[2024] 9 S.C.R. 683 : 2024 INSC 687

Arvind Kejriwal
v.
Central Bureau of Investigation

(Criminal Appeal No. 3816 of 2024)

13 September 2024

[Surya Kant* and Ujjal Bhuyan,* JJ.]

Issue for Consideration

The instant appeals are directed against the judgments and orders dated 05.08.2024 passed by the High Court, dismissing the appellant's challenge to his arrest being illegal as well as his application for the grant of regular bail.

Headnotes†

Code of Criminal Procedure, 1973 – ss.41A – Penal Code, 1860 – s.477A – Prevention of Corruption Act, 1988 – s.7 – The High Court upheld the arrest of the appellant by the CBI and congruously denied him regular bail – Propriety:

Held: [Per Surya Kant, J.]: CBI complied with Section 41A CrPC, in its true letter and spirit – The appellant's arrest does not suffer with any procedural infirmity – Although the procedure for the Appellant's arrest meets the requisite criteria for legality and compliance, continued incarceration for an extended period pending trial would infringe upon established legal principles and the appellant's right to liberty, traceable to Article 21 of Constitution – The appellant satisfies the requisite conditions for the grant of bail – Thus, the appellant directed to be released on bail in connection with FIR registered by the CBI. [Paras 29, 36, 40, 47(ii)(a)] **– [Per Ujjal Bhuyan, J. (concurring)]:** It is evident that CBI did not feel the need and necessity to arrest the appellant from 17.08.2022 till 26.06.2024 i.e. for over 22 months – It was only after the Special Judge granted regular bail to the appellant in the ED case that the CBI activated its machinery and took the appellant into custody – Such action on the part of the CBI raises a serious question mark on the timing of the arrest; rather on the arrest itself – For 22 months, CBI does not arrest the appellant but after the Special Judge grants regular bail to the appellant in the ED case, CBI seeks his custody – In the circumstances, a view

* Author

may be taken that such an arrest by the CBI was perhaps only to frustrate the bail granted to the appellant in the ED case – The belated arrest of the appellant by the CBI is unjustified and the continued incarceration of the appellant in the CBI case that followed such arrest has become untenable – Thus, appellant directed to be released on bail forthwith. [Paras 23, 41, 43]

Code of Criminal Procedure, 1973 – s.41A – Penal Code, 1860 – s.477A – Prevention of Corruption Act, 1988 – s.7 – The primary basis for the appellant's challenge rests on the contention that the procedure for arrest, as outlined u/ss. 41A of the CrPC, was not complied with:

Held: S.41A of the CrPC pertains to the issuance of a notice by a police officer to an individual when their arrest is not warranted u/s.41(1) of the CrPC, but their presence is still required before the investigating authority – In the present context, since the appellant was already in judicial custody at the relevant time in the ED case, the CBI filed an application on 24.06.2024 before the trial Court u/s.41A of the CrPC, *inter alia* seeking to interrogate and examine him – Such examination was allegedly necessitated by new facts and evidence uncovered by the CBI upon further investigation – The provision, however, does not outline any express procedure to be undertaken where the individual in question is already incarcerated – It is to be remembered that the Court is, in a way, the guardian of an undertrial, while he is in judicial custody – That being so, there could possibly be no other way to secure the appellant's physical presence for the purpose of further investigation, except to seek prior permission of the trial Court for his interrogation – In the case in hand, the trial Court's approval of the CBI's application to interrogate the Appellant should be viewed as satisfying the essential requirements of Section 41A, as the issuance of a formal notice through the jail authorities would have had an adverse impact on the rights of the appellant – Thus, in considered view of this Court the CBI complied with the procedure encompassed within the framework of Section 41A of the CrPC. [Paras 17, 18, 20] [Per Surya Kant, J.]

Code of Criminal Procedure, 1973 – s.41A(3) – Penal Code, 1860 – s.477A – Prevention of Corruption Act, 1988 – s.7 – Whether there was violation of Section 41A(3) of the CrPC:

Held: First, it is trite law that there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of

a Magistrate – Thus, there is no impediment in terms of arresting a person already in custody for the purposes of investigation, whether for the same offence or for an altogether different offence – The appellant's arrest by the CBI was thus entirely permissible, in light of the trial Court's order dated 25.06.2024 wherein the trial Court, after considering the reasons, allowed the CBI's application for the appellant's arrest – Second, Section 41A(3) allows for arrest, provided the reasons are recorded, justifying the necessity of such a step, and the police officer is satisfied that the individual should be arrested – In this context, the CBI, in their application dated 25.06.2024, clearly recorded the reasons as to why they deemed the appellant's arrest necessary – These reasons were also summarized in the arrest memo dated 26.06.2024 – Third, s.41A(1), when r/w.s.41A(3) CrPC, does not impose an absolute prohibition on the arrest of an individual against whom there exists reasonable suspicion of having committed a cognizable offence punishable with imprisonment up to seven years – This is evident from the language of the provision itself – S.41A(3) explicitly states that an arrest is permissible if the police officer believes it to be necessary and duly records the reasons for such arrest – This provision thus essentially carves out an exception to the general rule u/s. 41A, which mandates that an individual whose appearance is required should not be arrested u/s.41(1) of the CrPC. [Paras 25, 26, 27, 28] [Per Surya Kant, J.]

Code of Criminal Procedure, 1973 – s.41(1)(b)(ii) – Penal Code, 1860 – s.477A – Prevention of Corruption Act, 1988 – s.7 – Whether s.41(1)(b)(ii) of the CrPC is applicable:

Held: Section 41(1)(b)(ii) of the CrPC clearly stipulates that an arrest under this provision can be made based on a complaint or credible information that an individual has committed a cognizable offence punishable with imprisonment up to seven years, with or without a fine – However, such an arrest must be conducted subject to the satisfaction of specific conditions outlined in sub-sections (a) to (e) – The said provision is inapplicable to the vicissitudes of the present factual matrix – Here is a case where the court upon application of judicial mind accorded its approval to the appellant's arrest for which necessary warrant was issued – There was thus no occasion for the arresting police officer to form an opinion regarding the existence of valid reasons of arrest – The competent court having undertaken such a task, the police officer cannot be expected to sit over the order of the court. [Paras 32, 33] [Per Surya Kant, J.]

Code of Criminal Procedure, 1973 – Bail – Constitution of India – Art. 21 – Penal Code, 1860 – s.477A – Prevention of Corruption Act, 1988 – s.7 – Whether the appellant is entitled to the relief of regular bail:

Held: The FIR was registered on 17.08.2022, and since then, the chargesheet along with four supplementary chargesheets have been filed – The fourth supplementary chargesheet was filed as recently as 29.07.2024 and the Trial Court has taken cognizance of the same – Additionally, seventeen accused persons have been named, 224 individuals have been identified as witnesses, and extensive documentation, both physical and digital, has been submitted – These factors suggest that the completion of the trial is unlikely to occur in the immediate future – Although the procedure for the appellant's arrest meets the requisite criteria for legality and compliance, continued incarceration for an extended period pending trial would infringe upon established legal principles and the appellant's right to liberty, traceable to Article 21 of our Constitution – The Appellant has been granted interim bail by this Court in the ED matter on 10.05.2024 and 12.07.2024, arising from the same set of facts – Additionally, several co-accused in both the CBI and ED matters have also been granted bail by the Trial Court, the High Court, and this Court in separate proceedings – So far as the apprehension of the Appellant influencing the outcome of the trial is concerned, it seems that all evidence and material relevant to the CBI's disposition is already in their possession, negating the likelihood of tampering by the Appellant – Therefore, in the light of these extenuating circumstances and considering the foregoing analysis, it could be resolved that the Appellant satisfies the requisite conditions for the grant of bail. [Paras 39, 40, 41, 42] [Per Surya Kant, J.]

Code of Criminal Procedure, 1973 – Regular bail – Filing of charge-sheet – Whether the filing of a chargesheet is a change in circumstances warranting relegation to the trial court for grant of regular bail:

Held: It is true that generally the trial Court should consider the prayer seeking bail once the chargesheet is filed, since the material that an Investigating Authority may have been able to procure would undoubtedly facilitate that court to form a prima facie opinion with regard to (i) the gravity of offence; (ii) the degree of involvement of the applicant; (iii) the background and vulnerability of the witnesses; (iv) the approximate timeline for conclusion of the trial based on

the number of witnesses; and (v) the societal impact of granting or denying bail – However, there can be no straitjacket formula which enumerates that every case concerning the consideration of bail should depend upon the filing of a chargesheet – In fact, each case ought to be assessed on its own merits, recognizing that no one-size fits all formula exists for determining bail – An undertrial thus should, ordinarily, first approach the trial Court for bail, as this process not only provides the accused an opportunity for initial relief but also allows the High Court to serve as a secondary avenue if the trial Court denies bail for inadequate reasons – If an accused approaches the High Court directly without first seeking relief from the Trial Court, it is generally appropriate for the High Court to redirect them to the Trial Court at the threshold – This issue is however, more or less academic in the instant case as the High Court did not relegate the appellant to the trial Court at the preliminary stage – Since notice was issued and the parties were apparently heard on merits by the High Court, it not necessary at this stage to relegate the appellant to the trial Court even though filing of a chargesheet is a change in the circumstances – Thus, appellant directed to be released on bail. [Paras 43, 44, 45, 46] [Per Surya Kant, J.]

