Mohd. Tahir Hussain Vs State Of Nct Of Delhi

Court: Supreme Court Of India

Date of Decision: Jan. 22, 2025

Acts Referred: Constitution of India, 1950 â€" Article 14, 21, 136
Code of Criminal Procedure, 1973 â€" Section 436A
Representation of People Act, 1951 â€" Section 62, 62(5)
Bharatiya Nagarik Suraksha Sanhita, 2023 â€" Section 480(3)(b), 482(2)(ii)

Hon'ble Judges: Pankaj Mithal, J; Ahsanuddin Amanullah, J

Bench: Division Bench

Advocate: Siddharth Aggarwal, Rajiv Mohan, Tara Narula, Sonal Sarda, Shivangi Sharma, Noyonika Deori, Rishabh Bhati, A. Mitra, Karan Dhalla, Vismita Diwan, Sujoy Chatterjee, Suryaprakash V. Raju, Annam Venkatesh, Zoheb Hussain, Rajat Nair, Hitarth Raja, Mukesh Kumar Maroria

Judgement

Pankaj Mithal, J.

1. Heard Mr. Siddharth Aggarwal, learned senior counsel appearing for the petitioner and Mr. S. V. Raju, learned Additional Solicitor General

appearing for the respondent-State.

2. The petitioner is in custody in connection with FIR No. 65 of 2020 dated 26.02.2020 registered at Police Station Dayalpur, District North East, Delhi

in connection with rioting and murder of one Ankit Sharma, an official of the Intelligence Bureau, Ministry of Home Affairs, Government of India.

Apart from the aforesaid case, several other cases relating to riots in Delhi which took place in the month of February, 2020 and one under PMLA are

pending consideration and the petitioner is allegedly involved in all of them.

3. The petitioner so far has not been successful in getting bail in the above case and some other cases, so he applied to the High Court for grant of

interim bail from 14.01.2025 to 09.02.2025 simply to participate and contest Delhi Assembly Election, 2025 from Mustafabad Constituency, Delhi. It

may be remembered that the petitioner was earlier a councilor from the ticket of the Aam Aadmi Party. However, subsequently he left the said party

and was given ticket to contest the Assembly Elections by the All India Majlis-e-Ittehadul Muslimeen (AIMIM). He took the ticket to contest the

Assembly Elections fully knowing that he is in jail in connection with several cases in some of which he may have been granted bail but continues to

languish therein and so he has to participate in the election remaining behind the bars.

4. The interim bail application moved by the petitioner was considered by the High Court and was ultimately disallowed by the order impugned dated

14.01.2025 but he was granted conditional custody parole for subscribing oath and to complete formalities in respect of filing his nomination papers to

contest the Assembly Elections. In this way, though the petitioner has no fundamental right to contest the elections but his statutory right to that effect

was duly protected.

5. The petitioner is not satisfied by the grant of custody parole for filing his nomination enabling him to participate in the election and has thus preferred

this Special Leave Petition contending inter alia that permitting filing of nomination is meaningless if he is not allowed to campaign and canvass.

6. It is important to note here that right to campaign or canvass is neither a fundamental right nor a constitutional or a human right. It is not even a

right recognized under any statute. However, the petitioner is an Indian citizen and we are conscious that his rights as a citizen are to be protected.

Nonetheless, the involvement of the petitioner in as many as eleven cases including the present one, one pertaining to PMLA and nine in relation to

Delhi riots of 2020, dilutes and erodes his position as a law-abiding citizen.

7. The allegations against the petitioner in the present case are not only in connection with the rioting but also of the murder of the official of the

Ministry of Home Affairs, Government of India. The allegations made against the petitioner, if considered cumulatively along with the chargesheet

which has been submitted on 02.06.2020 reveals the seriousness of the charges levelled against the petitioner. The allegations against the petitioner

are also to the effect that his house/office was being used as the epicenter for the commission of the aforesaid offences in which murder of one Ankit

Sharma is a sequel. On the rooftop of petitionerÃ¢â‚¬â„¢s house/building objects like stones, bricks, petrol bombs, acid drums etc. were recovered which

were used during the riots, as per material on record. It has come on record in the order impugned that many material witnesses, especially in

connection with the present FIR No. 65 of 2020 are yet to be examined.

