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

Judgment reserved on : 23.08.2022

Judgment delivered on : 26.09.2022

+ **BAIL APPLN. 540/2022, CRL.M.As. 2909/2022, 3665/2022**

DEVKI NANDAN GARG

..... Petitioner

Through: Mr. Siddharth Luthra, Sr. Adv. with
Mr. Rishi Agarwala, Mr. Parminder Singh, Mr.
Vishnu Tallapragada, Mr. Kanav Vir Singh, Mr.
Akshat Kumar and Mr. Fazan Ahmed, Advs.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain, Adv. with Mr.
Vivek Gurnani, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. This is an application filed seeking grant of regular bail to the applicant in the Complaint Case No. 20/2021 pending before learned Special Judge (PC Act), CBI-12, Rouse Avenue, District Courts, New Delhi titled '*Devki Nandan Garg vs. Directorate of Enforcement*' arising out of ECIR No. DLZO-1/12/2021.
2. It is stated that on 11.06.2020, a complaint was received from State Bank of India (SBI) and the Central Bureau of Investigation (CBI) registered case *vide* FIR RCO742020E0014 dated 31.12.2020 against M/s Shakti Bhog Foods Ltd. (hereinafter "SBFL") and others.

3. The offences mentioned in the FIR are under Section 120B read with Section 420, section 467, 468 and 471 of the Indian Penal Code, 1860 (hereinafter “IPC”) and section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter “PC Act”).
4. Since the offences in the FIR were scheduled offences under the provisions of the Prevention of Money Laundering Act, 2002 (hereinafter “PMLA”), as such ECIR No. DLZO-1/12/2021 was recorded on 30.01.2021 by the Directorate of Enforcement (hereinafter “DoE”), Delhi Zonal Office-I, New Delhi.
5. The allegations are that the DoE conducted search at different premises of SBFL and various documents and electronic devices were seized and analyzed and the same show commission of scheduled offences, generation, acquisition, layering and siphoning off the proceeds of crime.
6. It is stated that SBFL had availed of various loan facilities from a consortium of banks led by SBI from 2006 onwards, and in order to acquire more loan funds from Banks, the company resorted to round tripping and money laundering using its various group companies as platforms.
7. SBFL had rotated its funds to group companies in the form of share investment, share application money, share premium, inter corporate deposits, compulsory convertible debentures, loans and advances and inter group purchases with the sole intent to launder and change colour of these loan funds from liabilities to assets.
8. SBFL classified many of transfers of borrowed fund as purchase and sale though there was no actual or little sale/purchase between M/s

SBFL and its group entities. M/s Shakti Bhog Snacks Ltd. and Dash Exports Ltd. are alleged to be the main sister companies with which SBFL had entered into such purchase and sale transactions. These acts immensely inflated the net worth of the directors and their relatives.

9. Investigations conducted under the PMLA have revealed that SBFL borrowed, layered and siphoned off the loan funds using the platform of about 24 known group companies and firms controlled by the main Director and key management persons, namely, Mr. Kewal Krishan Kumar in association with his wife, sons and other managerial persons. The shareholding pattern of SBFL shows that SBFL was nothing, but family-owned concern of Mr. Kewal Krishan Kumar.
10. It is stated that SBFL in association with Mr. Kewal Krishan Kumar, Mr. Raman Bhuraria (Chartered Account) and the applicant were involved in paper sale/ purchase transactions without conducting any actual business transactions which resulted in false inflation of the financials.
11. It is stated by Mr. Luthra, learned senior counsel appearing for the applicant, that the applicant is neither the Promoter nor the Chartered Account of SBFL. He is not mentioned either in the FIR or in the ECIR.
12. The role of the applicant in commission of the offence of money laundering in terms of Section 3 of PMLA is mentioned as under:-

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<i>Sr. No.</i>	<i>Name of the Accused</i>	<i>Role of the Accused in the case</i>
1.	<i>Devki Nandan Garg S/o Late Shri</i>	<i>Devki Nandan Garg was operator/owner/controller of various shell companies/firms from which Shakti Bhog</i>

