

(2024) 05 SC CK 0026

Supreme Court Of India

Case No: Criminal Appeal No. 2493 Of 2024

Arvind Kejriwal

APPELLANT

Vs

Directorate Of Enforcement

RESPONDENT

Date of Decision: May 10, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 21
- Prevention of Money Laundering Act, 2002 - Section 19
- Indian Penal Code, 1860 - Section 120B, 447A
- Prevention of Corruption Act, 1988 - Section 7
- Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 32
- Representation Of The People Act, 1951 - Section 62(5)

Hon'ble Judges: Sanjiv Khanna, J; Dipankar Datta, J

Bench: Division Bench

Advocate: Dr. Abhishek Manu Singhvi, Amit Desai, Vikram Chaudhari, Vivek Jain, Mohd. Irshad, Rajat Bharadwaj, Karan Sharma, Amit Bhandari, Rishikesh Kumar, Shadan Farasat, Suchitra Kumbhat, Rajat Jain, Sadiq Noor, Mohit Siwach, Kaustubh Khanna, Gopal Shenoy, Shailesh Chauhan, Tushar Mehta, Suryaprakash V. Raju, Mukesh Kumar Maroria, Kanu Agarwal, Annam Venkatesh, Zoheb Hossain, Vivek Gurnani, Hitarth Raja, Abhipriya, Kartik Sabarwal, Vivek Gaurav

Judgement

1. Leave granted.

2. Arvind Kejriwal in this appeal has challenged the order and judgment passed by the trial court and the High Court of Delhi, upholding his arrest by the Directorate of Enforcement [For short, 'DoE'] on 21.03.2024.

3. A number of legal pleas and issues have been raised, including the scope and violation of Section 19 of the Prevention of Money Laundering Act, 2002. We have heard learned counsel appearing for both the appellant as well as DoE at some length, albeit hearing is yet to conclude and considered decision will take time.

4. In view of the prolongation of proceedings, in the hearing held on 03.05.2024, we had put the parties to notice, that the Court may examine the question of grant of interim bail/release. Accordingly, we have heard arguments on the said aspect.
5. DoE had registered ECIR No. HIU-II/14/2022 on 22.08.2022 pursuant to registration of the predicate offences by the Central Bureau of Investigation [For short, 'CBI'] on 17.08.2022 in RC No. 0032022A0053 under Section 120-B read with Section 447A of the Indian Penal Code, 1860 and Section 7 of the Prevention of Corruption Act, 1988. This RC was registered on the complaint dated 20.07.2022 made by the Lieutenant Governor of the Government of NCT of Delhi and on the directions of the competent authority conveyed by Director, Ministry of Home Affairs, Government of India.
6. The investigation by the DoE resulted in filing of the first prosecution complaint on 26.11.2022. The Special Court took cognisance on 20.12.2022. Thereafter, DoE has filed four supplementary prosecution complaints. CBI has filed a chargesheet, followed by two supplementary chargesheets. However, charges have not been framed.
7. At this stage, it is not possible for us to either conclude the arguments or finally pronounce the judgment. However, there is an intervening factor which has prompted us to consider and pass the present order, namely, 18th Lok Sabha General Elections, which are in progress. As the appeal is pending before us, we do not think it would be proper for us to direct the appellant – Arvind Kejriwal to approach the trial court for interim bail/release. This may not be apt in view of the legal issues and contentions that are under examination and consideration before us.
8. It is no gain saying that General Elections to Lok Sabha is the most significant and an important event this year, as it should be in a national election year. Between 650-700 million voters out of an electorate of about 970 million will cast their votes to elect the government of this country for the next five years. General Elections supply the vis viva to a democracy. [See Mohinder Singh Gill and Another v. Chief Election Commissioner, New Delhi and Others, (1978) 1 SCC 405] Given the prodigious importance, we reject the argument raised on behalf of the prosecution that grant of interim bail/release on this account would be giving premium of placing the politicians in a benefic position compared to ordinary citizens of this country. While examining the question of grant of interim bail/release, the courts always take into consideration the peculiarities associated with the person in question and the surrounding circumstances. In fact, to ignore the same would be iniquitous and wrong.
9. We will now refer to some case law on the power to grant interim bail/release, which power is exercised routinely even by the trial courts.

10. In *Mukesh Kishanpuria v. State of West Bengal* (2010) 15 SCC 154, this Court has held that the power to grant regular bail includes the power to grant interim bail, particularly in view of Article 21 of the Constitution of India.
11. *Sunil Fulchand Shah v. Union of India and Others* (2000) 3 SCC 409 observes that parole by way of temporary release can be granted by Government or its functionaries in case of detenus under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Further, the High Courts and this Court can direct temporary release of a detenu for specified reasons when the request is unjustifiably rejected by the authorities. However, the power of temporary release of a detenu suffering preventive detention is exercised only in extreme and deserving cases.
12. In *Dadu @ Tulsidas v. State of Maharashtra* (2000) 8 SCC 437, notwithstanding Section 32A of the Narcotic Drugs and Psychotropic Substances Act, 1985 [For short, the 'NDPS Act'], which prohibits the appellate court from suspending sentence awarded to the convict, this restriction, it is observed, does not affect the power and authority of the court to grant parole or furlough, even where a person has been convicted and sentenced and his appeal has been dismissed.
13. *Athar Pervez v. State* 2016 SCC Online Del 6662, a judgment of the Delhi High Court authored by one of us (Sanjiv Khanna), on the power to grant interim bail in cases registered under the NDPS Act, in addition to the judgments noted, refers to *Siddharam Satlingappa Mhetre v. State of Maharashtra and Others* (2011) 1 SCC 694, which decision leans on the Constitutional Bench judgment in *Shri Gurbaksh Singh Sibbia and Others v. State of Punjab* (1980) 2 SCC 565, and *Central Inland Water Transport Corporation Limited and Another v. Brojo Nath Ganguly and Another* (1986) 3 SCC 156, and observes:
- "20. The expression "interim" bail is not defined in the Code. It is an innovation by legal neologism which has gained acceptance and recognition. The terms, "interim" bail/"interim" suspension of sentence, have been used and accepted as part of legal vocabulary and are well known expressions. The said terms are used in contradistinction and to distinguish release on regular bail during pendency of trial or appeal till final adjudication. Applications for "interim" suspension or bail are primarily moved and prayed for, when the accused or convict is not entitled to or cannot be granted regular bail or suspension of sentence, or the application for grant of regular bail is pending consideration and is yet to be decided. "Interim" bail entailing temporary release can be granted under compelling circumstances and grounds, even when regular bail would not be justified. Intolerable grief and suffering in the given facts, may justify temporary release, even when regular bail is not warranted. Such situations are not difficult to recount, though making a catalogue would be an unnecessary exercise."