8. In the aforesaid facts and circumstances and keeping in mind the submissions of Sh. Siddharth Aggarwal, learned senior counsel for the petitioner,

who has limited/confined his arguments to the grant of interim bail only, as the regular bail remains pending for consideration before the High Court,

the limited issue before this Court is whether a purpose based interim bail can be granted to contest the election or for canvassing as the petitioner

himself is one of the candidates.

9. There is no provision for interim bail under the law but lately it has become an acceptable mode of grant of bail in certain special contingencies.

10. In Arvind Kejriwal vs. Directorate of Enforcement (2024) 9 SCC 577 this Court quoted with approval from Athar Pervez 2016 SCC OnLine Del

6662 case which reads as under:

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.

11. The reasons and factors whereunder interim bail may be permitted may include cases where there is death in the family of the accused and the

cremation has to take place; to attend the wedding of son/daughter or of any close relative of the accused but such a right has not been recognized on

the plea of contesting or canvassing for the election.

12. In the event interim bail is made permissible on the ground of contesting elections, it will open a PandoraÃ¢â‚¬â„¢s box inasmuch as in this country

election in some form takes place throughout the year and the accused persons in jail may take undue benefit of it and even if they are not serious in

contesting elections, they would move interim bail application for the purposes of participating in the election knowing fully well they are likely to lose

or are not serious contenders. This will open a flood gate of litigation which ought not to be permitted so as to widen the scope of grant of interim bail,

more particularly when the regular bail application is pending consideration.

13. Secondly, if right to participate, canvassing and contesting in election is allowed to be treated as a ground for interim bail, then the necessary

sequel of the same would be that the accused person ought to be allowed to vote in the election as well. Such a sequel would be in conflict with the

provision Section 62(5) of the Representation of People Act, 1951 which circumscribe the right to vote by laying down that no person shall vote in any

election, if he is confined in a prison or is in lawful custody of the police. The grant of interim bail for contesting elections would mean permitting the

accused to cast his/her vote, which would be antithesis to the provisions of Section 62(5) of the Representation of People Act, 1951.

14. In the case of Anukul Chandra Pradhan, Advocate Supreme Court Vs. Union of India and Ors.: 1997 (6) SCCÃ, 1,Ã,th eÃ, three

Ã, JudgesÃ, BenchÃ, ofÃ, thisÃ, CourtÃ, has observed as under:

Ã¢â‚¬Å“8. There are other reasons justifying this classification. It is well known that for the conduct of free, fair and orderly elections, there is need to deploy

considerable police force. Permitting every person in prison also to vote would require the deployment of a much larger police force and much greater security

arrangements in the conduct of elections. Apart from the resource crunch, the other constraints relating to availability of more police force and infrastructure facilities

are additional factors to justify the restrictions imposed by sub-section (5) of Section 62. A person who is in prison as a result of his own conduct and is, therefore,

deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others who are not in prison.

The classification of persons in and out of prison separately is reasonable. Restriction on voting of a person in prison results automatically from his confinement as a

logical consequence of imprisonment. A person not subjected to such a restriction is free to vote or not to vote depending on whether he wants to go to vote or not;

even he may choose not to go and cast his vote. In view of the restriction on movement of a prisoner, he cannot claim that he should be provided the facility to go

and vote. Moreover, if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote

cannot be called unreasonable.Ã¢â‚¬â€‹

15. One of the basic submissions of Sh. Siddharth Aggarwal is that permitting filing of nomination alone is of no use unless the person is allowed to

campaign and canvass. The argument appears to be attractive, but, has no force.

16. Canvassing in an election can be done in many ways such as through newspapers, social media, pamphlets, writing letters and it is not necessary

that it should be in the physical form such as by holding meetings and by personal contact. Permitting the petitioner to be released on interim bail for

the purpose of canvassing would amount to permitting the petitioner to hold meetings and to undertake door to door canvassing. This would necessarily

involve interaction of the petitioner with the people of the locality on personal basis. Since, the incident mentioned in the FIR took place in the locality

from where the petitioner is contesting, if the petitioner is permitted to move around freely, there is a very high possibility of his tampering with the

witnesses who are or local people living in that locality alone.