Code of Criminal Procedure, 1973 – Constitution of India – Art. 20(3) – Arrest – Grounds of arrest – Detention citing evasive reply:

Held: The respondent-CBI is definitely wrong when it says that because the appellant was evasive in his reply, because he was not cooperating with the investigation, therefore, he was rightly arrested and now should be continued in detention – It cannot be the proposition that only when an accused answers the questions put to him by the investigation agency in the manner in which the investigating agency would like the accused to answer, would mean that the accused is cooperating with the investigation – Further, the respondent cannot justify arrest and continued detention citing evasive reply – One should not forget the cardinal principle under Article 20(3) of the Constitution that no person accused of an offence shall be compelled to be a witness against himself. [Paras 24, 25] [Per Ujjal Bhuyan, J.]

Constitution of India – Art. 20(3) – No person accused of any offence shall be compelled to be a witness against himself:

Held: Article 20(3) of the Constitution of India states that no person accused of an offence shall be compelled to be a witness against

himself – This Court has held that such a protection is available to a person accused of an offence not merely with respect to the evidence that may be given in the court in the course of the trial, but is also available to the accused at a previous stage if an accusation has been made against him which might in the normal course result in his prosecution – Thus, the protection is available to a person against whom a formal accusation has been made, though the actual trial may not have commenced and if such an accusation relates to the commission of an offence which in the normal course may result in prosecution – An accused has the right to remain silent; he cannot be compelled to make inculpatory statements against himself – No adverse inference can be drawn from the silence of the accused – If this is the position, then the very grounds given for arrest of the appellant would be wholly untenable – On such grounds, it would be a travesty of justice to keep the appellant in further detention in the CBI case, more so, when he has already been granted bail on the same set of allegations under the more stringent provisions of PMLA. [Para 25] [Per Ujjal Bhuyan, J.]

Bail – Bail jurisprudence:

Held: Bail jurisprudence is a facet of a civilised criminal justice system – An accused is innocent until proven guilty by a competent court following the due process – Hence, there is presumption of innocence – Therefore, this Court has been reiterating again and again the salutary principle that bail is the rule and jail is the exception – As such, the courts at all levels must ensure that the process leading to and including the trial does not end up becoming the punishment itself – This Court has emphasized and re-emphasized time and again that personal liberty is sacrosanct – It is of utmost importance that trial courts and the High Courts remain adequately alert to the need to protect personal liberty which is a cherished right under Constitution. [Paras 39, 40] [Per Ujjal Bhuyan, J.]

Case Law Cited

In the judgement of Surya Kant, J:

Arnesh Kumar v. State of Bihar [2014] 8 SCR 128 **: (2014) 8 SCC 273 – relied on.**

Central Bureau of Investigation v. Anupam J. Kulkarni [1992] 3 SCR 158 **: (1992) 3 SCC 141**; *Gudikanti Narasimhulu v. Public*

Prosecutor [1978] 2 SCR 371 **: (1978) 1 SCC 240;** *Union of India v. K.A. Najeeb* [2021] 1 SCR 443 **: AIR (2021) SC 712 – referred to.**

In the judgement of Ujjal Bhuyan, J:

Kanumuri Raghurama Krishnam Raju v. State of A.P. **(2021) 13 SCC 822;** *Gudikanti Narasimhulu v. Public Prosecutor* [1978] 2 SCR 371 **: (1978) 1 SCC 240 – relied on.**

Manish Sisodia v. CBI **(Criminal Appeal No. 3296 of 2024, decided on 09.08.2024 by the Supreme Court);** *Joginder Kumar v. State of U.P.* [1994] 3 SCR 661 **: (1994) 4 SCC 260**; *Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)* [2010] 4 SCR 103 **: (2010) 6 SCC 1;** *Arnesh Kumar v. State of Bihar* [2014] 8 SCR 128 **: (2014) 8 SCC 273;** *Mohd. Zubair v. State (NCT of Delhi)* [2022] 18 SCR 494 **: (2022) SCC Online SC 897**; *Arnab Ranjan Goswami v. Union of India* [2020] 8 SCR 222 **: (2020) 14 SCC 12 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Constitution of India; Penal Code, 1860; Prevention of Corruption Act, 1988.

List of Keywords

Section 41A of Code of Criminal Procedure, 1973; Section 41(1)(b)(ii) of Code of Criminal Procedure, 1973; Article 20(3) of Constitution of India; Section 477A of Penal Code, 1860; Section 7 of Prevention of Corruption Act, 1988; Bail; Regular bail; Arrest; Grounds of arrest; Procedural infirmity; Article 21 of Constitution of India; Charge-sheet; Gravity of offence; Background and vulnerability of the witnesses; Societal impact of granting or denying bail; Personal Liberty; Necessity and timing of arrest.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3816 of 2024

From the Judgment and Order dated 05.08.2024 of the High Court of Delhi at New Delhi in BA No. 2285 of 2024

With

Criminal Appeal No. 3817 of 2024

Appearances for Parties

Dr. Abhishek Manu Singhvi, N. Hariharan, Vikram Chaudhary, Narendra Hooda, Sr. Advs., Vivek Jain, Mohd. Irshad, Rajat Bhardwaj, Karan Sharma, Suchitra Kumbhat, Amit Bhandari, Sadiq Noor, Rajat Jain, Mohit Siwach, Kaustubh Khanna, Shailesh, Rishikesh, Indresh Upadhyay, Ms. Arveen, Ms. Muskaan Khurrana, Advs. for the Appellant.

Suryaprakash V. Raju, A.S.G., Mukesh Kumar Maroria, Zoheb Hussain, Annam Venkatesh, Vivek Gurnani, Samrat Goswami, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Surya Kant, J.

Leave granted.

2. These appeals are directed against the judgements and orders dated 05.08.2024 passed by the High Court of Delhi (**hereinafter, 'High Court'**), dismissing the Appellant's challenge to his arrest being illegal as well as his application for the grant of regular bail. Consequently, the High Court upheld the legality of the Appellant's arrest and has summarily declined to exercise its concurrent jurisdiction under Section 439 of the Code of Criminal Procedure, 1973 (**hereinafter, 'CrPC'**), thereby denying his prayer for regular bail.

Facts:

3. At the very outset, it is essential to advert to the brief factual background to provide context to the manner in which the present proceedings have arisen.

   3.1. The Appellant is a public representative and has been elected thrice the Chief Minister of the Government of National Capital Territory of Delhi (**hereinafter 'GNCTD'**). He also happens to be the National Convenor of Aam Aadmi Party, a political party in India.

   3.2. Central Bureau of Investigation (**hereinafter 'CBI'**) – the Respondent registered an FIR No. RC0032022A0053

(**hereinafter 'FIR'**), on 17.08.2022 under Sections 120B read with Section 477A of the Indian Penal Code, 1806 (**hereinafter 'IPC'**) and Section 7 of the Prevention of Corruption Act, 1988 (**hereinafter 'PC Act'**) against various persons. The FIR alleged irregularities, falsification, undue advantage, and a conspiracy among the persons holding positions of responsibility within the GNCTD, in framing and implementing the Excise Policy for the year 2021-2022 (**hereinafter 'Excise Policy'**). However, the Appellant's name did not figure in the FIR.

3.3. On 21.03.2024, the Directorate of Enforcement (**hereinafter 'ED'**), arrested the Appellant in the purported exercise of its power under Section 19 of the Prevention of Money Laundering Act, 2002. Subsequently, this Court granted the Appellant interim bail on 10.05.2024, until 01.06.2024. The Appellant surrendered thereafter before the jail authorities on 02.06.2024. We may hasten to add here that the question of law sought to be raised in the ED matter is presently pending consideration before a larger bench of this Court and is not relevant to the present controversy, and its particulars are included solely to ensure lucidity in the factual matrix.

3.4. The Special Judge *vide* order dated 20.06.2024 granted the Appellant regular bail while his bail in the ED matter was pending before this Court and reserved for judgement. However, the ED swiftly sought the cancellation of that bail order. The High Court on 21.06.2024 stayed the operation of that order, as a result of which, the Appellant continued to remain in jail.

3.5. CBI moved an application on 24.06.2024 before the Special Judge (PC Act) (**hereinafter 'Trial Court'**) under Section 41A of the CrPC, seeking to interrogate the Appellant, which was thereupon allowed. Having completed interrogation and examination, the CBI filed an application on 25.06.2024 seeking permission to arrest the Appellant and for the issuance of production warrants. Thereafter, the Trial Court allowed the CBI's application noting that the accused was already in judicial custody in the ED matter. In the meantime, the High Court conclusively stayed the order granting regular bail to the Appellant in the ED matter on 25.06.2024 itself.

