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

+ BAIL APPLN. 1762/2022 & CrI.M.A.11556/2022

VIJAY AGRAWAL THROUGH PAROKAR Petitioner

Through: Mr. Siddharth Luthra and
Mr. Siddharth Aggarwal, Sr.
Advocates with Mr. Arjun Dewan,
Mr. Shahryar Khan, Mr. Akash Arora,
Ms. Arshiya Ghose, Ms. Subhangi
Jain, Mr. Aditya Raju and Mr.
Sheezan Hashmi, Advocates.

versus

DIRECTORATE OF ENFORCEMENT Respondent

Through: Mr. Zoheb Hossain, Special Counsel
for ED with Mr. Vivek Gurnani,
Mr. Siddharth Kaushik and Mr.
Rajendra Singh, ED.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% **13.12.2022**

CRL.M.(BAIL) 713/2022 (for interim bail)

1. This is an interim bail application filed on behalf of the accused. The petitioner seeks bail on the ground of his medical condition during the pendency of the proceedings.

2. In the application it has been stated that the petitioner is aged about 59 years and is having various ailments relating to spine and back for which the applicant is under constant medical supervision. The applicant has referred

to the MRI conducted on 03.02.2021 and has further stated that on account of his stay in jail his ailments have worsened as he has not been able to get any proper treatment.

3. Sh. Zoheb Hossain, learned Special counsel for ED, at the outset, vehemently opposed the present bail application and has submitted that earlier bail application CrI.M.A.17447/2022 has been dismissed by the coordinate Bench of this Court vide order dated 06.09.2022. Sh. Zoheb Hossain has submitted that there is hardly any change of circumstances which may necessitate grant of interim bail on medical grounds. Learned Special counsel has submitted that the petitioner is not suffering from any serious ailments which require any immediate hospitalization or any kind of further intervention. Learned Special counsel has submitted that as evident only oral medication has been prescribed along with subsequent review in neurology and medical OPD. Further, the condition of the petitioner has been found to be stable as per the latest medical report dated 10.12.2022 filed by the prison authorities. Besides this, Sh. Zoheb Hossain, learned Special counsel also has submitted that this Court and Hon'ble Supreme Court have taken a consistent view that in such like matters, the interim bail should not be granted. Reliance has been placed upon catena of the judgments including *State vs. Jaspal Singh Gill*: (1984) 3 SCC 555, *State of U.P. vs. Gayatri Prasad Prajapati*: 2020 Online SC 843, *Asha Ram vs. State of Rajasthan*: SLP (Crl.) 6202/2016 in order dated 30.0.2017, *Surjeet vs. State (Govt. of NCT of Delhi)*: 2021 SCC Online Del 228, *Karim Morani vs. CBI*: 2011 SCC Online Del 2967, *Rajkishor Sunnidhi Dash vs. State of Maharashtra*: 2020 SCC Online Bom 11261, *Akhtar Parvej vs.*

State of West Bengal: 2022 SCC Online Cal 471 and *Nasir Abdul Kadar Keval vs. State of Maharashtra*: 2018 SCC Online Bom 1562.

4. Sh. Zoheb Hossian, learned Special counsel has submitted that in fact the petitioner has not placed any material on record to demonstrate any change of circumstances or any material which could demonstrate any worsening medical condition. Therefore, in view of strict mandatory twin conditions under Section 45 of PMLA, accused may not be released on interim bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of offence of money laundering and that he is not likely to commit any offence while on bail. Sh. Zoheb Hossian, learned Special counsel has further submitted that the bail application of the co-accused in the present case Sh. Bimal Jain has already been dismissed by this Court twice. Learned special counsel submits that earlier SLP filed by the co-accused was dismissed as withdrawn. However, a fresh SLP has been filed in the Supreme Court against the order of this Court dismissing the bail application.

5. Sh. Zoheb Hossian, learned Special counsel has submitted that in the facts and circumstances of the case, there is no ground of interim bail made out as the condition of the petitioner is stable and therefore the interim bail application may be dismissed and the bail application may be heard on merits.