	Amar Singh	<p><i>Foods Limited (SBFL) procured bogus sale and purchases bills on commission basis without actual business transactions. Shakti Bhog Foods Limited (SBFL), the borrowing company (SBFL) was illegally generating, acquiring, layering and siphoning off the proceeds of crime with his aid and assistance. It was on the strength of these fake purchase-sale bills procured from shell companies under his control, SBFL inflated its inventory and its overall financials and fraudulently borrowed loan from the consortium of 10 banks led by the State Bank of India.</i></p> <p><i>Investigation conducted so far also revealed that the borrowed funds had further been layered and siphoned off by creating a web of complex transactions through the bank accounts of various shell companies under command and control of Devki Nandan Garg. Again, using the platform of his shell entities, he assisted SBFL and its directors etc. transfer the proceeds of crime to its sister/group companies claiming the same as genuine business transactions. Besides, SBFL had transferred the loan funds to the shell entities under him and he concealed the location of the proceeds of crime by creating a cover through complex transactions, thus, leading to commission of the offence of money laundering.</i></p> <p><i>Investigation also revealed that Devki Nandan Garg in cohorts with others had fabricated the transport bills and used fake PANs and vehicle numbers in the fake invoices supplied by him to SBFL through the shell entities under his control. It is found that Devki Nandan Garg has been actively involved in the rotation and layering of bank funds in dummy entities. Further, these loan funds were also transferred into sister concerns of SBFL without any genuine business and physical movement of goods.</i></p> <p><i>Through dummy entities under his command and control including M/s Lachhu Ram Aggarwal & Co., M/s Chaturbhuji Enterprises, M/s Mayank Trading Company and many others acquired proceeds of crime worth Rs.1576 Crore from Shakti Bhog Foods Limited by raising fake purchase invoices and then transferred these funds to SBFL, its sister companies and directors, either in cash or otherwise in the guise of fake sale,</i></p>
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		<p><i>loan etc. Investigation unearthed that these purchases and sale were fake without any business transactions or movement of funds.</i></p> <p><i>Investigation revealed that Devki Nandan Garg also acquired proceeds of crime to the tune of Rs.15.76 Crore {@1 % average rate of commission for fake bills worth Rs.1576 Crore} in the name of commission for illegally providing fake purchase-sale bills to SBFL. The funds acquired under guise of commission etc. were nothing but the 'Proceeds of crime' as defined under Section 2 (u) of PMLA, 2002 derived by way of criminal activity. It is with aid and assistance of Devki Nandan Garg, SBFL could layer and rotate its loan funds through his shell companies/firms and falsely inflated its financials and procured huge credit facilities from banks. Devki Nandan Garg and shell entities under his control and influence channelized proceeds of crime through their bank accounts and helped conceal its true colour and nature. By issuing fake invoices without any actual business transactions enabled SBFL, its group companies and others to claim proceeds of crime as untainted business income and utilise the same in acquiring various assets and investments etc.</i></p> <p><i>Devki Nandan Garg was knowingly a party and actually involved in process and activity connected with proceeds of crime including its acquisition, use, possession, concealment and projecting as well claiming the same as untainted. He was beneficiary of proceed of crime acquired through the criminal activities related to scheduled offences. Therefore, Devki Nandan Garg has committed offence of money laundering u/s 3 of PMLA.</i></p>
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13. The Applicant was summoned on a number of occasions by DoE and has joined the investigation on each and every occasion and cooperated in the investigation.
14. It is stated that the applicant was regularly summoned by the

respondent and has appeared from 05.07.2021 to 20.09.2021 (even on a number of other occasions) as and when called by the respondent. The applicant was arrested on 21.09.2021 and has been in custody since then till 20.01.2022. As on 19.01.2022 the applicant was granted interim bail on account of his poor medical condition when he contracted corona virus and has since been on bail.

