogation now at this stage. The co-accused Radhe Shyam and Bansi Lal were released on bail immediately upon their appearance in Court pursuant to issuance of summons for their appearance.

22. In view of the discussion made above, particularly the precarious medical condition of the petitioner, the petition merits acceptance and is hereby accepted. The petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”

- c. A Coordinate Bench of this Court in ***Devki Nandan Garg v. Directorate of Enforcement, 2022 SCC OnLine Del 3086*** considered the serious health condition of the petitioner along with serious co-morbidities and granted bail to the petitioner therein holding that:

“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.”

12. The learned senior counsel for the petitioner submitted that the petitioner has been granted interim bail on medical grounds by the Trial Court vide orders dated 28th February 2023, and 18th April 2023 after being satisfied of the twin conditions of Section 45(1) PMLA and upon consideration of the petitioner’s medical condition, putting him under the category of “sick or infirm” as per the provision.

13. It is further submitted that the petitioner has never misused the liberty granted to him by the Trial Court and has complied with all the conditions imposed by the Ld. Trial Court while releasing him on interim bail.

14. Further, it is submitted that the petitioner has clean antecedents and would not flee from justice, and is willing to abide by all the orders and directions passed by this Court.

15. Learned senior counsel for the petitioner finally submitted that petitioner/ applicant is suffering from life-threatening diseases and therefore, he requires immediate and best medical treatment.

16. It is further submitted that a medical board was constituted at AIIMS for medical examination of the petitioner vide order of the Coordinate Bench of this Court dated 29th May 2023. The medical report dated 3rd June 2023 stated that, “*Mr. Sameer Mahendru’s condition is stable and he has made considerable progress from his last assessment at AIIMS.*” It is submitted that although the condition of the petitioner has



been termed as 'stable' by the medical board, still it does not mean that the diseases suffered by the petitioner are not life-threatening in nature.

17. It is further submitted that the co-accused in the case, P. Sarathi Chandra Reddy, has been granted regular bail by Coordinate Bench of this Court vide judgment titled ***P. Sarath Chandra Reddy v. Directorate of Enforcement, Bail Application 1266/2023*** dated 8th May 2023 on medical grounds. The Coordinate Bench of this Court, while granting bail to P. Sarathi Chandra Reddy held as under:

“14. It is pertinent to mention that the respondent department has also not brought on record any material on record to show that the petitioner is a flight risk. It is also a settled proposition that right to life is facet of Fundamental Right enshrined by the Constitution. Right to live with dignity includes right to live a healthy life. The person who is sick or infirm has a right to have adequate and effective treatment. Though jails and designated hospitals provide good basic treatment, but we cannot expect them to provide specialised treatment and monitoring as required in the present case. Last medical report of the petitioner dated 03.05.2023 shows that petitioner is in bad state and can be put into the category of sick/infirm.

15. In view of the medical record being furnished by the petitioner and the submissions made by learned ASG, the petitioner is admitted to bail on furnishing a personal bond in the sum of Rs.1,00,000/- (Rupees One lakh) with two sureties of the like amount to the satisfaction of the trial court, subject to the following conditions”



18. It is submitted that the said judgment of grant of regular bail to P. Sarathi Chandra Reddy has attained finality and has not been challenged by the respondent.

19. It has been further submitted by the learned senior counsel that the health condition of the petitioner is far more severe and worse off than the co-accused (P. Sarath Chandra Reddy) and his case is clearly severe than that of the co-accused.

20. Hence, in view of the foregoing discussion it is submitted that the petitioner is entitled to interim bail on medical grounds.

On behalf of the respondent

21. *Per Contra*, Mr. Zoheb Hossain, learned counsel for the Enforcement Directorate has submitted that as per the proviso to Section 45(1) PMLA, it is the discretion of the court to grant bail to persons falling under the categories as mentioned therein. The discretion is to be exercised based on the facts and circumstances of each and every case. The learned counsel submitted that the sickness contemplated by the proviso to Section 45 of the PMLA can only be a sickness that involves a risk or danger to the life of the accused person and it is submitted that the facts of the present case do not warrant this discretionary relief.

22. The counsel relies on the medical report dated 3rd June 2023, submitted by the medical board constituted at AIIMS in pursuance of the direction given by this Court vide order dated 29th May 2023, the relevant portion of which is reproduced as under:



“At the point of current assessment, Mr. Sameer Mahandru’s condition is stable. He has made considerable progress from his last assessment at AIIMS (done on 26th May 2023) and his pain has decreased significantly. He has chronic backache for many years, for which he is already under treatment.”