6. *Per contra*, Sh. Siddharth Luthra and Sh. Siddharth Aggarwal, learned senior counsel appearing for the petitioner submit that the petitioner/applicant is aged about 59 years and was arrested on 14.03.2022

and is in judicial custody since 21.03.2022. It has been submitted that the applicant apart from general ailments is suffering from serious lumbar pain. The petitioner was diagnosed with PIVD (Prolapsed Intervertebral Disk), LCS (Lumbar Canal Stenosis) L-3, L-4, L-5 and L5-S1. It has been submitted that on account of herniated discs and degenerative disease, the petitioner had nerve compression resulting in immense pain and stiffness of limbs. Sh. Siddharth Aggarwal, learned senior counsel for the petitioner has submitted that even before the applicant was arrested, he remained hospitalised at Bombay hospital in Indore in September 2021 and has been under constant medical supervision. The prescriptions have been placed on record. Learned senior counsel for the petitioner has submitted that the applicant is able to walk only a few steps without any support.

7. Learned senior counsel for the petitioner has also invited the attention of the Court that on 14.07.2022, the petitioner had sudden fall in the hospital with frothing from mouth and was not able to walk properly, on which he was taken to emergency ward of DDU Hospital. In DDU Hospital, he was referred to Higher Centre and thereafter was examined at RML.

8. Learned senior counsel for the petitioner submits that on 26.07.2022, the applicant was referred to GB Pant Hospital, Cardiology/Neurology Department where he was advised 2D Echo, oral medication and neurology opinion. Learned senior counsel for the petitioner submits that pursuant to the order dated 06.09.2022 passed by this Court, the petitioner was taken to G.B. Pant Hospital and a medical board was constituted. The medical board of the Neurology Department examined the petitioner on 22.09.2022. The Board examined and noted tenderness and pain present in the back. It noted

knee joint power and ankle joint power as 2/5 each which was 5/5 on 14.07.2022. Learned senior counsel for the petitioner submits that it is evident that on account of lack of treatment the applicant's strength and sensory powers have immensely decreased.

9. Learned senior counsel for the petitioner submits that this examination was conducted after rejection of the interim bail application of this Court on 06.09.2022. Learned senior counsel for the petitioner submits that there are substantial changes in the circumstances necessitating to approach this Court for grant of interim bail.

10. Learned senior counsel for the petitioner has further submitted that the in their earnest, the jail authorities tried to get the MRI/LS being carried out. However, the date i.e. fixed for MRI is 08.12.2023. Learned senior counsel for the petitioner submits that while the Jail authorities have taken the appellant for further examination but till date no neurosurgery evaluation has been conducted. Learned senior counsel for the petitioner has submitted that even the request for preponement of the MRI has not been accepted by the concerned hospital. It has also been submitted that the petitioner was supposed to be taken for medical examination on 17.11.2022, however, the same was cancelled. The petitioner though was taken on 24.11.2022 for neurosurgery evaluation however the same was not conducted as there was no MRI report. Learned senior counsel for the petitioner has submitted that the petitioner has been waiting for neurosurgery review since July 2022 and still the same has not been conducted. Learned senior counsel for the petitioner submits that therefore it is in the best interest of the health of the petitioner that he may be released on interim bail for a sufficient time so that

to get his neurology medical examinations conducted.

11. This Court has received a report from the Office of the Superintendent, Prison. The report dated 10.12.2022 of Medical Officer, In charge, CJ-07 Dispensary, Tihar Jail reads as under:

“D.No./SMO/CJ-07/2022/1770

Date:10-12-2022

*To,
The Superintendent,
Central Jail Hospital,
Tihar, New Delhi – 110064.*

Sub: Regarding Medical Report of inmate patient Vijay Agarwal S/o Ram Chander Agarwal.

Sir,

In continuation with previous Report submitted on 29/07/2022 vide D.No./SMO/CJ-07/2022/1042. As per the available medical record the inmate patient is case of LBA PIVD with B/L lower limb Radiculopathy, HTN, DM2 and Post COVID case, and under treatment from DDU Hospital, G.B. Pant Hospital Cardiology & Neurology Department / Jail Visiting Senior Resident and Duty Doctor at CJ-07 Dispensary.

The inmate patient was referred to Neurosurgery department at G.B. Pant Hospital wherein he was examined by the Neurosurgeon and was advised MRI LS spine and Physiotherapy.