15. Mr. Luthra, learned senior counsel for the petitioner, has stated that the petitioner falls within the definition of sick and infirm person, and hence, is entitled to bail under Proviso to Section 45(1) of the PMLA. He also states that he is suffering from various ailments including old age.

16. He has drawn my attention to a chart showing his medical condition which reads as under:-

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<i>MEDICAL AILMENTS OF DEVKI NANDAN GARG</i>	
<i>a)</i>	<i>One Kidney is DEAD and Other Kidney functions in a compromised manner and requires day to day monitoring, otherwise it can be FATAL</i>
<i>b)</i>	<i>Recently a PACEMAKER was installed in March 2020 Due to uneven Heartbeats and electrical impulse problem in heart.</i>
<i>c)</i>	<i>Suffering from SPONDILITIS – Lower Back Problem</i>
<i>d)</i>	<i>Suffering from VERTIGO – acute onset of positional vertigo</i>
<i>d)</i>	<i>LARGE INTESTINE has been REMOVED - after 1 YEAR of COLOSTOMY in the year 2006.</i>
<i>e)</i>	<i>Colostomy SURGERY done in the Year 2004-2005. HERNIA OPERATION done in the Year 1984.</i>
<i>f)</i>	<i>GALL BLADER REMOVAL SURGERY done in the Year 1983.</i>
<i>g)</i>	<i>PEPTIC ULCER SURGERY done in the Year 1980.</i>
<i>h)</i>	<i>Contracted SYPHILIS while in judicial custody on 27.10.2021</i>
<i>i)</i>	<i>Tested positive for COVID-19 on 17.01.2022 while in judicial custody</i>

”

17. It was submitted that the applicant suffers from multiple serious ailments. The Applicant has one kidney that is non-functional and the other that is impaired. Therefore, the Applicant is unable to effectively remove toxicity from his body. The Applicant also has a serious heart condition. It is further stated that during incarceration, the applicant got infected with Syphilis and tested Covid-19 positive.
18. Mr. Luthra, learned senior counsel has also drawn my attention to the order dated 29.09.2021 passed by the learned Special Judge (PC Act), wherein the Special Judge notes the medical condition of the petitioner as under:-

“So far as other request for medical checkup including kidney function monitoring on daily basis of the accused is concerned, keeping in view that the accused has only one functional kidney and that too is operating with 30% capacity, the Jail Supdt. is directed to ensure that there is regular medical checkup of the accused with regard to his kidney function. The prescribed medicines be also permitted to the accused once the same are approved by the jail doctor.”

19. He has also drawn my attention to the Medical Committee Report dated 16.03.2022 of Atal Bihari Vajpayee Institute of Medical Sciences which reads as under:-

**GOVERNMENT OF INDIA
ATAL BIHARI VAJPAYEE INSTITUTE OF MEDICAL SCIENCES,
DR. RAM MANOHAR LOHIA HOSPITAL, NEW DELHI**

TELE: 23404451/ 23346441

Dr. (Prof.) Nandini Duggal,
Additional Medical Superintendent
F.No. Addl.M.S.(ND)/CMB-14/2022/RMLH/69

Dated, the 16th March, 2022

To,

Sh. Prateek Singh, Assistant Director,
Delhi Zonal Office-1, Directorate of Enforcement,
1st Floor, Block-C, Pravartan Bhawan,
Dr. APJ Abdul Kalam Road, New Delhi-110011

Sub: Constitution of Medical Board to examine medical documents submitted by
accused Devki Nandan Garg.

(CRL.M.A 2909/2022 (Extension of Interim Bail))

Sir,

With reference to Hon'ble Court order dated 23.2.2022 on the subject cited above, the Medical Board, constituted by the Medical Superintendent to examine documents was scheduled for 15.03.2022 at 12:00 A.M. in Room No. 307, Admin. Block, PGI Building, Dr. R.M.L. Hospital, New Delhi. As per the finding out of the meeting, the medical board is of the opinion that Mr. Devki Nandan be examined physically with all the detailed records including all investigations and CT Scan/ MRI films on 21.03.22 at 12 Noon in Room No. 307, Admin. Block, ADVIMS, Dr. R.M.L. Hospital.

