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

+ BAIL APPLN. 1266/2023

P. SARATH CHANDRA REDDY Petitioner
Through: Mr.Vikas Pahwa, Sr.Adv. with
Mr.Mayank Jain, Mr.Parmatma
Singh, Mr.Madhur Jain, Mr.Vivek
Chandra Jaiswal, Mr.Lakshay Raj,
Mr.PRabhav Ralli and Ms.Namisha
Jain, Advocates

versus

DIRECTORATE OF ENFORCEMENT Respondent
Through: Mr.S.V.RAju, learned ASG with
Mr.Zoheb Hossain, counsel for ED,
Mr.A.Venkatesh and Mr.Vivek
Gurnani, advocates
Mr.Joginder, Investigating Officer

% *Date of Decision: 08.05.2023*

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 10307/2023 (for exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

BAIL APPLN. 1266/2023 & CRL.M.(BAIL) 561/2023

1. Present bail application has been filed with the following prayer:

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a) Enlarge the petitioner on regular bail in ECIR/HIU-II/14/2022 on such terms and conditions as this Hon'ble Court may deem fit and proper;

2. During the course of submissions, Mr.Vikas Pahwa, learned senior counsel appearing for the petitioner has submitted that he had filed an additional affidavit regarding the medical condition of the petitioner himself. Learned senior counsel submits that though initially bail was sought on the merits but however in the interregnum period, the health condition of the petitioner has deteriorated and the medical record which is being furnished shows that the petitioner is sick and infirm.
3. Mr.S.V.Raju, learned Additional Solicitor General confirms that copy of the additional affidavit has been supplied to them and the same have been verified and found to be genuine. Learned ASG further submits that though they oppose the application on merits but however in view the medical condition of the petitioner, an appropriate order may be passed. Learned ASG has very fairly submitted that during the period when the petitioner was on bail there has been no violation of any bail condition or tampering of evidences has been reported.
4. Mr.Vikas Pahwa submits that though there was no specific averment regarding grant of bail on medical grounds but the question being involved of the liberty of an individual, this court may entertain the request for enlarging the petitioner on bail on medical grounds in view of his health condition. Learned senior counsel submits that the petitioner has filed additional affidavit with medical records, however, the affidavit and the medical documents are not on record, but the hard

copy has been supplied. Let it be brought on record today itself. The relevant paras of the additional affidavit are as follows:

3. That certain relevant documents such as the medical records of the Petitioner were inadvertently not filed alongwith the Bail Application. It is imperative that these documents are placed on record to enable this Hon'ble Court to appreciate the facts and circumstances in the case and for the proper adjudication of the bail application.

4. The Petitioner craves liberty to place on record the following relevant documents/medical records of the Petitioner, annexed herewith and marked as follows:

i. True copy of the Petitioner's OPD card dated 22.02.2023 of Deen Dayal Upadhyay Hospital, New Delhi is filed herewith and marked as Annexure A.

ii. True copy of the Petitioner's discharge summary sheet dated 27.02.2023 of Deen Dayal Upadhyay Hospital, New Delhi is filed herewith and marked as Annexure B.

iii. True copy of the medical record of the Petitioner issued by the Medical Officer Incharge, Central Jail Hospital, Tihar is filed herewith and marked as Annexure C.

iv. True copy of the prescription dated 03.05.2023 of Apollo Hospital, Secunderabad of the Petitioner is filed herewith and marked as Annexure D.

5. That the aforesaid documents/medical records of the petitioner are necessary for the proper adjudication of the bail application and the same may be taken on record in the interest of justice.