17. The argument that the petitioner is entitled to interim bail on the ground that he has suffered long incarceration for around four years and that

despite submission of chargesheet way back on 20.06.2020 itself, the trial has not progressed and very few witnesses till date have been examined, is

of no assistance for the petitioner for seeking interim bail. The said argument may be appreciated better while considering the regular bail, but not an

interim bail which is limited only to the ground whether he should be allowed to be released temporarily for the purpose of contesting or participating in

the election.

18. This apart, the thrust of the argument is that an interim bail for canvassing is necessary for effectively contesting the election. It is well known that

a person contesting election has to nurture his constituency for years together and canvassing for ten or fifteen days would not suffice the purpose. If

he has earned a good reputation and his services are recognized by the people, the canvassing in the last days would not be very material. It is also

well accepted that a large number of people in the past have contested elections sitting behind the bars and they have won without being released for

the purposes of canvassing. Therefore, there is no special circumstance in the case of the petitioner to grant him interim bail for that purpose. Most of

the times, the campaigning is done by the party or its workers and if one person in the party or the leader or even the candidate is debarred from

canvassing, it does not in any way affect the legal right.

19. Reliance placed upon the decision of this Court in the case of Arvind Kejriwal (supra) cuts no ice inasmuch as it is distinguishable on facts. There

the petitioner was holding the post of Chief Minister and was the President of a national party and therefore, the Court opined that he is one of the

main campaigners, which is not the situation in the case at hand.

20. It may not be out of context to mention that the petitioner is in jail not only in connection with the case at hand i.e., FIR No. 65 of 2020 but also in

two other cases, including a PMLA case, and a case arising out of FIR No. 59 of 2020. In those two cases, the petitioner has not been granted bail.

His bail application/interim bail application in those cases are pending in different courts but the fact remains that he is not on bail in those two cases,

meaning thereby that even if the petitioner is granted interim bail in the present case, he would not be out of prison for the purpose of canvassing and

campaigning. Therefore, the entire exercise in this regard will prove to be academic and futile in nature.

21. It is high time that the citizens of India deserve a clean India, which means clean politics as well and for the said purpose, it is necessary that

people with tainted image, especially those who are in custody and had not been granted bail and those who are undertrial, even if out of jail, be

restricted in some way or the other from participating in the election. The people of India should be given a choice to elect people with clean image

and antecedents.

22. In the case at hand, as stated earlier, the Court is confined as to whether interim bail for the purposes of election ought to be allowed or not. The

petitioner, on the ground of his long custody or the trial not being completed for long, may argue for regular bail but that is not the subject-matter for

consideration before this Court today. We do not intend to usurp the jurisdiction of the High Court, where the regular bail of the petitioner is pending

consideration.

23. In the facts and circumstances of the case, long incarceration of the petitioner or the fact that some of the other co-accused have been released

on bail or that upon evidence, the entire case of prosecution will fall to the ground are not relevant, and therefore, I am of the opinion that the High

Court has not committed any error of law in exercising its decision in refusing the interim bail to the petitioner and permitting him only custodial parole

for the purposes of subscribing oath and filing of his nomination papers.

24. In simple words, interim bail is not permissible for the purposes of contesting elections, much less for campaigning.

25. In this view of the matter no case is made out for any indulgence in exercise of discretionary power of this Court under Article 136 of the

Constitution of India and the Special Leave Petition is dismissed with liberty to the petitioner to pursue his regular bail application before the High

Court where he may seek an advancement of the date of hearing fixed in the matter concerned, if so advised.

26. The Special Leave Petition is dismissed as aforesaid.

Ahsanuddin Amanullah, J.

1. With great reverence for the erudite opinion expressed by learned Brother Pankaj Mithal, J., I express my inability to concur therewith.

2. The factual matrix has been noted by Brother Mithal. I see no need to repeat the same, except to refer thereto where required.

PRELUDE:

3. The Petitioner seeks interim bail to contest in and canvass for the upcoming General Elections to the Legislative Assembly of the National Capital

Territory of Delhi. The Petitioner is an accused in cases relating to the unfortunate riots that took place in Delhi in February/March, 2020. It is averred

that except for three cases i.e., 2 FIR s Ã¢â‚¬Ëœ First Information ReportÃ¢â‚¬â„¢ (including the present one) and ECIR Ã¢â‚¬Ëœ Enforcement Case Information

ReportÃ¢â‚¬â„¢ No.05/STF/2020, the Petitioner has secured bail in all the other cases, whereas one FIR has been quashed by the Delhi High Court.