You are requested to intimate the concerned authority to produce Devki Nandan Garg before the Medical Board with all treatment records on the date and time mentioned above.

(Dr. Prof.) Nandini Duggal
Additional Medical Superintendent

20. He has also drawn my attention to the Medical Report dated 21.03.2022 to highlight that he is not only sick, but infirm, and hence, needs to be released on bail in accordance with Proviso to Section 45(1) of the PMLA. The Medical Report reads as under: -

GOVERNMENT OF INDIA
ATAL BIHARI VAJPAYEE INSTITUTE OF MEDICAL SCIENCES,
DR. RAM MANOHAR LOHIA HOSPITAL, NEW DELHI
F. No. Addl. MS (MD)/ CMB-14/2022/RML H/

New Delhi, the 21st March, 2022

Medical Report

In continuation of the meeting dated 15.03.22, the Medical Board consisting of undersigned members re-evaluated the old available medical records and some new records of Mr. Devki Nandan in Room No. 307 on 21.03.22. Further, he was also

examined by the Medical board.

The Medical Board observed that Mr. Devki Nandan is suffering from multiple chronic medical ailments including Hypertension, Coronary Artery Disease with Permanent Pacemaker, Obesity, Hypothyroidism, Spondylosis, Non-Functional Right Kidney and acceptable functional left kidney. He is currently under treatment in the form of oral tablets from a private hospital as an outpatient for these conditions.

Medical Board is of the opinion that currently Mr. Devki Nandan has multiple chronic medical ailments and requires lifelong treatment on outpatient (OPD) basis.

Prof. (Dr.) Manish Kumar, Prof. (Dr.) B.K Bajaj, Prof. (Dr.) Himansu S. Mahapatra,
(Consultant, Medicine) (HoD Neurology) (HoD Nephrology & Chairperson)

21. He also draws my attention to the Medical Report dated 24.05.2022 which reads as under:-

**“GOVERNMENT OF INDIA
ATAL BIHARI VAJPAYEE INSTITUTE OF MEDICAL SCIENCES,
DR. RAM MANOHAR LOHIA HOSPITAL, NEW DELHI**

F.No. Addl.MS(MD)/CMB-14/2022/RMLH New Delhi, the 24th May, 2022

Medical Report

A meeting was held constituting the medical board as undersigned in Room No.307 on 24.05.2022 at 12 noon to examine Mr. Devki Nandan. His all previous clinical records were examined by the Medical board. Now he has produced some new records in the form of investigations and clinical prescriptions for re-examination. He has also been clinically examined by all the concerned senior faculties of the medical board.

As mentioned in the previous medical report, it is confirmed that he is suffering from multiple clinical ailments. However, no new disease has been observed after his physical examination and investigation reports. At present, he is clinically stable and needs regular oral medications. He may visit to the Out Patient Department in a fixed time interval for renewal of his prescription/ change in treatment and as and when required.

Dr. Anshita Aggarwal
(Asst. Prof., Endocrinology)

Dr. B.N. Pandit
(Prof., Cardiology)

Dr. Sandeep Lamoria
(Assoc. Prof., Medicine)

Prof. (Dr.) Manish Kumar,
(Consultant, Medicine)

Prof. (Dr.) Himansu S. Mahapatra,
(HoD Nephrology & Chairperson) ”

22. Per contra, Mr. Hossain, learned counsel for the respondent has emphasized the role of the applicant and stated that he is one of the key accused persons, and with his active connivance and fraud, SBFL has been able to siphon off crores of public money. He stated the following:
- i. The applicant being an entry operator was involved in paper sale purchase transactions with SBFL without conducting any actual business transactions. Around 56 shell entities were found under direct or indirect command and control of the applicant through which borrowed funds/ proceeds of crime of about Rs.1576 Crore have been diverted, layered and siphoned off by the applicant.
 - ii. Investigations unearthed that the applicant was instrumental not only in inflating stock of the company and booking false purchase-sale of SBFL and its group companies but also in diverting and siphoning off the proceeds of crime by creating a web of complex transactions through shell companies in his control. He not only assisted in generation of proceeds of crime to SBFL but also helped in its distribution to the group companies.