3.6. Shortly thereafter, on 26.06.2024, the Appellant was produced before the Trial Court, whereupon he was arrested in the instant

CBI case and a copy of the arrest memo was handed over to the Appellant's counsel. On the same day, on an application moved by the CBI, the Trial Court remanded the Appellant to police custody for five days. Subsequently, on 29.06.2024, the Trial Court remanded the Appellant to judicial custody till 12.07.2024. It may be noted that the investigation at that time was ongoing.

3.7. Both the above stated orders dated 26.06.2024 and 29.06.2024 of the Trial Court, came to be challenged by the Appellant before the High Court *vide* a Writ Petition, *inter alia* seeking a declaration that his arrest was illegal. On 02.07.2024, when the Petition was heard, the High Court issued notice to the CBI and scheduled the matter to be heard on 17.07.2024. In the *interregnum*, the Appellant also approached the High Court under Section 439 CrPC, seeking regular bail in connection with the subject FIR. On 05.07.2024, when the Bail Application came up for hearing, the High Court issued notice and renotified it to be heard on 17.07.2024, along with the Writ Petition challenging the very arrest of the Appellant.

3.8. The High Court extensively heard the matter on 17.07.2024 and reserved judgement in the Writ Petition. The Bail Application was renotified for further hearing on 29.07.2024, which was also reserved. Finally, on 05.08.2024, the High Court *vide* the impugned judgement and order upheld the arrest of the Appellant by the CBI and congruously denied him regular bail, with liberty to approach the Trial Court for such relief.

3.9. As regard to the legality of the Appellant's arrest, the High Court upheld the same on the following broad points: (i) The five circumstances delineated under Section 41(1)(b) of the CrPC apply only to arrests made without a warrant and does not pertain to arrests made under the aegis of Section 41(2) of the CrPC, which is an arrest upon the order of a court; (ii) The arrest was made in accordance with Section 41(2) of the CrPC; and (iii) The plea of non-compliance with Section 41A of the CrPC was totally unsubstantiated.

3.10. As regard to the Appellant's prayer for regular bail, the High Court has denied the same for the following reasons: (i) The complexity of the facts and material on record necessitated a more comprehensive determination of the Appellant's role in the

alleged conspiracy so as to assess his entitlement to bail; and (ii) The Bail Application had been filed prior to the chargesheet being submitted, and since the chargesheet has now been filed before the Trial Court, the Appellant was directed to first approach the Court of the Sessions Judge.

3.11. Meanwhile, this Court *vide* order dated 12.07.2024, passed in Criminal Appeal No. 2493/2024 directed the Appellant's release on interim bail in the ED matter.[1] However, the Appellant continues to face incarceration on account of the proceedings initiated by the CBI.

3.12. The instant appeals are therefore restricted to the Appellant's challenges regarding the legality and propriety of his arrest by the CBI and his prayer for release on regular bail in connection with the proceedings initiated by the CBI *via* the subject FIR.

CONTENTIONS OF THE PARTIES

4. Dr. Abhishek Manu Singhvi, Learned Senior Counsel representing the Appellant, argued first and foremost that the Appellant had been arrested illegally, in violation of the procedure enumerated in Sections 41(1) and 41A of the CrPC. In this vein, he assailed that the Appellant was arrested without giving any reasons, thus violating the: (i) precondition of just and valid reasons for the change of a case from 'non-arrest' to 'arrest' under Section 41A (3) of the CrPC; and (ii) the mandatory details that have to be fulfilled under Section 41(1)(b)(ii), to satisfy that the arrest fell within the purview of any of the clauses (a) to (e). Considering that none of these stipulations were complied with, the Appellant's arrest is fraught with illegality.

5. Dr. Singhvi drew our attention to the High Court having erred in misapplying the provision of Section 41(2) of the CrPC to justify the non-compliances of Section 41(1)(b)(ii) of the CrPC and consequential arrest of the Appellant. He highlighted that Section 41(2) is attracted only to non-cognizable offences, whereas the arrest of the Appellant was made in a case of cognizable offence. This was fortified by contending that none of the applications moved by the CBI seeking remand, sought to invoke Section 41(2). These violations, Learned Senior Counsel contended, were squarely against the dictum of this

1 Arvind Kejriwal v. Directorate of Enforcement, Criminal Appeal No. 2493/2024

Court in ***Arnesh Kumar v. State of Bihar***[2] and a plethora of other subsequent decisions.

6. Dr. Singhvi further argued that the Appellant deserves to be granted bail, as his continued incarceration is not necessitated, given that the entire material is in the safe custody of the CBI. He also emphasized that the Appellant has been granted both interim and regular bail in the ED matter by this Court, where the conditions are stricter, thus demonstrating that he would invariably meet the threshold explicated by the 'triple test' in the CBI matter as well: he has no criminal antecedents, is not a flight risk, and poses no threat of tampering with witnesses or evidence. He also assailed that the High Court ought not to have relegated the Appellant to the Trial Court, considering that it exercises concurrent jurisdiction under Section 439 of the CrPC. This measure, he underscored, was akin to taking the Appellant back to square one, leading to a travesty of justice and unwarranted delay in the adjudication of his bail application.

7. Lastly, Dr. Singhvi drew our attention to the fact that the trial was not likely to be concluded in the near future, as the FIR was registered on 17.08.2022, with one chargesheet and three supplementary chargesheets having been filed, 17 accused persons arraigned, as many as 224 witnesses cited and the physical and digital records running into lakhs of pages. Further, the fourth supplementary charge sheet was filed on 29.07.2024, cognizance of which was taken only recently, and which was yet to be supplied to the Appellant. These reasons, he contended, irrefutably validated his apprehension of reasonable delay in the conclusion of trial.

8. *Per contra*, Mr. S.V. Raju, Learned Additional Solicitor General of India argued that the arrest of the Appellant had been conducted in due compliance with the statutory procedure as contemplated in Section 41(1) and 41A of the CrPC. He contended that these provisions do not, in any manner, mandate a blanket ban on the arrest of an individual, against whom there is a reasonable suspicion of commission of a cognizable offence, punishable with imprisonment up to seven years. The law only stipulates that the investigating authority ought to be satisfied with the necessity of such an arrest, which has been duly met in the present case. He strenuously

2 Arnesh Kumar v. State of Bihar (2014) 8 SCC 273

urged that the pre-requisites set out in Section 41(1)(b)(ii) had been fulfilled as the CBI deemed it imperative to conduct the custodial interrogation of the Appellant to unearth a larger conspiracy hatched amongst the accused persons and to establish the money trail of ill-gotten proceeds.

9. Mr. Raju contended that the requirement of notice under Section 41A of the CrPC is intended solely to compel the accused to appear before the investigating authority. Since the accused in the instant case was already in judicial custody, such notice would have been an empty formality. He argued that the CBI had obtained permission from the Trial Court, under whose custody the Appellant was. He supported his contention by referencing Section 41A (4) of the CrPC, which outlines the procedure for situations where an accused fails to comply with a Section 41A notice. Mr. Raju maintained that, given the Appellant's incarceration, the circumstance envisaged under Section 41A (4) becomes inapplicable, and therefore, the requirement of notice thereunder was not necessary. In regard to the misgivings on the erroneous application of Section 41(2) of the CrPC, he explained that the High Court had inadvertently mistyped the provision and that it ought to be read as Section 41(1)(b)(ii) of the CrPC instead.

10. While strongly opposing the Appellant's prayer for bail, Mr. Raju contended that there was a likelihood of witness intimidation, should the Appellant be released on bail, resulting in the trial proceedings being severely derailed. Mr. Raju also alluded to certain instances having occurred in the context of M/s. Mahadev Liquors of Punjab, thus pointing to the influence exerted by the Appellant, whose political outfit is ruling more than one State.

11. Mr. Raju vehemently pressed into aid his preliminary objection to relegate the Appellant to the Trial Court, who he stressed ought not to have approached the High Court directly, notwithstanding the concurrent jurisdiction under Section 439 of the CrPC. He urged that the Appellant should not be granted any special treatment merely because of the position of power he holds or his political stature. Mr. Raju canvassed that the Appellant deserves to be treated like any other undertrial and, hence, he must firstly approach the Trial Court, emphasizing that the High Court's jurisdiction is discretionary and should be exercised only in rare and exceptional circumstances.

12. According to the Learned ASG, the High Court was correct in refusing to exercise its jurisdiction because the Appellant had failed to make out an exceptional case warranting such special scrutiny. Furthermore, Mr. Raju highlighted a significant anomaly: the Appellant's failure to annex the chargesheet while applying for bail. He argued that a crucial aspect of seeking bail is to demonstrate, based on the material on record, that no *prima facie* case exists against the accused. Due to these oversights, Mr. Raju asserted that the Appellant should first seek relief from the Trial Court.