5. Learned senior counsel for the petitioner submits that the petitioner has medical history and was suffering while in judicial custody also. Learned senior counsel has placed reliance upon verified medical record. As per verified medical record of the petitioner, it has been found as under:

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In OPD Card dated 22.02.23 of Deen Dayal Upadhyay Hospital, the petitioner was diagnosed as follows:

*C/o Low Back Pain x 25 days
No Fever/Trauma
H/o B/s Lower Limb Radiculopathy
O/C : LS Spine
Tenderness + L4
SLR R-50 degree L- 60 degree
Neurology-WNL
Adv: Hot water fomentation
1. T. Dodo SO BD 3Da
2. T.PAN OD
3. T. Meltocarbaind SOO, BD
Dolo Gel
-CT Scan LS Spine
1175/TLS*

*Review on Friday 24.02.2023 in Oeltao
CPD-3*

6. The petitioner thereafter remained admitted in Deen Dayal Upadhyay hospital from 24.02.2023 to 27.02.2023. In Discharge summary dated 27.02.2023, it was mentioned:

<i>Admitted Diagnosis</i>	<i>Acute Low Back Pain</i>
<i>Final Diagnosis</i>	<i>Bilateral Lower Limb Radiculopathy</i>

<i>Operations</i>	<i>Conservative Management</i>
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Summary of Case: Patient was admitted with the above mentioned diagnosis and was planned for conservative management of his symptoms. He was managed on Lumbar Traction and medical therapy Patient B Symptomtrally better now and

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being planned for discharge with the following advice.

The petitioner was advised CT Scan and was asked to follow up after four weeks. Learned senior counsel has further relied upon Extraction of examination dated 28.02.2023 by Medical Officer Incharge, Central Jail:

10.03.2023

C/O Low Back Pain Radiating to both lower limbs O/E Pt can and 'illegible'

BP - 160/94 m

D-80mg

CVS-LL+

CNS- 'ILLEGIBLE'

Chest - B/L, A/E equal

P/A- Softnontender

Tab-Amlodipine 5 mg OD X 7d

ADV- CST 28-02-2023

To 1 Week

Review C. SR Ortho

S Lipid Profile C SR Medicine

CT LS Spine – D12-Ll Disc

space

Reduction C mild osteo Phytic Formation

10.03.2023

7. Learned senior counsel has further referred to the OPD Ticket No.1245/23 of Central Jail Hospital, Tihar/Modoli, the complaint and diagnosis of the petitioner is as under:

C/o Pain Lower Back

C Radiolopathy B/C LL

H/o Jerk RY

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8. The petitioner was again examined on 18.03.2023 by Medical Officer Incharge, CJ-04, Tihar. The medical report indicates as under:

Pt is again started complaining
Lower Back ache
Radiation B/L LL

Adv

- MRI is spine (urgent) LIE
- Avoid long stands & Long Sitting
- Avoid heavy lift
- Avoid forward bending
- Tenderness literal
- Rom
- Mild Swelling
- Creepilus -

CST- 15 days

OPD after 2 weeks

9. While the petitioner was on interim bail, he was examined on 02.05.2023 at Apollo Hospital by Dr.Naveen P. Reddy, D.Orth, M.Ch (Orth) Fellow in Joint Replacement (Israel) Consultant Orthopaedic Surgeon, extraction of the examination is as under:

(a) PRESENTING COMPLAINTS:

- *sever low back ache since morning following fall due to numbness left lower limb*
- *difficult to bend, walk or turning to the sides*
- *giddiness/relling sensation*

(b) HISTORY OF PRESENT ILLNESS

- *pain aggravates on bending*

(c) PAST MEDICAL/SURGICAL HISTORY

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- *severe complaints with pain radiating to left lower limb was treated with analgesics and bedrest.*
- *ct scan lumbar spine shows disc prolapse d12.l1 lumbar 1 disc prolapse with degenerative changes*
- *HTN*

In the same examination dated 02.05.2023 following instructions were given by Dr.Naveen P.Reddy:

IMPORTANT.INSTRUCTIONS

- *absolute bed rest for 4 days*
- *hot fomentation 2//3 day,*
- *physiotherapy lumbar region. ift//swd// traction for 1 week*
- *back strengthening exercises after pain subsides*
- *continue hypertension drugs/ salt restricted diet/ weight loss to reduce back pain*
- *if symptoms do not subside MRI scan lumbar spine is advised*
- *prognosis is guarded*
- *neurosurgeon opinion*