4. The Petitioner approached the High Court which granted Ã¢â‚¬Ëœ Custody Parole for subscribing the Oath and to complete the formalities in

respect of filing his Nomination PapersÃ¢â‚¬â„¢, subject to conditions as enumerated in the Impugned Judgment 2025 SCC OnLine Del 111.

5. It is clear that the Petitioner has been permitted to file his nomination and, consequent thereof, contest in the Election. Therefore, what this Court is

required to consider as to whether or not, in the attendant facts and circumstances, he can be granted interim bail to campaign/canvass.

6. The contours on which to examine the grant of bail are no longer res integra. I may gainfully refer to State of Haryana v Dharamraj, 2023 SCC

OnLine SC 1085, where this Court cancelled the grant of anticipatory bail to an accused by the Punjab and Haryana High Court, but revisited the

precedents on grant/cancellation of bail as under:

Ã¢â‚¬Ëœ7.Ã¢â‚¬Â¦. This Court considered the factors to guide grant of bail in Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 and Kalyan Chandra Sarkar

v. Rajesh Ranjan, (2004) 7 SCC 528. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the relevant principles were restated thus:

Ã¢â‚¬Ëœ9. Ã¢â‚¬Â¦ It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is

equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a

plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an

application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.Ã¢â‚¬â„¢

xxx

11. The contours of anticipatory bail have been elaborately dealt with by 5-Judge Benches in Gurbaksh SinghÃ, Sibbia v. StateÃ, of Punjab, (1980)Ã, 2 SCC 565

and SushilaÃ, Aggarwalv. State (NCT of Delhi), (2020) 5 SCC 1. Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 is worthy of mention

in this context, despite its partial overruling in Sushila Aggarwal (supra). We are cognizant that liberty is not to be interfered with easily. More so, when an order

of pre-arrest bail already stands granted by the High Court.

12. Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements

are illustrative, and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits. In Vipan Kumar Dhir v. State of Punjab, (2021) 15 SCC

518, taking note of Dolat Ram (supra) and X v. State of Telangana (supra), the Court cancelled the anticipatory bail granted to the accused therein. Keeping all

the aforesaid in mind, we turn our attention to the facts in praesenti.Ã¢â‚¬â„¢

(emphasis supplied)

7. I consciously refrain from discussing in detail the evidence or my view thereon, following, inter alia, Niranjan Singh v Prabhakar Rajaram

Kharote, (1980) 2 SCC 559; Vilas Pandurang Pawar v State of Maharashtra, (2012) 8 SCC 795, and; Manik Madhukar Sarve v Vitthal

Damuji Meher, (2024) 10 SCC 753. However, in view of the elaborate submissions advanced at the Bar, reference somewhat to the materials on

record is necessitated.

8. Yet, before forming an opinion as to whether the prayer for grant of interim bail, for the purpose presently sought for i.e., to campaign for the

Election for which his Nomination Papers stand submitted, can be granted, this Court would have to go into the broader merits of the case, subject to

the caveat afore-recorded.

THE PETITIONERÃ¢â‚¬â„¢S SUBMISSIONS:

9. Mr. Siddharth Aggarwal, learned senior counsel appearing for the Petitioner has submitted that he would be confining himself, at this stage, to

attempting to persuade the Court as to whether in the particular facts and circumstances, the Petitioner would, due to the non-grant of interim bail, be

seriously prejudiced and his Fundamental Rights as a citizen under the Constitution of India would also be compromised if he only takes part in the

Election as a formality, inasmuch as even after filing his Nomination Papers and being declared fit to contest, he would not be allowed to connect with

the people of the constituency concerned, and to satisfy the electorate as to why he should be elected.

10. The thrust of Mr. AggarwalÃ¢â‚¬â„¢s argument was that the Petitioner has been in custody for almost 5 years now (reckoned from March, 2020)

which is a long period and the democratic process requires that a candidate should go before the electorate from whom he seeks votes to represent

them in the body for which elections are going to be held.