- iii. He states that the applicant has been actively involved in the rotation and layering of bank funds in dummy entities. He further transferred the loan funds into sister concerns of SBFL without any genuine business and physical movement of goods. He submits that the applicant withdrew cash from some shell entities, collected blank cheques from owners/middlemen of shell entities and issued fake bills to SBFL. The applicant was instrumental in the offence of money laundering by providing fake purchase-sale bills to SBFL.
- iv. Investigation also revealed that the applicant in collusion with others had fabricated the transport bills and used fake PANS and vehicle numbers in the fake invoices supplied by him to SBFL through the shell entities under his control. It is found that the applicant has been actively involved in the rotation and layering of bank funds in dummy entities. Further, these loan funds were also transferred into sister concerns of SBFL without any genuine business and physical movement of goods through dummy entities under his command and control.
- v. He submits that the applicant acquired proceeds of crime to the tune of Rs.15.76 Crore (@1% average rate of commission for fake bills worth Rs.1576 Crore) in the name of commission for illegally providing fake purchase-sale bills to SBFL. It is with aid and assistance of the applicant that SBFL could layer and rotate its loan funds through his shell companies/firms and falsely inflated its financials and procured huge credit facilities from banks. The applicant and shell entities under his control channelized proceeds

of crime through their bank accounts and helped conceal its true colour and nature. The applicant was knowingly a party and actually involved in process and activity connected with proceeds of crime and hence, in this way played a key role in the offence of money laundering.

23. He also states that a bare perusal of the medical history will show that the applicant is suffering from these ailments from 2001 onwards, and even during the period of alleged offences i.e., from the year 2007 to 2012, the applicant was suffering from these ailments. Hence, all the medical conditions of the applicant are historical. He further submits that the jail provided proper and satisfactory medical facilities to the applicant.
24. Mr. Hossain, learned counsel has drawn my attention to three judgments of *State v. Jaspal Singh Gill 1984 (3) SCC 555*, *State of U.P. v. Gayatri Prasad Prajapati 2020 SCC OnLine SC 843* and *Directorate of Enforcement v. Ashok Kumar Jain 1998 (2) SCC 105* to state that the test required is whether the applicant in custody suffers from a condition which cannot be addressed from the jail. The test is whether the applicant suffers from such a condition that he has to be hospitalized and/ or released on bail as the jail is unable to provide the highest level of medication, care and treatment.
25. Mr. Hossain has also stated that to enlarge the accused on bail, the High Court has to record a finding that the treatment accorded to the accused by the jail authorities is not 'Satisfactory'. He has placed reliance on the judgment of *Jaspal Singh Gill (supra)* wherein the

Apex Court in para 11 held the following:

“11. In the circumstances, I am of the view that the High Court should not have enlarged the respondent on bail in the larger interests of the State. It is urged that the respondent is a person who has undergone a cardiac operation and needs constant medical attention. I am sure that the prison authorities will arrange for proper treatment of the respondent whenever the need for it arises.”