23. It is submitted that as per the report, the condition of the petitioner was found to be stable and that his pain had decreased significantly. It is further submitted that if the disease of the person is life-threatening but his condition is found to be stable, he should not be entitled to be enlarged on medical bail.

24. The learned counsel for strengthening his arguments has placed reliance on the following judgments:

- i. ***Asha Ram v. State of Rajasthan, SLP (Crl) 6202/2016*** whereby the Hon’ble Supreme Court refused to grant bail to the petitioner on the basis of stability of medical condition and observed as under:

"9. The issue that boils down in respect of the medical condition of the petitioner is that he has difficulty in urination, emerging out of a condition described as prostatomegaly. We are of the view, that the present condition, is not such a serious condition, as would entail the transfer of the petitioner from one jail to another, or to require him to be subjected to any kind of specialized treatment, at some different station. The medical condition of the petitioner has been described as stable, and as such, there is no question of extending him the



concession of bail on medical grounds."

- ii. A Coordinate Bench of this Court in ***Surjeet vs. State (Govt. of NCT of Delhi), 2021 SCC OnLine Del 228***, observed that when the condition of an accused is stable and can be properly managed by the medication then interim bail on medical grounds need not be granted. The court observed as under:

"5. It is not in dispute that petitioner is on interim bail since 12.06.2020 on medical grounds and another extension of interim bail is sought on medical grounds only. As per status report dated 28.01.2021, necessary verification was done from the Head of the Department of Deen Dayal Hospital, New Delhi. Discharge summary sheet dated 25.01.2021 placed on record notes that petitioner was admitted on 13.01.2021 for anti-coagulation therapy and optimization and after treatment was discharged on 25.01.2021 in stable condition. In the aforesaid discharge summary sheet, Dr. P.S. Sarang, Specialist and HOD (Surgery) has specifically stated that this treatment is also available in Tihar Jail. In view of aforesaid, I am of the view that petitioner can continue his treatment within jail premises, if so required and extension of his interim bail on medical grounds is unwarranted."

.....

8. From the aforesaid record, it transpires that the petitioner underwent by-pass surgery around the year 2007. Thereafter, for a continuous period of 4 years, there is no medical record, which prima facie indicates that during the period from 2007 to 2011, the



petitioner did not suffer any medical complication. Coming to the medical record of the petitioner for the year 2011, it would be seen that the record submitted by the petitioner starts from 25th April, 2011. It is pertinent to note that supplementary charge sheet showing the petitioner as one of the accused was also filed in the court on 25th April, 2011. From the medical record of year 2011 submitted by the petitioner, it cannot be said that petitioner is suffering from such a medical condition which cannot be managed by proper treatment regime in jail hospital.

.....

13. On careful consideration of the previous medical reports of the petitioner and the medical reports received from the Board of Doctors of G.B. Pant Hospital, it is apparent that since his detention in jail, the condition of the petitioner is stable and it is being properly managed by medication. Thus, I do not find it a fit case for grant of interim bail on medical grounds, particularly when the release of the petitioner for a period of 4-6 weeks would not change his medical history or situation.”

- iii. The Bombay High Court in ***Rajkishor Sunnidhi Dash vs. State of Maharashtra, 2020 SCC OnLine Bom 11261*** similarly rejected the interim bail on the grounds of the stable health of the petitioner holding as under:

“6. Thus, report indicate that the applicant is under close observation of prison Medical Officers in consultation with J.J. Hospital Doctors. He was regularly referred to J.J.



Hospital for follow up and his overall health is moderately stable at present. Hence, no ground is made to grant relief in this application.”

25. The learned counsel for the respondent submitted that the petitioner has not been cooperative during the investigation and has been evasive in his statements on the grounds of which he was arrested on 28th September 2022. Further, he tried to hide the relevant information from ED which is incriminating in nature. The petitioner has tried to derail the investigation by first giving a statement under Section 50 of PMLA and then filing an application before Special PMLA Court stating that the facts were untrue, substituted and without specific references. Moreover, the petitioner has used/destroyed his mobile phones 4 times in the last 5 months of the Delhi Liquor Scam indicating the destruction of evidence.