11. It was submitted that the Petitioner had an unblemished record as a Ward Councillor and only because of the unfortunate incidents which took

place in February/March, 2020, the Petitioner due to certain circumstances was named as an accused in as many as 11 FIRs, out of which in 8, he has

been granted bail. What remains are the instant case and two other cases, including one under the Prevention of Money-Laundering Act, 2002

(hereinafter referred to as Ã¢â‚¬ËœPMLAÃ¢â‚¬â„¢). It was submitted that in all the cases, the basic allegation is that the Petitioner was chiefly an instigator

and that he may be the person who was also instrumental in logistics for the rioters. However, on identical facts, in the 8 other cases, the Petitioner

has been granted bail and in the remaining cases, his applications for interim bail as well as regular bail are still pending, without having been finally

considered on merits.

12. Learned senior counsel submitted that under law, the right of an accused to bail is almost crystallized, in the event that the prosecution fails to

discharge its onus of facilitating a fair and speedy trial, which is glaring in the present case. He submitted that in the present case, there are five

named Chargesheet prosecution eye-witnesses, out of which four have already been examined but the fifth witness is yet to be examined and the

ground is that the said witness has been out of Delhi on the various dates fixed in the trial. It was next submitted that the Chargesheet was

filed/submitted on 02.07.2020 and now, almost five years have passed. Mr. AggarwalÃ¢â‚¬â„¢s submission was that without blaming anybody for such

situation, including a systemic failure, there is no real probability of the trial being concluded in the near future. Asserting that the PetitionerÃ¢â‚¬â„¢s

rights cannot be curtailed in this way, he urged the Court to consider as to whether the Petitioner deserves to be enlarged on bail even otherwise,

albeit without fully going into the merits.

13. It was submitted even under specific laws, where there are prohibitions for grant of bail, unless the Court is satisfied that there is no chance of the

petitioner being convicted and/or it would not otherwise be against public interest, the Courts have held that the same would not apply in case of

granting provisional bail. It was submitted that such proposition has been dealt with at Paragraphs 12 and 13 in Arvind Kejriwal v Directorate of

Enforcement, 2024 (9) SCC 577 [12.Athar Pervez v. State (NCT of Delhi) [Athar Pervez v. State (NCT of Delhi), 2016 SCC OnLine Del 6662] , a judgment of

the Delhi High Court authored by one of us (Sanjiv Khanna, J.), 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 [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 :

(2011) 1 SCC (Cri) 514] , which decision leans on the Constitution Bench judgment in Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v.

State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , and Central Inland Water Transport Corpn. v. Brojo Nath Ganguly [Central Inland Water Transport

Corpn. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429] , and observes : (Athar Pervez case [Athar Pervez v. State (NCT of Delhi), 2016 SCC

OnLine Del 6662] , SCC OnLine Del para 20) Ã¢â‚¬Å“20. The expression Ã¢â‚¬Å“interimÃ¢â‚¬ bail is not defined in the Code. It is an innovation by legal neologism which

has gained acceptance and recognition. The terms, Ã¢â‚¬Å“interimÃ¢â‚¬ bail/Ã¢â‚¬Å“interimÃ¢â‚¬ 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 Ã¢â‚¬Å“interimÃ¢â‚¬ 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.

Ã¢â‚¬Å“InterimÃ¢â‚¬ 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.Ã¢â‚¬ 13. 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.Ã¢â‚¬â„¢]. Further, it has been contended that even the Petitioner was granted bail by the

Delhi High Court or the Trial Court concerned in a majority out of the total eleven cases. It was urged that the Petitioner has been shown to be the

villain because he was a Ward Councillor and naturally people would reach out to him, if they required help including those from his own community,

during the time of the riots.

14. However, learned Senior Counsel took the Court through the Chargesheet, the reading whereof would indicate that (i) the Petitioner made

repeated calls to the Police Control Room, (ii) the police arrived late at the spot, and; (iii) the PetitionerÃ¢â‚¬â„¢s house was the sole house which was not

vandalised. He submitted that even as per the materials, some incriminating articles have been recovered from the PetitionerÃ¢â‚¬â„¢s house but that

would not prove that the Petitioner was the mastermind of the entire plot, as was the version of the prosecution. Otherwise, advanced the learned

senior counsel, in a regular case, the Courts have always granted bail to the accused within a few months of incarceration. It was contended that the

materials which have been recovered would not disentitle the Petitioner from favourable consideration for release on bail.