13. Lastly, Mr. Raju submitted that since the chargesheet and some supplementary chargesheets have been filed after the Appellant had approached the High Court for his enlargement on bail, it is a significant change in circumstances and therefore, in light of this too the Appellant should be relegated to the Trial Court. Such relegation would aid in his bail claim being considered with reference to the nature of evidence gathered by the CBI and the complicity of the Appellant, if any, as may be discernible from such evidence.

Issues

14. Having considered the material on record and the extensive submissions made by the parties, the following questions fall for our deliberation:

    i. Whether there was any illegality in the Appellant's arrest? If so, whether the Appellant is entitled to be released forthwith, even in the absence of a formal bail application?

    ii. Whether the Appellant, regardless of his lawful arrest, is entitled to be enlarged on regular bail?

    iii. Whether the filing of a chargesheet is a change in circumstances of such a decisive nature that an accused would be liable to be relegated to the Trial Court to make out a case for grant of regular bail?

Analysis

15. We have bestowed our consideration to the rival contentions, along with the sequence of events that culminated in the Appellant's arrest. Given the nature of the issues pending determination, it is essential to address them each independently and arrive at a definitive conclusion.

A. Whether the procedure undertaken in arresting the Appellant was illegal?

16. The primary basis for the Appellant's challenge rests on the contention that the procedure for arrest, as outlined under Sections 41(1)(b)(ii) and 41A of the CrPC, was not complied with. For the purpose of analysing the legality of the Appellant's arrest, there are two key aspects which we propose to examine separately, namely: (i) whether the issuance of a notice under Section 41A of the CrPC was duly complied with, in the context of the present factual scenario; and (ii) whether Section 41(1)(b)(ii) of the CrPC is applicable in the facts and circumstances of this case.

i. Compliance with Section 41A of the CrPC

17. Section 41A of the CrPC pertains to the issuance of a notice by a police officer to an individual when their arrest is not warranted under Section 41(1) of the CrPC, but their presence is still required before the investigating authority. Issuance of a notice under Section 41A(1) therefore would be imminent, when there is a complaint made, credible information received or there is a reasonable suspicion of the individual having committed a cognizable offence. Clause (2) of Section 41A thereafter, demands that an individual to whom such a notice has been issued, complies with the same. Section 41A (3) bears out that an individual who complies and continues to comply with such notice is not to be arrested in respect of the offence mentioned, unless the police officer, for reasons to be recorded, deems it necessary to arrest them. Finally, Section 41A (4) stipulates that if an individual fails to comply with the notice or refuses to identify themself, the police may arrest such an individual for the offence recorded in the notice, subject to any orders passed by a competent court.

18. Given the lucid nature of the language of the provision, it is crucial to examine the circumstances surrounding the Appellant's arrest in order to gauge whether there was due compliance with the procedural safeguards enshrined within Section 41A. In the present context, since the Appellant was already in judicial custody at the relevant time in the ED case, the CBI filed an application on 24.06.2024 before the Trial Court under Section 41A of the CrPC, *inter alia* seeking to interrogate and examine him. Such examination was allegedly necessitated by new facts and evidence uncovered by the CBI upon further investigation. The CBI, *vide* this application, outlined

the reasons prompting such examination, including the purported irregularities in the framing and implementation of the Excise Policy, and its manipulation to facilitate the monopolization and cartelization of wholesale and retail liquor trade in India.

19. The application also alleged that, upon further investigation, statements from several witnesses, incriminating documents and messages exchanged between the accused persons named in the chargesheets, revealed that the Appellant was a critical component in the criminal conspiracy related to the Excise Policy. It was claimed that the Appellant, in connivance with the other accused persons, engaged in tweaking the policy to enhance the profit margin of wholesalers from 5% to 12%, resulting in significant windfall gains. These gains were ultimately alleged to have been utilised by the Appellant's political party towards election related expenses, during the 2021-22 Goa Assembly elections. The application highlighted that the emergence of these new facts, pointing toward the Appellant's complicity, required further examination, as there was reasonable suspicion of his involvement in the commission of the offence. Upon considering these reasons, the Trial Court, by its order dated 24.06.2024, allowed the CBI's application seeking to interrogate the Appellant.

20. At this juncture, it is pertinent to first address the Appellant's allegations regarding the CBI's non-compliance with Section 41A of the CrPC, particularly concerning the issuance of notice or lack thereof. In this regard, it is crucial to draw reference to the language and intent of the provision, which aims to ensure an individual's appearance through the issuance of a notice. The provision, however, does not outline any express procedure to be undertaken where the individual in question is already incarcerated. It is to be remembered that the Court is, in a way, the guardian of an undertrial, while he is in judicial custody. That being so, there could possibly be no other way to secure the Appellant's physical presence for the purpose of further investigation, except to seek prior permission of the Trial Court for his interrogation.

21. In fact, given what was contended by the Appellant, it must be explicated that Section 41A does not envisage or mandate the issuance of a notice to an individual already in judicial custody. As such a person is already under the court's authority, any request to include them in an investigation in another case must be approved by the competent court. The CBI has thus followed the procedure which is contemplated in terms of the intent and purpose of Section 41A CrPC.

22. Contrarily, if the Appellant's contention is taken to its logical conclusion, it could lead to detrimental consequences. For instance, serving a notice upon an undertrial in jail through the Jail Superintendent, without informing the court that placed them in judicial custody, would effectively enable the police to arrest such individuals in a new case without the court's knowledge. This could result in a misuse of police authority and a violation of the Constitutional and procedural rights afforded to undertrials. Alternatively, when the court's permission is sought, it ensures the application of judicial scrutiny to assess whether custodial interrogation is necessary and, if so, for what duration.

23. In the case in hand, the Trial Court's approval of the CBI's application to interrogate the Appellant should be viewed as satisfying the essential requirements of Section 41A, as the issuance of a formal notice through the jail authorities would have had an adverse impact on the rights of the Appellant. Thus, it is our considered view that the CBI complied with the procedure encompassed within the framework of Section 41A of the CrPC.

24. That being said, let us now address the specific contention pertaining to the alleged violation of Section 41A(3) of the CrPC. The provision elucidates, at the risk of reiteration, that an individual who complies with the notice issued under Section 41A should not be arrested, unless the police officer for reasons recorded, opines that arrest is necessary. The vital takeaway from this provision is that while compliance with the notice generally shields an individual from arrest, the police may still proceed with the arrest if they conclude that it is essential and provide duly recorded reasons for doing so.

25. In the present case, following the interrogation, the CBI moved another application to the Trial Court on 25.06.2024, seeking permission to arrest the Appellant. The CBI justified the arrest on the grounds that the Appellant had allegedly given evasive responses during questioning and that custodial interrogation was necessary to confront him with evidence and uncover a purported larger conspiracy involving the accused persons in the implementation of the excise policy. The Trial Court, after considering these reasons, allowed the CBI's application for the Appellant's arrest and issued production warrants on the same day.

26. In this respect, our analysis is confined to assessing whether Section 41A(3) was violated, thereby rendering the arrest *per se* illegal. *First*, it is trite law that there is no insurmountable hurdle in

the conversion of judicial custody into police custody by an order of a Magistrate. Thus, there is no impediment in terms of arresting a person already in custody for the purposes of investigation, whether for the same offence or for an altogether different offence.[3] The Appellant's arrest by the CBI was thus entirely permissible, in light of the Trial Court's order dated 25.06.2024.

27. *Second*, Section 41A(3) allows for arrest, provided the reasons are recorded, justifying the necessity of such a step, and the police officer is satisfied that the individual should be arrested. In this context, we have already noted that the CBI, in their application dated 25.06.2024, clearly recorded the reasons as to why they deemed the Appellant's arrest necessary. These reasons were also summarized in the arrest memo dated 26.06.2024. It is important to clarify that our current analysis is limited to verifying whether the CBI followed the correct procedure, including the recording of sufficient reasons. This issue would not detain us further, as the reasons as to why the Appellant's arrest was necessitated are discernible from the CBI's application dated 25.06.2024.

28. *Third*, Section 41A(1), when read with Section 41A(3) CrPC, does not impose an absolute prohibition on the arrest of an individual against whom there exists reasonable suspicion of having committed a cognizable offence punishable with imprisonment up to seven years. This is evident from the language of the provision itself. Section 41A(3) explicitly states that an arrest is permissible if the police officer believes it to be necessary and duly records the reasons for such arrest. This provision thus essentially carves out an exception to the general rule under Section 41A, which mandates that an individual whose appearance is required should not be arrested under Section 41(1) of the CrPC.

29. Therefore, in view of these considerations, we do not find any merit in the Appellant's contention that the CBI failed to comply with Section 41A CrPC, in its true letter and spirit.

ii. Whether Section 41(1)(b)(ii) of the CrPC is applicable?