26. It has been further submitted that the application by the petitioner for an extension of interim bail on medical grounds was dismissed by the Coordinate Bench of this Court on 27th April 2023.

27. Learned counsel for the respondent contended that Section 45 of the PMLA is a mandatory provision and cannot be dispensed with in the present case. He drew the attention of this Court towards the landmark judgment of *Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929* wherein the Hon'ble Supreme Court upheld the provisions of PMLA stating that the object of the Act is to punish the offender proportionately and to create a deterrent effect. The Court held as under:

“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.

130. 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 Shah, 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.”

28. Learned counsel for the respondent finally submitted that the petitioner is involved in a heinous crime and has not satisfied the twin conditions enumerated in Section 45(1) of the PMLA and therefore, in the instant application interim bail may not be granted to him.



29. The learned senior counsel appearing on the behalf of the petitioner in his rejoinder vehemently opposed the arguments of the respondent submitting that the respondent/ ED has not been taking a consistent stand in opposing the bail applications of the other accused persons who have been involved in similar offences under Sections 3 and 4 of the PMLA in the same case. In the case of the co-accused, P. Sarathi Chandra Reddy, he has been granted regular bail by Coordinate Bench of this Court which remains unchallenged by the ED and hence, has also attained finality, However, in the instant case, the ED has placed his strong objections despite the medical condition being severe.

ANALYSIS AND FINDINGS

30. Heard the learned counsel for parties and perused the record.
31. The point before adjudication of this court is whether the petitioner is entitled to interim bail as being “sick or infirm” in terms of the proviso to Section 45(1) of the PMLA.
32. For proper adjudication of the matter, it is appropriate to reproduce Section 45(1) of PMLA which reads as under:

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

(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), no person accused of an offence under this Act 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, 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:..."

33. To appreciate the legislative intent of the Section 45(1) of the PMLA a reference can be made to ***Devaki Nandan v. Directorate of Enforcement, (Supra)*** whereby relaxations were given for a certain class of people in the rigors of PMLA provisions and it was observed that the stringent twin conditions of bail need not be satisfied if the person seeking bail falls in those relaxations or exceptions. The Coordinate Bench of this Court held that:

"33. A bare perusal of the Statement of Objects and Reasons of the PMLA goes to show that inclusion of the above conditions for grant of bail as a proviso to Section 45(1) of the 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.

*34. The above position was noted by the Supreme Court in **Gautam Kundu v. Directorate of Enforcement** [**Gautam Kundu v. Directorate of Enforcement (2015) 16 SCC 1: (2016) 3 SCC (Cri) 603**], particularly para 34 which reads as under: (SCC p. 16, para 34)*

"34. We note that admittedly the complaint is filed against the appellant on the allegations of committing the offence punishable under Section 4 of the PMLA. The contention raised on behalf of the appellant that no offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence



under the PMLA, needs to be considered from the materials collected during the investigation by the respondents. There is no order as yet passed by a competent court of law, holding that no offence is made out against the appellant under Section 24 of the SEBI Act and it would be noteworthy that a criminal revision praying for quashing the proceedings initiated against the appellant under Section 24 of the SEBI Act is still pending for hearing before the High Court. We have noted that Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45-A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure.”

*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].”*



34. Proviso to Section 45(1) is analogous to Section 437 of the Cr.P.C. and the intent of Section 437 of the Cr.P.C. as a welfare legislation can be imputed to Section 45(1) of the PMLA. The Hon'ble Supreme Court in ***Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51*** stated the relevance and purpose of the proviso containing bail provision and relaxation for certain classes. The Hon'ble Court held that:

“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.”

35. This Court in ***Kewal Krishna Kumar v. Enforcement Directorate,***



Neutral Citation No-2023:DHC:1925 interpreted the term “sickness” or “infirmity” for the grant of interim bail on medical grounds. The Coordinate Bench of this Court observed that:

“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.”

36. The Bombay High Court in ***Mahendra Manilal Shah v. Rashmikant Mansukhlal Shah, 2009 SCC OnLine Bom 2095*** held that the nature of the sickness needs to be seen as to whether the accused can be treated in the government hospitals and custody. The relevant portion of the judgment is reproduced hereunder:

“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....”

37. A cumulative consideration of the legislative intent of the PMLA, and the precedents indicates that the proviso to Section 45(1) is a relaxation to the sick or infirm persons provided that the sickness or infirmity is so grave that it is life-threatening and cannot be treated by jail hospitals.