15. It was submitted that almost five years of incarceration have rendered the Petitioner out of society and there has been no contact with the

electorate and thus, it is all the more reasonable and fair that the Petitioner should get a chance for whatever few days remain for the Election, such

that he can attempt to convince the electorate to exercise their franchise in his favour. Moreover, it was submitted that the PetitionerÃ¢â‚¬â„¢s conduct

otherwise, prior to the date of the FIRs has remained unquestioned. There are no indications that he is a hardened criminal, for within a few days of

the unfortunate incident(s), he was incarcerated. Learned senior counsel stated that prior in time to the riots, there is no allegation of the Petitioner

being a member of or otherwise being involved with any organized gang. Attention was also drawn to the observations made on the PetitionerÃ¢â‚¬â„¢s

role by the High Court/Trial Court in the orders which granted him bail.

16. Learned senior counsel submitted that he is tempted, in the above backdrop, to also go into the main merits, but being conscious that the present

petition is only for an interim bail, that too, for a specific purpose, he refrains from the same. He submits that his case for regular bail is pending before

the High Court, wherein the next date for hearing fixed is 20.02.2025. It was informed in the pending two cases also, the bail applications are next

fixed on dates after conclusion of the elections.

THE RESPONDENTÃ¢â‚¬â„¢S REPLY:

17. Per contra, the sole respondent opposed the petition. Mr. S. V. Raju, the learned Additional Solicitor General Ã¢â‚¬ËœASGÃ¢â‚¬â„¢, appearing for the

respondent submitted that the present petition is misconceived. It was submitted that when on a specific prayer made before the High Court, custody

parole was granted only to fill up and submit his Nomination Papers, the matter should have attained finality there itself. It was vehemently submitted

that the right to contest elections is not a Fundamental Right and the fact that the Petitioner has been allowed to fill up his Nomination Form indicates

that the High Court was indulgent to allow him to participate in the Election, but a right to campaign would not be a necessary corollary to the

indulgence granted, for the reason that various other modes of campaigning are available to him apart from physically eg., by way of pamphlets,

etcetera.

18. Learned ASG submitted that even under the relevant electoral laws, the right to vote is not available to a person who is behind bars. If the

Petitioner, at present behind bars, is allowed to come out, he would have a right to vote which would be an infringement of the statutory provision

under Section 62 [Ã¢â‚¬Ëœ62. Right to vote.Ã¢â‚¬"(1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered

in the electoral roll of any constituency shall be entitled to vote in that constituency. (2) No person shall vote at an election in any constituency if he is subject to

any of the disqualifications referred to in Section 16 of the Representation of the People Act, 1950 (43 of 1950). (3) No person shall vote at a general election in

more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void. (4) No

person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that

constituency more than once, and if he does so vote, all his votes in that constituency shall be void. (5) No person shall vote at any election if he is confined in a

prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police: Provided that nothing in this sub-

section shall apply to a person subjected to preventive detention under any law for the time being in force: Provided further that by reason of the prohibition to

vote under this sub-section, a person whose name has been entered in the electoral roll shall not cease to be an elector. (6) Nothing contained in sub-sections (3)

and (4) shall apply to a person who has been authorised to vote as proxy for an elector under this Act in so far as he votes as a proxy for such elector.Ã¢â‚¬â„¢] of the

Representation of the People Act, 1951, especially Section 62(5).

19. Learned ASG stated that the Court should consider the balance of equity between the parties and in the present case, the same is heavily tilted in

favour of the prosecution, for the reason that in view of the nature of the allegations levelled against the Petitioner, his coming out on bail would lead to

many other complexities inasmuch as he would be getting in touch with the witnesses of the cases and would also be in a position to dominate them

under the garb of a Ward Councillor. Moreover, it was submitted that in the larger picture, the Court would also consider as to whether inference in

the present case would lead to a precedent where similarly-situated convicts/undertrial prisoners, just to get out of jail, may stand in any election.