30. At the outset, it is imperative to clarify that our analysis will be restricted to the procedure outlined under Section 41(1)(b)(ii) of the

3 Central Bureau of Investigation v. Anupam J. Kulkarni (1992) 3 SCC 141

CrPC. This is because Section 41(1), in its entirety, addresses multiple situations and complexities regarding the procedure for arrest, which may not be directly applicable to the intricacies of the present case.

31. In this vein, the language of Section 41(1)(b) postulates as follows:

> ***"41. When police may arrest without warrant.—***
>
> *(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—*
>
> *…..*
>
> *(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—*
>
> *(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;*
>
> *(ii) the police officer is satisfied that such arrest is necessary—*
>
> *(a) to prevent such person from committing any further offence; or*
>
> *(b) for proper investigation of the offence; or*
>
> *(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or*
>
> *(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or*
>
> *(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:*

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

……"

32. Section 41(1)(b)(ii) of the CrPC clearly stipulates that an arrest under this provision can be made based on a complaint or credible information that an individual has committed a cognizable offence punishable with imprisonment up to seven years, with or without a fine. However, such an arrest must be conducted subject to the satisfaction of specific conditions outlined in subsections (a) to (e). The rigors of Section 41(1)(b)(ii) have been extensively examined by this Court in ***Arnesh Kumar*** ***(supra)***, where it was observed that:

"7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires

the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC."

33. Given this annotation, while there exists no doubt that the submissions made by the Appellant in regard to the precepts of Section 41(1)(b) are sound, the provision is inapplicable to the vicissitudes of the present factual matrix. Here is a case where the court upon application of judicial mind accorded its approval to the Appellant's arrest for which necessary warrant was issued. There was thus no occasion for the arresting police officer to form an opinion regarding the existence of valid reasons of arrest. The competent court having undertaken such a task, the police officer cannot be expected to sit over the order of the court.

34. Still further, Section 41(1) opens with the expression that '*any police officer may arrest without an order from a Magistrate or without a warrant*'. It necessarily means that where a Magistrate has issued an order, the police officer stands absolved form his statutory obligation of forming an opinion. Consequently, it becomes apparent that the variables and conditions ensconced in Section 41(1)(b)(ii) of the CrPC would cease to apply in the present context, given the order granted by the Trial Court prior.

35. Lastly, we are inclined to agree with the explanation given by the Learned ASG that the reference to Section 41(2) of the CrPC in the High Court's judgment appears to have been included inadvertently and is a typographical error. Both parties, during their submissions, have rightly clarified that Section 41(2) which pertains to the procedure

of arrest in non-cognizable offences, does not apply to the facts and circumstances here.

36. Having considered the CBI's compliance with Section 41A of the CrPC and the inapplicability of Section 41(1)(b)(ii) of the CrPC, we are thus of the view that the Appellant's arrest does not suffer with any procedural infirmity. Consequently, the plea regarding non- compliance of these provisions, merits rejection. Ordered accordingly.

B. Whether the Appellant is entitled to the relief of regular bail?

37. Adverting to the question of granting bail to the Appellant, it may be noticed that the High Court has viewed that due to the complexity and web of facts and the material on record, it was crucial to comprehensively determine the role of the Appellant in the alleged conspiracy and then only decide his entitlement to bail. The High Court further observed that considering the charge sheet had been filed before the Trial Court, the Appellant should first seek relief from that court.

38. The evolution of bail jurisprudence in India underscores that the 'issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process'.[4] The principle has further been expanded to establish that the prolonged incarceration of an accused person, pending trial, amounts to an unjust deprivation of personal liberty. This Court in ***Union of India v. K.A. Najeeb*** has expanded this principle even in a case under the provisions of the Unlawful Activities (Prevention) Act, 1967 (**hereinafter 'UAPA'**) notwithstanding the statutory embargo contained in Section 43-D(5) of that Act, laying down that the legislative policy against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time.[5] The courts would invariably bend towards 'liberty' with a flexible approach towards an undertrial, save and except when the release of such person is likely to shatter societal aspirations,

4 Gudikanti Narasimhulu v. Public Prosecutor (1978) 1 SCC 240

5 Union of India v. K.A. Najeeb, AIR 2021 SC 712

derail the trial or deface the very criminal justice system which is integral to rule of law.

39. It was submitted during these proceedings that the FIR was registered on 17.08.2022, and since then, the chargesheet along with four supplementary chargesheets have been filed. The fourth supplementary chargesheet was filed as recently as 29.07.2024 and we are informed that the Trial Court has taken cognizance of the same. Additionally, seventeen accused persons have been named, 224 individuals have been identified as witnesses, and extensive documentation, both physical and digital, has been submitted. These factors suggest that the completion of the trial is unlikely to occur in the immediate future.

40. In our considered view, although the procedure for the Appellant's arrest meets the requisite criteria for legality and compliance, continued incarceration for an extended period pending trial would infringe upon established legal principles and the Appellant's right to liberty, traceable to Article 21 of our Constitution. The Appellant has been granted interim bail by this Court in the ED matter on 10.05.2024 and 12.07.2024, arising from the same set of facts. Additionally, several co-accused in both the CBI and ED matters have also been granted bail by the Trial Court, the High Court, and this Court in separate proceedings.

41. So far as the apprehension of the Appellant influencing the outcome of the trial is concerned, it seems that all evidence and material relevant to the CBI's disposition is already in their possession, negating the likelihood of tampering by the Appellant. Similarly, given the Appellant's position and his roots in the society, there seems to be no valid reason to entertain the apprehension of his fleeing the country. In any case, in order to assuage the apprehensions of the CBI, we may impose stricter bail conditions. As regard to Appellant indulging in influencing witnesses, it needs no emphasis that in the event of any such instance, it will amount to misuse of the concession of bail and necessary consequences will follow.

42. Therefore, in the light of these extenuating circumstances and considering the foregoing analysis, it could be resolved that the Appellant satisfies the requisite triple conditions for the grant of bail. We order accordingly.

C. Whether the filing of a chargesheet is a change in circumstances warranting relegation to the trial court for grant of regular bail?

43. It is true that generally the Trial Court should consider the prayer seeking bail once the chargesheet is filed, since the material that an Investigating Authority may have been able to procure would undoubtedly facilitate that court to form a *prima facie* opinion with regard to (i) the gravity of offence; (ii) the degree of involvement of the applicant; (iii) the background and vulnerability of the witnesses; (iv) the approximate timeline for conclusion of the trial based on the number of witnesses; and (v) the societal impact of granting or denying bail. However, there can be no straitjacket formula which enumerates that every case concerning the consideration of bail should depend upon the filing of a chargesheet. In fact, each case ought to be assessed on its own merits, recognizing that no one-size fits all formula exists for determining bail.

44. An undertrial thus should, ordinarily, first approach the Trial Court for bail, as this process not only provides the accused an opportunity for initial relief but also allows the High Court to serve as a secondary avenue if the Trial Court denies bail for inadequate reasons. This approach is beneficial for both the accused and the prosecution; if bail is granted without proper consideration, the prosecution too can seek corrective measures from the High Court.

45. However, superior courts should adhere to this procedural recourse from the outset. If an accused approaches the High Court directly without first seeking relief from the Trial Court, it is generally appropriate for the High Court to redirect them to the Trial Court at the threshold. Nevertheless, if there are significant delays following notice, it may not be prudent to relegate the matter to the Trial Court at a later stage. Bail being closely tied to personal liberty, such claims should be adjudicated promptly on their merits, rather than oscillating between courts on mere procedural technicalities.

46. This issue is however, more or less academic in the instant case as the High Court did not relegate the Appellant to the Trial Court at the preliminary stage. Since notice was issued and the parties were apparently heard on merits by the High Court, we do not deem it necessary at this stage to relegate the Appellant to the Trial Court even though filing of a chargesheet is a change in the circumstances.

Conclusion:

47. We, thus, deem it appropriate to pass the following order:

    i. The Criminal Appeal challenging the legality of arrest (arising out of SLP (Crl.) No. 10991/2024) is, hereby, dismissed.

    ii. The Criminal Appeal (arising out of SLP (Crl.) No. 11023/2024) is allowed and the impugned judgement of the High Court dated 05.08.2024, to that extent is set aside. Consequently,

        a. the Appellant is directed to be released on bail in connection with FIR No. RC0032022A0053/2022 registered by the CBI at PS CBI, ACB, upon furnishing bail bonds for a sum of Rs. 10,00,000 /- with two sureties of such like amount, to the satisfaction of the Trial Court;

        b. the Appellant shall not make any public comments on the merits of the CBI case, it being *sub judice* before the Trial Court. This condition is necessitated to dissuade a recent tendency of building a self-serving narrative on public platforms;

        c. however, this shall not preclude the Appellant from raising all his contentions before the Trial Court;

        d. the terms and conditions imposed by a coordinate bench of this Court vide orders dated 10.05.2024 and 12.07.2024 passed in Criminal Appeal No. 2493/2024, titled ***Arvind Kejriwal v. Directorate of Enforcement***, are imposed *mutatis mutandis* in the present case;

        e. the Appellant shall remain present before the Trial Court on each and every date of hearing, unless granted exemption; and

        f. the Appellant shall fully cooperate with the Trial Court for expeditious conclusion of the trial proceedings.