38. *Vijay Agrawal Through Parokar v. Directorate of Enforcement, (Supra)* requires attention in this scenario as the Coordinate Bench of this Court, in this case, linked the bail to “sick or infirm” with the fundamental right to live with dignity under Article 21 of the Constitution of India and held that the discretionary power of the court in granting bail in the offences of PMLA should not only be exercised at the last breathing stage but also when adequate treatment is warranted for the accused person with ailments. The Court held that:

“14. Howsoever serious the offence may be, the health condition of a human being is paramount. The custody during the period of investigation cannot be termed to be punitive in nature. The health concern of a person in custody



has to be taken care of by the State and keenly watched by the judiciary. Every person has a right to get himself adequately and effectively medically treated.

15. Article 21 of the Constitution not only gives a fundamental right to live but the right to live with dignity. Right to live a healthy life is also one of the facets of fundamental rights granted by the Constitution of this Country. The consistent view has been taken that if sufficient treatment is available in the jail then preferably the same should be provided to the prisoners. This Court firmly believes that a person in custody suffering from serious ailment should be given an opportunity to have the adequate and effective medical treatment. The discretion for granting the interim bail on medical ground may not be exercised only at a stage when the person is breathing last or is on the position that he may not survive.

16. The kind of ailments which have been informed that the petitioner suffering from are really very painful and needs immediate redressal. Therefore this Court, without going into the merits of the case and only on a limited point that let the petitioner get his suitable neurology examination conducted, is inclined to grant the interim bail on medical grounds.”

39. In the present case, the medical report dated 3rd June 2023 stated as under:

“At the point of current assessment, Mr. Sameer Mahandru’s condition is stable. He has made considerable progress from his last assessment at AIIMS (done on 26th May 2023) and his pain has decreased significantly. He has chronic backache for many years, for which he is already under treatment.”

40. In order to analyze the findings of the medical report, it is important to refer back to ***Kewal Krishna Kumar (Supra)*** where the



Coordinate Bench of this Court has held that:

“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).”

41. Though the medical report indicates that the condition of the petitioner is stable at the date of assessment and he is making progress, he is still eligible to be categorized under the term “sick” enumerated under proviso to Section 45(1) of PMLA due to the life-threatening nature of the diseases with likelihood of causing irreversible injury to the petitioner.

42. It is pertinent to note that the petitioner also falls under the term “infirm” as according to the interpretation of the Coordinate Bench of this Court in *Kewal Krishna Kumar (supra)* observing that infirmity takes place if the person is incapacitated in performing ordinary routine activities on a day-to-day basis. The medical note submitted on behalf of the petitioner, to this effect, explicitly states that:



“Discectomy with spinal instrumentation and stabilization surgery took place on 8th May 2023 and in the surgery 4 titanium pedicle screws held together by 2 titanium rods have been inserted in his spinal vertebrae for which he has been advised:

- 1. Bed rest for 2 months.*
- 2. Post operative rehabilitation protocol including physiotherapy under expert in house physiotherapy team and muscle rehabilitation program.*
- 3. Limited ambulation*
- 4. Avoid forward bending, prolonged sitting, twisting, lifting of any weight.*
- 5. Petitioner may require extended period of physiotherapy and assisted care to prevent the weakened muscles around spine, prevent increased risk of re-injury, spinal stability and formation of scar tissue reducing range of motion and return of symptoms.”*

43. Hence, the fact that the petitioner is unable to sit, bend forward, and not even able to lift any weight suggests the infirmity on the part of the petitioner to carry out day-to-day routine activities and non-following the advice and the specialized treatment may lead to neurological damage to the petitioner.

44. The conduct of the petitioner also warrants attention in the present scenario as the Coordinate Bench of this Court in ***Kewal Krishna Kumar (supra)*** held that:

“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.*”

45. The petitioner has been granted interim bail on medical grounds by the Ld. Trial Court on two occasions, 28th February 2023, and 18th April 2023 and there is nothing on record or in the submissions of learned counsel for the parties to show that the liberty granted to the petitioner has been misused by him or the opportunity has been exploited by him nor there are any allegations of influence exerted on any witness or tampering of evidence by the petitioner during his previous interim bails on medical grounds. Further, there is nothing brought on the record to show that the petitioner is a flight risk as well.