26. Respondents have also laid emphasis on the judgment of **Ashok Kumar Jain (supra)** to show that the court shall not interfere till the time the jail authorities are competent and capable to provide adequate medical treatment to the accused. In this regard, the Supreme Court has held as under:

“8. We have noticed that learned Sessions Judge while dismissing the application for pre-arrest bail has taken due note of the aforesaid plea of the respondent and made necessary observations regarding the need to provide medical care and protection to the respondent in view of the medical reports. It cannot be contended, nor has it been contended before us, that respondent is immune from arrest on even interrogation simply on account of his physical conditions. No doubt investigating officials of the Directorate are duty bound to bear in mind that the respondent has put forth a case of delicate health conditions. They cannot overlook it and they have to safeguard his health while he is in their custody. But to say that interrogation should be subject to the opinion of the cardiologists of the AIIMS and that the officials of the Directorate should approach the Director of AIIMS to constitute a Board of Cardiologists to examine the respondent etc. would, in our opinion, considerably impair the efficient functioning of the investigating authorities under FERA. The

authorities should have been given freedom to chalk out such measure as are necessary to protect the health of the person who would be subjected to interrogatory process. They cannot be nailed to fixed modalities stipulated by the court of conducting interrogations. It is not unusual that persons involving themselves in economic offences, particularly those living in affluent circumstances, are afflicted by conditions of cardiac instability. So the authorities dealing with such persons must adopt adequate measures to prevent deterioration of their health during the period of custodial internment. The court would interfere when such authorities fail to adopt necessary measures. But we are not in favour of stipulating in advance modalities to be followed by the authorities for that purpose. According to us such anticipatory stipulations are interferences with the efficient exercise of statutory functions when dealing with economic offences. Hence learned Single Judge ought not have imposed such conditions on the Directorate.”

27. He has drawn my attention to a number of judgments to show refusal of bail on medical grounds. He has placed reliance on ***Surjeet v. State (Govt. of NCT of Delhi) 2021 SCC OnLine Del 228*** where the court while rejecting bail noted the following :

“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.”

28. He also relies on the judgment of ***Karim Morani v Central Bureau of Investigation 2011 SCC OnLine Del 2967*** where court refused bail whilst making the following observations :

“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. As per the report of Dr. Yash Lokhandwala, D.M. (Cardiology) dated 13th May, 2011, following line of treatment was suggested to the petitioner:

“Suggest

- Neurosurgery opinion.*
- No anti-hypertensives.*
- Stop Aquazide.*
- Increase the salt and water intake.*
- Dietary and postural advice.*

- *Strongly avoid any stressful situation.*
- *To see the Holter report.*
- *LP (a) and Homocysteine”*

The record also suggests that the petitioner got admitted in Lilavati Hospital & Research Centre for treatment on 11th May, 2011 with the complaint of episode of Syncope two days earlier and breathlessness. He was diagnosed for Neurocardiogenic Syncope, Pituitary Adenoma-cystic IHD, Post CABG Status, HTN, Nasal Polynosis, Cervical lumbar spondylosis etc. and as per his Discharge Summary, his stay in the hospital was uneventful. He was advised medication and physiotherapy. Besides that, the petitioner has also placed on record a certificate dated 20th June, 2011, purported to have been issued by Dr. Jolly Bansal which is based upon the medical record provided to him and not on the basis of physical examination of the patient. This certificate does not even indicate as to what medical record was shown to him. Therefore, much reliance cannot be placed upon it.

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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.”

29. Mr. Luthra, learned senior counsel, on the other hand, has stated that the Proviso to Section 45(1) of PMLA is akin to Section 437 Proviso to Cr.PC, where identical phraseology has been used.

30. He further refers and relies on a plethora of judgments to substantiate grant of bail on medical grounds. He contends that this court in *Amarendradhari Singh vs Directorate Of Enforcement 2021 SCC OnLine Del 3901* while granting bail observed the following:

*“42. Now as far as the medical condition of the petitioner is concerned, he is suffering from cancer since 2002 which is not denied by the department. The petitioner is under the treatment of one doctor namely Morton Coleman of U.S. and he visits the doctor for his follow up from time to time. It is on record that the petitioner was granted special permission to travel to America by the American Embassy aided by the Ministry of External Affairs and his sister was also allowed to travel with him due to his medical condition. Looking into the medical condition of the petitioner, this Court permitted the petitioner to travel to USA for his medical treatment subject to conditions, despite the registration of the FIR. The medical report in regard to the petitioner's health was also called form RML hospital and vide its report dated 19.07.2021, it has been stated that his medical records were reviewed by the medical board and he was found to be a known case of Hodgkin's Lymphome since 2002, Right bundle branch block, mild stress inacid ischaemia (infero-apical region on stress-MPI), hyper tension, diabetes mellitus, obstructive sleep apnea, treated graves decease, benign protest enlargement. **No doubt, as argued by the Ld. ASG, the condition of the petitioner is not serious and do not require immediate attention and his present condition is manageable, but one also cannot lose sight of the fact that the petitioner is a known case of cancer and is suffering from various aforementioned diseases for which he is taking medicines as submitted by Ld. Sr. counsel for the petitioner.***

43. The petitioner is in J.C. since 02.06.2021. Therefore, in

view of the entire facts and circumstances, I am of the considered opinion, that the petitioner is entitled to be released on bail on merits as well as on medical grounds....”

31. I have heard the learned counsel for the parties and have gone through the documents.

32. At this juncture, it is imperative to have an overview of the Statement of Objects and Reasons of PMLA, 2002 with respect to ‘sick and infirm’ which reads as under:

*“In addition to above recommendations of the standing committee the Central Government proposes to (a) relax the conditions prescribed for grant of bail so that the Court **may** grant bail to a person who is below sixteen years of age, or woman, or sick or infirm...”*

33. A bare perusal of the Statement of Objects and Reasons of PMLA goes to show that inclusion of the above conditions for grant of bail as a proviso to section 45(1) of 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 (PMLA) 2015 SCC OnLine SC 1333*** and 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 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 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 45A of 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.”*
(emphasis supplied)

35. Thus, the proviso to Section 45(1) of 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 (supra)*.
36. Sick and infirm have not been defined under the PMLA and I will have to rely on the dictionary meaning for the same. ‘Sick’ as per the Oxford

English Dictionary refers to being “*affected by illness; unwell, ailing.*” and ‘infirm’ is defined as “*not physically strong or healthy; weak or feeble, esp. through old age*”. According to the definition in Merriam Webster’s Dictionary, ‘sick’ means “*affected with disease or ill health; ailing*” and “infirm” means “*of poor or deteriorated vitality especially: feeble from age*”.

37. The question which I have to answer is whether the applicant falls within the category of sick or infirm so as to grant him the benefit of the proviso to section 45(1) PMLA?
38. I have already quoted extracts from the medical reports reproduced before me from Atal Bihari Vajpayee Institute of Medical Sciences in the preceding paragraphs. In view of the said medical reports, it leaves no room for doubt that the applicant is both, sick and infirm. He is functioning on 30% capacity of one kidney and the other kidney is dead. He requires constant monitoring otherwise his fluctuations can cause death. He has undergone multiple surgeries for removal of his large intestine, gall bladder, peptic ulcer, colostomy and even a hernia operation. He has a pacemaker installed due to his heart condition and is also suffering from Spondylitis and Vertigo. During his period in jail, the applicant contracted Syphilis on 27.10.2021 and Covid-19 on 17.01.2022. Out of the other ailments, only spondylitis and vertigo may be of a lesser degree but all other medical conditions are serious and life threatening.
39. The next question which has been raised by Mr. Hossain and needs to be addressed by me is whether the applicant suffers from a condition which cannot be addressed from the jail. The observation in *Ashok*

Kumar Jain (supra) is whether the applicant has to be hospitalized for ailments which the jail dispensary is unable to provide with prompt and utmost effectiveness. There cannot be a squabble with the proposition that the accused is entitled to proper and adequate medical attention and assistance.