14. Power to grant interim bail is commonly exercised in a number of cases. Interim bail is granted in the facts of each case. This case is not an exception.

15. The prosecution has rightly pointed out that the appellant – Arvind Kejriwal had failed to appear in spite of nine (9) notices/summons, first of which was issued in October 2023. This is a negative factor, but there are several other facets which we are required to take into consideration. The appellant – Arvind Kejriwal is the Chief Minister of Delhi and a leader of one of the national parties. No doubt, serious accusations have been made, but he has not been convicted. He does not have any criminal antecedents. He is not a threat to the society. The investigation in the present case has remained pending since August 2022. Arvind Kejriwal was arrested, as noted above, on 21.03.2024. More importantly, legality and validity of the arrest itself is under challenge before this Court and we are yet to finally pronounce on the same. The fact situation cannot be compared with harvesting of crops or plea to look after business affairs. In this background, once the matter is subjudice and the questions relating to legality of arrest are under consideration, a more holistic and libertarian view is justified, in the background that the 18th Lok Sabha General Elections are being held.

16. We will now refer to the judgments relied on behalf of the DoE:

(i) In *Anukul Chandra Pradhan v. Union of India and Others* (1997) 6 SCC 1, this Court rejected the constitutional challenge to sub-section (5) to Section 62 of the Representation of the People Act, 1951, observing that the right to vote is not a constitutional right, and that the right can be curtailed. Interestingly, the proviso to the said sub-section states that a person subjected to preventive detention can vote. The prohibition was upheld on several grounds, including, inter alia, it promotes the object of free and fair elections. Indeed there are decisions of this Court that advert to the importance of elections in democracy, described as the barometer and lifeline of parliamentary system and its setup. [See *Anoop Baranwal v. Union of India* (Election Commission Appointments), (2023) 6 SCC 161, quoting from *S.R. Chaudhuri v. State of Punjab and Others*, (2001) 7 SCC 126]

(ii) In *K. Ananda Nambiar and Another v. Chief Secretary to the Government of Madras and Others* AIR 1966 SC 657, challenge to the Defence of India Rules, 1962 in its application to Members of Parliament, was rejected on the ground that members of the legislature cannot claim freedom from arrest. Detention does not violate privileges of the Members of Parliament.

(iii) In *State of Maharashtra v. Anand Chintaman Dighe* (1990) 1 SCC 397, this Court while allowing the appeal, observed that the High Court has misdirected itself in granting bail to an accused convicted under the Terrorist and Disruptive Activities (Prevention) Act, 1987, by refusing to look into statements and further material collected by the investigating agency.

17. We would reject the argument that the reasoning recorded by us in paragraphs 7, 8 and 14, results in grant of privilege or special status to politicians. As observed in paragraphs 7, 8 and 14, several peculiarities of the case have weighed with us. In *Siba Shankar Das @ Pintu v. State of Odisha and Another* 2024 SCC OnLine SC 410, this Court accepting the appeal, deleted the condition imposed by the High Court stipulating that the appellant shall not be involved in any political activities, directly or indirectly. Imposition of this condition, the order holds, would breach fundamental rights. No such condition should be imposed. A coordinate Bench of this Court in *State of Andhra Pradesh v. Nara Chandra Babu Naidu* Special Leave Petition (Criminal) No. 15099 of 2023, in an appeal filed by the State, by an interim order has deleted the condition restraining the respondent therein from organising or participating in public rallies and meetings, thereby permitting him to participate in the political process. This petition seeking special leave to appeal is still pending.

18. For the aforesaid reasons, we direct that the appellant – Arvind Kejriwal will be released on interim bail in connection with case ECIR No. HIU-II/14/2022 dt. 22.08.2022 till 1st of June 2024, that is, he will surrender on 2nd of June 2024 on the following terms and conditions:

- (a) he shall furnish bail bonds in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the Jail Superintendent;
- (b) he shall not visit the Office of the Chief Minister and the Delhi Secretariat;
- (c) he shall be bound by the statement made on his behalf that he shall not sign official files unless it is required and necessary for obtaining clearance/ approval of the Lieutenant Governor of Delhi;
- (d) he will not make any comment with regard to his role in the present case; and
- (e) he will not interact with any of the witnesses and/or have access to any official files connected with the case.

19. The grant of interim bail will not be treated as an expression of opinion on the merits of the case or the criminal appeal which is pending consideration before us.