48. Pending applications, if any, shall stand disposed of in the above terms.

49. Ordered accordingly.

Ujjal Bhuyan, J.

I have gone through the draft judgment of my esteemed senior colleague Justice Surya Kant. I am in complete agreement with the conclusion and direction of his Lordship that the appellant should be released on bail. However, on the necessity and timing of the arrest, I have a definite point of view. Therefore, I deem it appropriate to render a separate opinion on the point of necessity and timing of the arrest of the appellant while concurring with the opinion of Justice Surya Kant that the appellant should be released on bail.

2. Leave granted.

3. At the outset, a brief recital of the relevant dates and the attending facts as borne out from the record may be noted.

3.1 A case was registered by the CBI on 17.08.2022 being RC No. 0032022A0053 under Section 120B read with Section 477A of IPC and Section 7 of the PC Act. The aforesaid case was registered on the basis of source information as well as on the basis of a written complaint received from Shri Praveen Kumar Rai, Director, Ministry of Home Affairs, Government of India dated 22.07.2022. This letter also conveyed complaint dated 20.07.2022 of Shri Vinay Kumar Saxena, Lieutenant Governor of the Government of National Capital Territory of Delhi. The complaint sought for enquiry into the irregularities and manipulation in the framing and implementation of the excise policy of the Government of National Capital Territory of Delhi (GNCTD) for the year 2021-22. The precise allegation is that the accused persons had deliberately tweaked and manipulated the excise policy of 2021-22 which resulted in enhanced profit of the liquor manufacturers, wholesalers and retailers in *lieu* of illegal gratification received by the accused persons from what is called the "south group" to meet the election related expenses of the Aam Admi Party at Goa.

3.2 On 14.04.2023, appellant received summons under Section 160 Cr.P.C. from the CBI to appear before it on 16.04.2023. In compliance thereto, appellant appeared before the CBI on 16.04.2023. According to the appellant, he was questioned by the CBI for about 9 to 10 hours.

3.3 CBI filed a total of four chargesheets wherein 17 persons were named as accused. Manish Sisodia and Kavitha Kalvakuntala were named as accused amongst others. Appellant Shri Arvind Kejriwal was not named as an accused in the said chargesheets. The gist of the chargesheets is that the excise policy in question was a result of criminal conspiracy which was hatched by a cartel of liquor manufacturers, wholesalers and retailers ensuring undue gain to them in *lieu* of pecuniary benefits to the accused persons. Such criminal conspiracy resulted in huge loss to the government exchequer.

3.4 Fifth and final chargesheet has been filed by the CBI on 29.07.2024 wherein appellant has been named as an accused.

4. Directorate of Enforcement or ED recorded ECIR No. HIU-II/14/2022 on 22.08.2022 under the Prevention of Money Laundering Act, 2005 (PMLA) on the basis of the offences under which the CBI case was registered. Thus, the offences under the CBI case became the predicate offence leading to investigation by the ED under PMLA. ED filed the first prosecution complaint on 26.11.2022 in respect of which the Special Court took cognizance on 20.12.2022. ED has since then filed seven supplementary prosecution complaints. In the last supplementary prosecution complaint filed on 17.05.2024, appellant has been named as an accused.

4.1 According to ED, several notices under Section 50 of PMLA were issued to the appellant for his examination and recording of statement but he failed to appear and join the investigation. However, according to the appellant, the notices issued under Section 50 were illegal, bad in law and invalid.

5. Be that as it may, appellant was arrested by the ED on 21.03.2024. Appellant challenged his arrest before the High Court by filing a petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. However, the same was dismissed by the High Court on 09.04.2024.

6. It is stated that the competent authority accorded permission under Section 17A of the PC Act on 23.04.2024 whereafter CBI proceeded to investigate the role of the appellant in the CBI case. However, it is not mentioned as to when such permission was sought for.

7. In so far arrest of the appellant in the PMLA case is concerned, appellant carried his challenge from the High Court to this Court. On 10.05.2024, this Court granted interim bail to the appellant till 02.06.2024 in Criminal Appeal No. 2493 of 2024 in view of the ongoing Lok Sabha elections. On completion of the period of interim bail, appellant surrendered and was taken back into custody.

8. On 20.06.2024, appellant was granted regular bail by the learned Special Judge in the ED case. This bail order was challenged by the ED before the High Court which stayed the bail order on 21.06.2024 on an oral mentioning. A detailed order staying the bail of the appellant in the ED case was pronounced by the High Court only on 25.06.2024.

9. CBI sought for custody of the appellant so as to interrogate him. Application filed by the CBI in this regard under Section 41A Cr.P.C. was allowed by the learned Special Judge on 24.06.2024.

10. It is stated that CBI interrogated the appellant in Tihar Jail on 25.06.2024 for 3 hours but according to the CBI, he did not furnish satisfactory reply to the questions put to him. His reply was found to be evasive.

11. At around the same time the High Court stayed the bail of the appellant in the PMLA case, on 25.06.2024 CBI sought for permission of the learned Special Judge to formally arrest the appellant in the CBI case. On production of the appellant before the learned Special Judge on 26.06.2024, appellant was formally arrested and remanded to CBI custody till 29.06.2024 by the learned Special Judge. In the arrest memo dated 26.06.2024, CBI mentioned in column 7 that it had explained the grounds of arrest to the appellant. The grounds of arrest were mentioned as under:

    He is not co-operating with the investigation and concealing the true facts even after being confronted with evidences gathered during the investigation so far and also the facts which are exclusively in his knowledge and relevant for the purpose of the investigation to reach to the just conclusion of the case. He is trying to purposely derail the investigation. He **may** influence the witnesses.

    11.1 In the remand application, CBI mentioned in paragraph 17 that appellant was examined/interrogated in Tihar Jail on 25.06.2024. During his interrogation he remained evasive

and non-cooperative, failing to give satisfactory replies to the questions put to him regarding his role in the conspiracy. CBI mentioned as under:

That Arvind Kejriwal was examined/interrogated in Tihar Jail on 25.06.2024. During his interrogation, he remained evasive and non-cooperative, failing to give satisfactory replies to the questions raised to him regarding his role in the matter of demand of upfront money of Rs. 100 Crores from co-accused persons of South Group, the acceptance and delivery of the same to Aam Aadmi Party through his close associate Vijay Nair as well as utilization of the ill-gotten money so received in the Assembly Elections of Goa during the year 2021-22 to meet the election related expenditures of Aam Aadmi Party. He further gave evasive replies regarding his role and the role of other co-accused in respect of criminal conspiracy hatched. His replies are contrary to the oral and documentary evidence gathered by CBI during the investigation. He is not disclosing the facts truthfully, despite being confronted with the incriminating evidence and also concealing the vital facts, which are exclusively in his knowledge. These facts are relevant for the purpose of the investigation to reach to the just conclusion of the case.

11.2 On 29.06.2024, learned Special Judge remanded the appellant to judicial custody till 12.07.2024.

12. Criminal Appeal No. 2493 of 2024 was heard by this Court in the meanwhile. On 12.07.2024, a detailed judgment was passed. A bench of two Hon'ble Judges of this Court framed the following three questions of law for consideration by a larger bench:

(a) Whether the "need and necessity to arrest" is a separate ground to challenge the order of arrest passed in terms of Section 19(1) of the PML Act?

(b) Whether the "need and necessity to arrest" refers to the satisfaction of formal parameters to arrest and take a person into custody, or it relates to other personal grounds and reasons regarding necessity to arrest a person in the facts and circumstances of the said case?

(c) If questions (a) and (b) are answered in the affirmative, what are the parameters and facts that are to be taken into consideration

by the court while examining the question of "need and necessity to arrest"?

12.1 While making the reference as above, the bench observed that right to life and liberty is sacrosanct. Appellant had suffered incarceration of over 90 days. The above questions referred to a larger bench would require in depth consideration. Therefore, appellant was directed to be released on interim bail in connection with ECIR No. HIU-II/14/2022 dated 22.08.2022 on the same terms which were imposed earlier while granting temporary bail on 10.05.2024.

13. CBI filed its final chargesheet naming the appellant for the first time as an accused on 29.07.2024.

14. Appellant filed Bail Application No. 2285/2024 before the High Court under Section 439 of Cr.P.C. seeking regular bail in the CBI case. On 05.07.2024, a learned Judge of the High Court issued notice. Thereafter, arguments were heard on interim bail on 17.07.2024. However, the case was directed to be listed again on 29.07.2024 at 03:00 PM. On 29.07.2024, arguments were heard and the judgment was reserved.