Learned ASG expressed an apprehension that given the position in our country, where elections are held at regular intervals somewhere or the other,

chances of misuse of an order of interim bail in the present case, are real and not imaginary. It was submitted that if the Petitioner is so confident of

his work and position in society, he would not be required to physically canvass and if at all, he is the choice of the electorate, the electorate would be

wise enough and vote for him, and then the consequences may follow. Learned ASG has also taken us through various judgments in support of the

proposition that the statute prohibits the grant of bail in like cases. Additionally, it was submitted that the present petition had been rendered

infructuous, and the Court could not prejudge the case, moreso when the High Court is yet to apply its mind on the merits, as the regular bail plea is

pending. The learned ASG submitted that the Court ought to refrain from granting interim bail to the Petitioner as the same would be purely academic,

in the background of the Petitioner still being in custody in two other cases, including one under the PMLA, in which he is unlikely to be granted relief.

20. Learned ASG distinguished the case of Arvind Kejriwal (supra) on the ground that he was the President of a National Party, and in the General

Elections to the House of the People, he was required to campaign for his party. It was urged that such factual element was missing in the present

case, as the Petitioner was elected as a Ward Councillor on a ticket from the Aam Aadmi Party [Recognised as a National Party by the Election

Commission of India (hereinafter referred to as Ã¢â‚¬ËœECIÃ¢â‚¬â„¢)], but this time he is a candidate on behalf of All India Majlis-e-Ittehadul

Muslimeen [Recognised as a State Party in Telangana by the ECI] (hereinafter referred to as Ã¢â‚¬ËœAIMIMÃ¢â‚¬â„¢), which is different party. It was

contended that AIMIM as a political party is sufficiently capable to canvass for him and he is not the only person who is left to campaign. Thus, his

interest to that extent stands safeguarded.

21. Further, it was pointed out that Arvind Kejriwal (supra) has been distinguished by a 3-JudgesÃ¢â‚¬â„¢ Bench in Order dated 08.07.2024 passed in

Special Leave Petition (Criminal) Nos.7684-7885 of 2024 titledD irectorate of Enforcement v Sadhu Singh Dharamsot. It was submitted that

Sadhu Singh Dharamsot (supra) clarified that the decision in Arvind Ã, Kejriwal (supra) Ã¢â‚¬Ëœwas passed, as the matter was sub judice and for the

reasons set out in paragraphs 7, 8 and 15 of the said order.Ã¢â‚¬â„¢ It was advanced that, in essence, the appellant therein occupied the positions of

President of a National Party and Chief Minister.

REJOINDER BY THE PETITIONER:

22. Learned senior counsel for the Petitioner submitted that the Court, in Sadhu Singh Dharamsot (supra), in fact, refused to interfere in the bail

granted therein. It was submitted that Sadhu Singh Dharamsot (supra) does not deviate from the principles laid down in Arvind Kejriwal (supra). Mr

Aggarwal, learned senior counsel, submitted that even the paragraphs from Arvind Kejriwal (supra), as referred to in Sadhu Singh Dharamsot

(supra), would support the Petitioner.

23. He submitted that as regards the present FIR, eight co-accused are already on bail, including two of the main assailants, who as per two eye-

witnesses, were the persons who had actually killed the deceased. On the aspect of recovery of articles, the submission was that they relate to other

cases, where the Petitioner is already on bail. Qua the PMLA case, it was submitted that out of the prescribed maximum sentence of 7 years, the

Petitioner has undergone approximately 4 years and 5 months behind bars, and as such, would be entitled to the benefit of Section 436-A[Ã¢â‚¬Ëœ436-A.

Maximum period for which an undertrial prisoner can be detained.Ã¢â‚¬"Where a person has, during the period of investigation, inquiry or trial under this Code of

an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone

detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court

on his personal bond with or without sureties: Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing,

order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or

without sureties: Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum

period of imprisonment provided for the said offence under that law. Explanation.Ã¢â‚¬"In computing the period of detention under this section for granting bail, the

period of detention passed due to delay in proceeding caused by the accused shall be excluded.Ã¢â‚¬â„¢] of the Code of Criminal Procedure, 1973.

ANALYSIS, REASONING AND CONCLUSION:

24. Insofar as Sadhu Singh Dharamsot (supra) is concerned, I may record that the said petition was dismissed as infructuous, although with a

clarification on Arvind Kejriwal (supra), as the interim bail therein was till 06.06.2024, whilst it was taken up for hearing on 08.07.2024.

25. I do not doubt the propositions of law eloquently recorded in Brother MithalÃ¢â‚¬â„¢s opinion. I have noted the guiding precedents in the Prelude and

would deal with some more hereafter.