On 20/09/2022, Nursing Orderly was sent to Radiology department at G.B. Pant Hospital for date fixation for MRI SL spine with SI-joint and the same was scheduled on 08/12/2023.

On 22/09/2022, Medical Board at G.B. Pant Hospital opined impression “PIVD L4-L5 / L5-S1 with right S1 Radiculopathy” and advised avoid lifting weight and forward bending, MRI LS spine and Neurosurgery review. (Copy enclosed)

In the mean time, there was communication between G.B. Pant Hospital/Medical Superintendent/director/Radiology HOD and CJ-07 Jail Administration for an early date of appointment for MRI LS spine. The same was denied and was advised “early date is not possible. Kindly use DAK services if early imaging is clinically indicated.” (Copy enclosed)

On 17/11/2022, the inmate patient referred to G.B. Pant Hospital Neurology department and the same was cancelled by DAP. (Copy enclosed)

On 24/11/2022 the inmate patient reviewed by SR Neurology at G.B. Pant Hospital wherein he was advised review with MRI report along with Medicine. (Copy enclosed)

In view of Court Order, the inmate patient is called before the undersigned wherein he gave complaint of low backache and Radiating pain for which he was reassured and was advised to continue medicine prescribed at Neurology Department at G.B. Pant Hospital.

At present, the general condition of the inmate patient is stable and all the medicines are being provided by CJ-07 Dispensary.

This is for your information and onward submission.

*Medical Officer Incharge
CJ-07 Dispensary
Tihar, New Delhi – 110064”*

12. It is correct that the report states that the general condition of the inmate/patient is stable and all the medicines is being provided by the CJ-07 Dispensary. However, at the same time this report makes it clear that the date for the MRI SL Spine with SL Joint has been scheduled for 08.12.2023.

13. It is also a matter of record that G.B. Pant Hospital did not accept the request for an early date of appointment for MRI LS Spine. It is no doubt true that the allegations against the accused are serious in nature. This court

makes it clear at the outset that this Court has not gone into merits of the case. The seriousness of the allegations against the accused shall certainly be examined in light of the twin conditions as provided under Section 45 PMLA at the time of the decision of the pending bail application.

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.

17. It is also pertinent to mention here that after earlier interim bail application was dismissed by this Court in September, 2022, the authorities tried for further neurological evaluation. But the date for MRI is given of December, 2023. Hence, this Court cannot ask the petitioner to wait for further one year only for advance neurological test. This court also directs the authorities to look into the matter with promptness to ensure that such long dates are not given for the medical examination or the prisoners. This Court considers that the concerned authorities are required to take immediate steps and develop an effective and adequate mechanism. It is also to be noted that there is no allegation of tampering with evidence or abuse of process by the petitioner in the prison.

18. Sh. Zoheb Hossain, learned Special counsel submits that in such a case, the interim bail should be granted for a minimal period and should not be used as a precedent in another case.

19. It is clarified that the interim bail on medical grounds is granted on the peculiar facts and circumstances of the case and will definitely not be taken as a precedent.

20. In the facts and circumstances of the case, the petitioner is admitted to interim bail on medical grounds till 10th February, 2023 on the following conditions:-

- (i) Petitioner shall furnish a bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court;

- (ii) The petitioner shall get himself examined/treated at a hospital of his choice and can have the opinion of any specialist within the territory of National Capital Region;
- (iii) Petitioner shall remain available on Mobile No.9425062506 and shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer
- (iv) Petitioner shall not be in touch with the co-accused and shall not make any effort to threaten or tamper with the prosecution witnesses;
- (v) Petitioner shall not in any manner misuse his liberty;
- (vi) Petitioner shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in pending case.
- (vii) Petitioner shall surrender himself before the Superintendent, Jail on or before 10th February, 2023 before 5 PM.

21. In view of the above, the present application stands disposed of. However, nothing expressed herein shall tantamount to be an expression on the merits of the case.

22. Copy of the order be given Dasti under the signatures of the Court Master.

BAIL APPLN. 1762/2022

List the matter on 10th February, 2023.

DINESH KUMAR SHARMA, J

DECEMBER 13, 2022/st..