46. It is pertinent to note that the co-accused in the present case, Mr. P. Sarathi Chandra Reddy has been granted regular bail on 8th May 2023 in ***P. Sarathi Chandra Reddy v. Directorate of Enforcement, Bail Application 1266/2023*** in view of his medical condition. The learned senior counsel for the petitioner has submitted that the respondent has been taking inconsistent stand in the bail applications of the co-accused in the same case. However, this Court shall not deal with such allegations while adjudicating the instant application and shall limit itself to the submissions made, documents placed and the judicial precedents relied upon and then proceed to decide the case on merits.

47. This Court is cognizant that as per the precedents of ***Neeru Yadav v. State of U.P., (2014) 16 SCC 508*** and ***Sunder Lal v. State, 1983 CrI. J 736***, that parity between the accused persons cannot become the sole criteria to grant bail and if the bail is granted to similarly placed co-



accused persons without assigning any reasons then based on such bail orders merely on the ground of parity, the bail application should not be allowed. Parity can only be persuasive and cannot be binding but the medical condition of the petitioner, coupled with the unblemished conduct and the grant of regular bail to the co-accused are reasons that are sufficient enough for this Court to grant interim bail to the petitioner for receiving specialized treatment.

48. A status report has also been filed by ED verifying the medical documents filed along with the petition to be genuine and correct. The same was brought on record before the court on 24th April 2023 and again considered on 5th May 2023.

49. The main ground for the opposition for grant of interim bail was the report of the medical board holding the condition of the petitioner to be 'stable' but this Court is of the view that mere stability in the present condition is not reflective of the life-threatening disease that the petitioner is suffering from which warrants immediate and best medical treatment.

CONCLUSION

50. Health condition of a human being deserves utmost importance and right to health is one of the most significant dimensions of Article 21 of the Constitution of India. Every person has a right to get himself adequately and effectively treated. The exercise of discretion of the grant of bail is not to be exercised only as a last resort rather freedom is a cherished fundamental right.

51. Hence, in view of the health conditions of the petitioner, the medical records being furnished on behalf of the petitioner and the same



being verified by the ED as authentic, the non-denial of the condition of the petitioner which is worse than the co-accused who has been granted regular bail, and on the perusal of all other precedents this Court finds that the petitioner is suffering from life-threatening diseases warranting immediate medical attention and post-operative care. This Court is of the opinion in view of the aforesaid discussion, the petitioner's case satisfies the test of the proviso to Section 45(1) of the PMLA.

52. This Court has also appreciated the other factors as required to be considered while granting bail to an accused. It is evident that there is nothing on record to show that the liberty granted to the petitioner has been misused by him during his previous interim bails and neither has he been found to be an absconder.

ORDER

53. In view of the entirety of the matter, the petitioner is admitted to interim bail for a period of six weeks on his furnishing a personal bond in the sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) with two sureties of the like amount to the satisfaction of the Trial Court concerned, subject to the following conditions:

- (i) That the petitioner shall not leave the limits of the hospital and his house, and under no circumstances, he shall leave the country;
- (ii) That he shall keep his mobile phone and its live location on at all the times and he will share the mobile number, including updated, if any, and the live location with the IO;
- (iii) That he shall not destroy or tamper with the evidence of this



case and shall not influence any witness of the case, and shall not make any attempts to contact any co-accused;

- (iv) That he shall not indulge in any criminal activities or commission of any offence of whatsoever nature and he shall not abuse the interim bail granted to him for any purposes;
- (v) That he shall mark his presence at the local police station every Monday till 25th July 2023;
- (vi) That he shall surrender before the Trial Court by 5 pm on 25th July 2023.

54. The petitioner shall be released from jail forthwith and after the expiry of the interim bail period, he shall surrender before the Trial Court concerned before or at 5 pm on 25th July 2023.

55. Copy of this order be sent to the Jail Superintendent/Trial Court for compliance.

56. It is also made clear that this Court has not gone into the merits of the case and no expression made herein shall tantamount to be an expression on the merits of the case.

57. In the terms as aforesaid, the application is disposed of.

58. The order be uploaded on the website forthwith.

BAIL APPLN. 1343/2023

List on 17th July, 2023 i.e., date already fixed.

**CHANDRA DHARI SINGH
(VACATION JUDGE)**

**JUNE 12, 2023
SV/MS/@K**