40. Prisons provide medical facilities but the services are not comparable to or equivalent to the level of treatment and care one can avail from private hospitals. The facilities in the jail are of a general nature and character which is inadequate to monitor proper health of the applicant who is suffering from multiple serious ailments. The jail is not equipped to provide special and intensive treatment and care that the applicant is in need of.
41. The respondent's reliance on the judgment of *Surjeet* (supra) and *Karim Morani* (supra) is misconceived. In the case of *Surjeet* (supra), the court notes that "*treatment is available in Tihar jail*". In *Karim Morani* (supra), a bare perusal of the paragraphs reproduced above shows that the nature of ailments was of a mild and general character. Further, after conclusion of arguments, Mr. Hossain has handed over an Order dated 06.09.2022 titled '*Vijay Agrawal Through Parokar v. Directorate of Enforcement*' BAIL APPLN. 1762/2022 wherein the petitioner's interim bail application was dismissed as the nature of ailments were of a general character. In the said case, on 14.07.2022, the petitioner fell in the bathroom with frothing from the mouth. This is a case of an isolated incident which prompted the filing of the Bail Application.
42. The present case at hand is distinguishable as it has already been noted

that the applicant has a serious medical condition. Though the medical report dated 24 May 2022 from Atal Bihari Vajpayee Institute of Medical Sciences states that the applicant is in a stable condition and no new ailments have been detected, the fact remains that the applicant is functioning on a single kidney which is only 30% functional and he has undergone major surgeries with respect to vital organs. He has a serious heart condition because of which he has a pacemaker installed. Furthermore, during incarceration, the applicant contracted two more diseases viz., syphilis on 27.10.2021 and Covid-19 on 17.01.2022.

43. Syphilis is a bacterial infection which can remain inactive in the body for decades before becoming active again. If untreated, syphilis can severely damage the heart, brain or other organs, and can be life-threatening. The risk of kidney failure is high and can be triggered by the slightest of infection. The applicant needs constant daily monitoring to check that the parameters of 30% kidney function do not collapse. His condition is such that he requires emergent medical assistance which cannot be provided in jail in a prompt and efficient manner vis-à-vis hospital atmosphere. Thus, considering the serious medical condition of the applicant, I am of the view that the aforementioned cases are not applicable in the present case.
44. The fact that the applicant is suffering from these ailments from the year 2001 is also not of much help to the respondents' as it is a given fact that ailments aggravate with age. In 2001, which is 21 years ago, the applicant would have been younger, healthier and in a better position to meet the requirements of his frail health. With age, the response, the resistance, the resilience and the capacity of the body to

fight ailments and recuperate efficaciously, decreases. I have already discussed that ailments which, coupled with old age brings the applicant within the purview of “Infirm Person”. The level of care, attention, minute to minute monitoring, emergent response which the applicant can get from a hospital cannot be provided at the jail.

45. Given the present case relates to Section 45 of PMLA, it is noted that courts have considered the medical condition of the accused for grant of bail even for offences committed under the aforesaid act. This court in ***D.K. Shivakumar vs Directorate Of Enforcement 2019 SCC OnLine Del 10691*** granted bail under Section 45 of PMLA whilst observing the following:

“18. In addition to above all discussed, undisputedly, the Petitioner has been hospitalized 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 18.09.2019.

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 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.
47. For the aforesaid reasons, the present bail application is allowed on the

following terms and conditions: -

- (a) The applicant shall furnish a personal bond with a surety in the sum of Rs. 50,000 each to the satisfaction of the I.O.;
- (b) The applicant shall appear before the Court as and when directed;
- (c) The applicant 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 applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
- (d) In case he changes his address, he will inform the IO concerned and this Court also;
- (e) The applicant shall not leave the country during the bail period and surrender his passport at the time of release before the I.O.;
- (f) The applicant shall not indulge in any criminal activity during the bail period;
- (g) The applicant shall not communicate with or intimidate any of the prosecution witnesses or tamper with the evidence of the case.

48. The application is disposed of in the aforesaid terms.

JASMEET SINGH, J

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