PLAN

- *Follow-up date 10-May-2023 11.15 AM*

10. Learned senior counsel submitted that thereafter, while the petitioner was on interim bail, on 03.5.2023, he was examined at Apollo Hospital by Dr.Amitava Ray, MBBS, MD (Cardiff, UK) FRCSEd, FRCS (Neurosurgery) Regd. No.: APMC-770015, Senior Consultant Neurosurgeon, the extraction of which is as under:

- *Mr. P. Sharat Chandra Reddy*
- *C/o -Giddiness+ reeling - Continuously*
- *- Backpain - radiating down leg*
- *- Occasional headache- Insomnia*

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- *S/B.- Orthopaedics Medication for LBP given.*
- *O/E- No eye contact, Feeling low;*
- *Says unable to talk to anyone*
- *SLR reduced L Leg . Spasm + + C- spine*
- *Somatization + Stress/depression related.*
- *Needs:- 1. Bloods CBC Electrolytes, creatinine,*
- *Lipid Profile, LFT and Vit D levels,*
- *2. MRI of brain*
- *R T. ESCITACOPRAM 10 mg at bed time- 10 pm*
- *Counselling .-now*
- *See in 1 month: earlier if required*

11. Mr.Vikas Pahwa, learned senior counsel submits that while the petitioner was on bail his health condition deteriorated. Learned senior counsel has submitted that in view of Section 45 of the PMLA, the petitioner being sick and infirm is entitled to be admitted to bail. Learned counsel has relied upon the judgment of this court in ***Devaki Nandan Garg vs. Directorate of Enforcement***, 2022 SCC OnLine Del 3086 wherein it was inter alia held as under:

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, particularly para 34 which reads as under :

“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 (supra).

45. Given the present case relates to Section 45 of the PMLA, it is noted that courts have considered the medical condition of the accused for grant of bail even for offences committed under the

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aforesaid act. This court in D.K. Shivakumar v. Directorate of Enforcement granted bail under Section 45 of the PMLA whilst observing the following:

“18. In addition to above all discussed, undisputedly, the petitioner has been hospitalised 4 times in the past 3 weeks and has been diagnosed with hypertension, diabetes, hypothyroidism, electrolyte imbalance. The petitioner was kept in Cardiac Care Unit (CCU) and as the petitioner complained of chest pain, Angiography was also performed on the petitioner on 18-9-2019. 19. Moreover, the proviso to Section 45 of the PML Act, provides that in case of sick person, bail should be granted to the person arrested”

46. The applicant continues to suffer from serious co-morbidities, including but not limited to a serious heart condition and a nonfunctional 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. Learned counsel has also relied upon the judgment of this court in ***Kewal Krishan Kumar vs. Enforcement Directorate*** in Bail Appl.3575/2022 dated 17.03.2023

“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.

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.”

13. Mr.S.V.Raju, learned ASG has very fairly submitted that the law regarding admitting the accused on bail on the grounds of being sick or infirm is well settled and if this court is satisfied with the medical record which has duly been verified, an appropriate order may be passed. Learned ASG has also submitted that the petitioner during the period of interim bail has not influenced any witness or tampered with any evidence.
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

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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:
- (i) The petitioner shall surrender his passport and shall not travel without prior permission of the learned trial court.
 - (ii) The petitioner shall appear before the investigation officer as and when directed by investigation officer.
 - (iii) The petitioner shall not communicate with or intimidate or influence any of the prosecution witnesses or tamper with the evidence of the case.
 - (iv) The petitioner shall appear before the Court as and when the matter is taken up for hearing;
 - (v) The petitioner 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 petitioner shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
 - (vi) In case he changes his address, he will inform the IO concerned and this Court also;

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- (vii) The petitioner shall not indulge in any criminal activity during the bail period;
16. This court makes it clear that this order has been passed in view of the medical condition of the petitioner and therefore shall not be taken as a precedent.
17. 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.
18. The petition along with the pending application stands disposed of.
19. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.
20. Copy of the order be given *dasti* under signatures of the Court Master.

DINESH KUMAR SHARMA, J

MAY 8, 2023

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