14.1 Seven days thereafter the judgment was delivered on 05.08.2024. Without deciding the bail application on merit, the High Court disposed of the same giving liberty to the appellant to approach the Court of Special Judge for regular bail saying that such a course of action would be more beneficial to the appellant.

15. From the narration of facts as noted above, it is seen that CBI had registered its case RC No. 0032022A0053 on 17.08.2022. A total of four chargesheets were filed by CBI in the case naming 17 persons as accused. Appellant Arvind Kejriwal was not named as an accused in those chargesheets.

16. In the meanwhile, ED recorded ECIR No. HIU-II/14/2022 under PMLA on 22.08.2022. ED filed seven complaints under PMLA. In none of the above complaints, appellant was named as an accused. However, appellant was arrested by the ED in the PMLA case on 21.03.2024.

17. On 20.06.2024, appellant was granted regular bail by the learned Special Judge in the ED case. On oral mentioning, this bail order was stayed by the High Court on 21.06.2024.

18. It was thereafter that CBI sought for custody of the appellant in the CBI case which was allowed by the learned Special Judge on 24.06.2024.

19. Finally, this Court granted interim bail to the appellant in the PMLA case on 12.07.2024.

20. CBI filed the fifth and final chargesheet in the CBI case on 29.07.2024 wherein appellant has been named as an accused.

21. Since appellant's arrest by the ED, bail granted by the learned Special Judge and stay of bail by the High Court in the PMLA case are subject matter of parallel proceedings where appellant has been granted interim bail by this Court, I would refrain from commenting thereon. Therefore, I will confine this opinion only to two aspects: arrest of the appellant and the judgment of the High Court.

Arrest of the appellant by the CBI: necessity and timing

22. In so far arrest of the appellant by the CBI is concerned, it raises more questions than it seeks to answer. As already noted above, CBI case was registered on 17.08.2022. Till the arrest of the appellant by the ED on 21.03.2024, CBI did not feel the necessity to arrest the appellant though it had interrogated him about a year back on 16.04.2023. It appears that only after the learned Special Judge granted regular bail to the appellant in the ED case on 20.06.2024 (which was stayed by the High Court on 21.06.2024 on oral mentioning) that CBI became active and sought for custody of the appellant which was granted by the learned Special Judge on 26.06.2024. Even on the date of his arrest by the CBI on 26.06.2024, appellant was not named as an accused by the CBI. Only in the last chargesheet filed by the CBI on 29.07.2024, appellant has been named as an accused.

23. Thus, it is evident that CBI did not feel the need and necessity to arrest the appellant from 17.08.2022 till 26.06.2024 i.e. for over 22 months. It was only after the learned Special Judge granted regular bail to the appellant in the ED case that the CBI activated its machinery and took the appellant into custody. Such action on the part of the CBI raises a serious question mark on the timing of the arrest; rather on

the arrest itself. For 22 months, CBI does not arrest the appellant but after the learned Special Judge grants regular bail to the appellant in the ED case, CBI seeks his custody. In the circumstances, a view may be taken that such an arrest by the CBI was perhaps only to frustrate the bail granted to the appellant in the ED case.

24. In so far the grounds of arrest are concerned, I am of the view that those would not satisfy the test of necessity to justify arrest of the appellant and now that the appellant is seeking bail post incarceration, those cannot also be the grounds to deny him bail. The respondent is definitely wrong when it says that because the appellant was evasive in his reply, because he was not cooperating with the investigation, therefore, he was rightly arrested and now should be continued in detention. It cannot be the proposition that only when an accused answers the questions put to him by the investigation agency in the manner in which the investigating agency would like the accused to answer, would mean that the accused is cooperating with the investigation. Further, the respondent cannot justify arrest and continued detention citing evasive reply.

25. We should not forget the cardinal principle under Article 20(3) of the Constitution of India that no person accused of an offence shall be compelled to be a witness against himself. This Court has held that such a protection is available to a person accused of an offence not merely with respect to the evidence that may be given in the court in the course of the trial, but is also available to the accused at a previous stage if an accusation has been made against him which might in the normal course result in his prosecution. Thus, the protection is available to a person against whom a formal accusation has been made, though the actual trial may not have commenced and if such an accusation relates to the commission of an offence which in the normal course may result in prosecution. An accused has the right to remain silent; he cannot be compelled to make inculpatory statements against himself. No adverse inference can be drawn from the silence of the accused. If this is the position, then the very grounds given for arrest of the appellant would be wholly untenable. On such grounds, it would be a travesty of justice to keep the appellant in further detention in the CBI case, more so, when he has already been granted bail on the same set of allegations under the more stringent provisions of PMLA.

26. That apart, the apprehension of tampering with the evidence or influencing witnesses has already been answered by this Court in the case of *Manish Sisodia* in the following manner:

> **57.** Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.

27. Power to arrest is one thing but the need to arrest is altogether a different thing. Just because an investigating agency has the power to arrest, it does not necessarily mean that it should arrest such a person. In *Joginder Kumar Vs. State of U.P.*,[1] a three-Judge bench of this Court examined the interplay of investigation and arrest. Referring to the third report of the National Police Commission, this Court declared that no arrest can be made just because it is lawful for police officers to do so. The existence of the power of arrest is one thing but justification for the exercise of it is quite another. It was held as under:

> **20.** …….No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation

1 [1994] 3 SCR 661 : (1994) 4 SCC 260

> as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.

28. In the case of *Sidhartha Vashisht alias Manu Sharma Vs. State (NCT of Delhi)*,[2] this Court emphasized that investigation must be fair and effective. Investigation should be conducted in a manner so as to draw a just balance between a citizen's right under Articles 19 and 21 of the Constitution of India and the expansive power of the police to make investigation. Concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India.

29. This Court in the case of *Arnesh Kumar Vs. State of Bihar*,[3] while examining the provisions of Sections 41 and 41A Cr.P.C. observed that arrest brings humiliation, curtails freedom and cast scars forever. This Court, while emphasizing the need to sensitize the police against high-handed arrest, deprecated the attitude to arrest first and then to proceed with the rest. While emphasizing that police officers should not arrest the accused unnecessarily and that the Magistrate should not authorize detention casually and mechanically, this Court observed as follows:

> **5.** Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it

2 [2010] 4 SCR 103 : (2010) 6 SCC 1

3 [2014] 8 SCR 128 : (2014) 8 SCC 273

> seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

30. Again in the case of *Mohd. Zubair Vs. State (NCT of Delhi)*,[4] a three-Judge Bench of this Court once again emphasized that the existence of the power of arrest must be distinguished from the exercise of the power of arrest. The exercise of the power of arrest must be pursued sparingly. This Court reiterated the role of the courts in protecting personal liberty and ensuring that investigations are not used as a tool of harassment. Referring to its earlier decision in *Arnab Ranjan Goswami Vs. Union of India*,[5] this Court observed that the courts should be alive to both ends of the spectrum: the need to ensure proper enforcement of criminal law on the one hand and the need to ensure that the law does not become a ruse for targeted harassment on the other hand. Courts must ensure that they continue to remain the first line of defence against the deprivation of liberty of the citizens. Deprivation of liberty even for a single day is one day too many.

31. When the CBI did not feel the necessity to arrest the appellant for 22 long months, I fail to understand the great hurry and urgency on the part of the CBI to arrest the appellant when he was on the cusp of release in the ED case. The substantive charge against the appellant is under Section 477A IPC which deals with falsification of accounts and if convicted carries a punishment of imprisonment

4 [2022] 18 SCR 494 : (2022) SCC Online SC 897

5 [2020] 8 SCR 222 : (2020) 14 SCC 12

for a term which may extend to seven years or with fine or with both. The appellant has also been charged under Section 7 of the PC Act which deals with offence relating to a public servant being bribed. Here the punishment, if convicted, is imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. Without entering into the semantics of applicability of Section 41(1)(b)(ii) and Section 41A Cr.P.C. as explained by this Court in *Arnesh Kumar* (supra), timing of the arrest of the appellant by the CBI is quite suspect.

32. CBI is a premier investigating agency of the country. It is in public interest that CBI must not only be above board but must also be seem to be so. Rule of law, which is a basic feature of our constitutional republic, mandates that investigation must be fair, transparent and judicious. This Court has time and again emphasized that fair investigation is a fundamental right of an accused person under Articles 20 and 21 of the Constitution of India. Investigation must not only be fair but must be seem to be so. Every effort must be made to remove any perception that investigation was not carried out fairly and that the arrest was made in a high-handed and biased manner.

33. In a functional democracy governed by the rule of law, perception matters. Like Caesar's wife, an investigating agency must be above board. Not so long ago, this Court had castigated the CBI comparing it to a caged parrot. It is imperative that CBI dispel the notion of it being a caged parrot. Rather, the perception should be that of an uncaged parrot.

Impugned order

34. Let me now deal with the impugned judgment and order of the High Court whereby the bail application of the appellant was disposed of. Appellant had filed Bail Application No. 2285 of 2024 before the High Court under Section 439 Cr.P.C. in the CBI case where he was taken into custody on 26.06.2024. On 05.07.2024, a learned Judge of the High Court issued notice, fixing 17.07.2024 for arguments. On 17.07.2024, arguments were heard on interim bail; thereafter, the case was directed to be listed on 29.07.2024 at 03:00 PM. On 29.07.2024, arguments were heard and the judgment was reserved. Finally, the judgment was pronounced on 05.08.2024, the relevant portion of which reads as under:

> **5**. Though there is no quarrel about the proposition that the District Courts and this Court have concurrent jurisdiction, as has been held in the Judgments relied on behalf of the appellant, but at the same time it has been held time and again by the Apex Court that the Party must first approach the Court of first instance.
>
> **6**. In the present case, it is more in the benefit of the appellant, considering the complexity and the web of the facts and the material on record, to comprehensively determine the role of the appellant in this alleged conspiracy to determine if he is entitled to bail. It may also be noted that when the Bail Application was filed before this Court, the chargesheet had not been filed. However, in the changed circumstances, when the chargesheet has already got filed before the learned Special Judge, it would be in the benefit of the appellant, to first approach the Court of Sessions Judge.
>
> **7**. In these circumstances, this Bail Application is hereby disposed of with the liberty to the appellant to approach the learned Special Judge for regular bail.

34.1 After observing that it would be more to the benefit of the appellant if the appellant approaches the learned Special Judge first for bail more so when the chargesheet has been filed, the High Court relegated the appellant to the forum of the learned Special Judge though both the Court of the Special Judge and the High Court have concurrent jurisdiction in the matter.

35. If indeed the High Court thought of remanding the appellant to the forum of the Court of Special Judge, it could have done so at the threshold itself. After issuing notice, after hearing the parties at length and after reserving the judgment for about a week, the above order was passed by the High Court. Though couched in a language which appears to be in favour of the appellant, in practical terms it has only resulted in prolonging the incarceration of the appellant for a far more longer period impacting his personal liberty.

36. In somewhat similar circumstances, this Court in *Kanumuri Raghurama Krishnam Raju Vs. State of A.P.,*[6] after observing that jurisdiction of the

6 (2021) 13 SCC 822

trial court as well as of the High Court under Section 439 Cr.P.C. is concurrent, held that merely because the High Court was approached by the appellant without approaching the trial court would not mean that the High Court could not have considered the bail application of the appellant. In the facts of that case, this Court opined that the High Court ought to have considered the bail application of the appellant on merit and decided the same. However, having regard to the fact that much time had lapsed since passing of the order of the High Court and there were subsequent medical reports of the appellant, this Court did not relegate the appellant back to the High Court but considered the bail application of the appellant on merit herein itself. This Court held thus:

> **14.** The jurisdiction of the trial court as well as the High Court under Section 439 of the Code of Criminal Procedure, 1973 is concurrent and merely because the High Court was approached by the appellant without approaching the trial court would not mean that the High Court could not have considered the bail application of the appellant. As such, in our view, the High Court ought to have considered the bail application of the appellant on merits and decided the same. However, since the High Court has not considered the matter on merits and much water has flown since the passing of the order of the High Court, as now there are two medical reports of the appellant, one by the government hospital on the direction of the High Court and the other by Army Hospital on the directions of this Court, we deem it fit and proper to consider the bail application of the appellant on merits.

37. Mr. Raju, learned Additional Solicitor General of India, while supporting the order of the High Court vehemently argued that the appellant has to first approach the trial court for bail though under Section 439 Cr.P.C. both the Special Court and the High Court have concurrent jurisdiction. No special privilege should be shown or granted to the appellant. I am afraid such a submission cannot be accepted. In this regard, I am in respectful agreement with the view taken by this Court in *Kanumuri Raghurama Krishnam Raju*. That apart, when the appellant has been granted bail under the more stringent provisions of PMLA, further detention of the appellant by the CBI in respect of the same predicate offence has become wholly untenable. In such

circumstances, asking the appellant or relegating the appellant to approach the trial court, then to the High Court and then to this Court for a fresh round of bail proceedings in the CBI case after he had already traversed the same route in the PMLA case would be nothing but a case of procedure triumphing the cause of justice. In this connection, it would be apt to refer to the observations of this Court in the case of *Manish Sisodia Vs. CBI,* Criminal Appeal No. 3296 of 2024, decided on 09.08.2024:

> **32**. It could thus be seen that this Court had granted liberty to the appellant to revive his prayer after filing of the chargesheet. Now, relegating the appellant to again approach the trial court and thereafter the High Court and only thereafter this Court, in our view, would be making him play a game of "Snake and Ladder". The trial court and the High Court have already taken a view and in our view relegating the appellant again to the trial court and the High Court would be an empty formality. In a matter pertaining to the life and liberty of a citizen which is one of the most sacrosanct rights guaranteed by the Constitution, a citizen cannot be made to run from pillar to post.

37.1 Manish Sisodia is a co-accused in the same CBI case and the ED case. His second bail application was rejected by the trial court on 30.04.2024 after taking about three months' time to decide the same. When Sisodia moved the High Court for bail, the same also came to be rejected on 21.05.2024. It was thereafter that Manish Sisodia approached this Court in the second round. In the hearing which took place on 04.06.2024, the learned Solicitor General for India made a statement before the Court that investigation would be concluded and final complaint as well as chargesheet would be filed in both the ED and CBI cases on or before 03.07.2024. On the basis of the above statement of the learned Solicitor General, this Court disposed of the two criminal appeals of Shri Manish Sisodia with liberty to him to revive his prayer afresh after filing of final complaint and chargesheet. When Shri Sisodia approached this Court for bail after the complaint and the chargesheet were filed, Mr. Raju learned Additional Solicitor General of India appearing for the ED as well as the CBI contended that Shri Sisodia should again approach the trial court for regular bail as in the *interregnum*, the complaint and the chargesheet were

filed. Such submission of Mr. Raju was rejected by this Court. Adverting to the earlier order of this Court dated 04.05.2024, this Court in *Manish Sisodia* observed as under:

> **33**. ……..It will be a travesty of justice to construe that the carefully couched order preserving the right of the appellant to revive his prayer for grant of special leave against the High Court order, to mean that he should be relegated all the way down to the trial court. The memorable adage, that procedure is a hand maiden and not a mistress of justice rings loudly in our ears.

38. Court in *Gudikanti Narasimhulu Vs. Public Prosecutor*,[7] had highlighted that bail is not to be withheld as a punishment. The requirement as to bail is merely to secure the attendance of the prisoner at trial. This Court in *Manish Sisodia* referred to and relied upon the aforesaid decision and reiterated the salutary principle that bail is the rule and jail is the exception. This Court has observed that even in straightforward open and shut cases, bail is not being granted by the trial courts and by the High Courts. It has been held as under:

> **53.** The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

39. Bail jurisprudence is a facet of a civilised criminal justice system. An accused is innocent until proven guilty by a competent court following the due process. Hence, there is presumption of innocence. Therefore,

7 [1978] 2 SCR 371 : (1978) 1 SCC 240

this Court has been reiterating again and again the salutary principle that bail is the rule and jail is the exception. As such, the courts at all levels must ensure that the process leading to and including the trial does not end up becoming the punishment itself.

40. This Court has emphasized and re-emphasized time and again that personal liberty is sacrosanct. It is of utmost importance that trial courts and the High Courts remain adequately alert to the need to protect personal liberty which is a cherished right under our Constitution.

41. That being the position and having regard to the discussions made above, I am of the unhesitant view that the belated arrest of the appellant by the CBI is unjustified and the continued incarceration of the appellant in the CBI case that followed such arrest has become untenable.

42. In the circumstances, the judgment and order of the High Court dated 05.08.2024 in W.P.(Crl.) No. 1939 of 2024 is clarified to the above context while the judgment and order of the High Court dated 05.08.2024 in Bail Application No. 2285 of 2024 is set aside.

43. Consequently, it is directed that the appellant shall be released on bail forthwith in the CBI case i.e. RC No. 0032022A0053 dated 17.08.2022. In so far bail conditions are concerned, this Court in the ED case i.e. in Criminal Appeal No. 2493 of 2024 has imposed several terms and conditions including clauses (b) and (c) *vide* the orders dated 10.05.2024 and 12.07.2024 which have been incorporated in clause (d) of paragraph 47(ii) of the judgment delivered by Justice Surya Kant. Though I have serious reservations on clauses (b) and (c) which debars the appellant from entering the office of Chief Minister and the Delhi Secretariat as well as from signing files, having regard to judicial discipline, I would refrain from further expressing my views thereon at this stage since those conditions have been imposed in the separate ED case by a two judge bench of this Court.

44. Both the appeals are accordingly disposed of.

Result of the case: Appeals disposed of.

†*Headnotes prepared by:* Ankit Gyan