26. The law, as it stands today, is that merely because a statute imposes limitations on grant of bail, the same would not per se oust the jurisdiction of a

Constitutional Court to grant bail, as held in Union of India v K A Najeeb, (2021) 3 SCC 713[17. It is thus clear to us that the presence of statutory

restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the

Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at

commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down

where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part

of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole

metric for denial of bail or for wholesale breach of constitutional right to speedy trial.Ã¢â‚¬â„¢ (emphasis supplied)]. Pertinently, Najeeb (supra), rendered by a

Bench of 3-Judges, was distinguished by a 2-Judge Bench in Gurwinder Singh v State of Punjab, (2024) 5 SCC 403. However, in the Review Petition

preferred thereagainst viz. Gurwinder Singh v State of Punjab, 2024 SCC OnLine SC 1777, the 2-Judge Bench clarified, while dismissing the Review

Petition, that Ã¢â‚¬Ëœour decision is to be construed on the facts dealt with by us.Ã¢â‚¬â„¢ This apart, the exposition in Najeeb (supra) has been reiterated by

another 2-Judge Bench in Javed Gulam Nabi Shaikh v State 11 of Maharashtra, (2024) 9 SCC 813 and Sheikh Javed Iqbal v State of Uttar Pradesh,

(2024) 8 SCC 293[Ã¢â‚¬Ëœ42. This Court has, time and again, emphasised that right to life and personal liberty enshrined under Article 21 of the Constitution of

India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions

in a penal statute if it finds that the right of the accused-undertrial under Article 21of the Constitution of India has been infringed. In that event, such statutory

restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in

favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to

grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional

jurisprudence. In any view of the matter, K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] being rendered by a three-Judge Bench is binding on a

Bench of two Judges like us.Ã¢â‚¬â„¢ (emphasis supplied)].

27. I have examined the allegations and the evidence against the Petitioner. No doubt, they are grave and reprehensible but as of this moment they are

exactly that Ã¢â‚¬" allegations. It is settled law that magnitude and gravity of the offence alleged are not grounds, in and by themselves, to deny bail [Para

18[Ã¢â‚¬Ëœ18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal

harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period

spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to

grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt

and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.Ã¢â‚¬â„¢ (emphasis supplied)] of K A Najeeb

(supra) and Jalaluddin Khan v Union of India, (2024) 10 SCC 574], moreso when trial is prolonged. The PetitionerÃ¢â‚¬â„¢s rights under Articles

14[Ã¢â‚¬Ëœ14. Equality before law.Ã¢â‚¬"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of

India.Ã¢â‚¬â„¢] and 21[Ã¢â‚¬Ëœ21. Protection of life and personal liberty.Ã¢â‚¬"No person shall be deprived of his life or personal liberty except according to procedure

established by law.] of the Constitution of India cannot be lost sight of. As on date, no Court of Law has convicted the Petitioner. The following

passage from Javed Gulam Nabi Shaikh (supra) is attracted squarely:

Ã¢â‚¬Ëœ18. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is

presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.Ã¢â‚¬â„¢

28. Further, I deem it appropriate to advert to the contention urged by the learned ASG, that the Court ought to refrain from granting interim bail to the

Petitioner as the same would be purely academic, in the background of the Petitioner still being in custody in two other cases, including one under the

PMLA, in which he is unlikely to be granted relief. The said proposition, to my mind, if accepted, would amount to this Court abdicating its

responsibility of deciding the lis before it by being influenced by factors not germane inasmuch as the consideration for interim bail in the present case

cannot be contingent upon prior grant of similar relief in the two other cases. Moreso, for the reason that the matter relating to the two other cases is

pending before courts subordinate to this Court. That said, I am not of the opinion that the lis raised herein is academic or should await the outcome of

cases in the courts subordinate to this Court.

29. The Petitioner is in custody since March, 2020. He has secured bail in a majority of the cases. The High Court permitted him to file his Nomination

and consequently stand as a candidate. On the short point of period under custody already undergone as also the bail secured in the other cases, I am

of the considered view that, subject to appropriate conditions being imposed, the Petitioner can be granted interim bail for a limited period. Ordered

accordingly.

30. The Petitioner is, thus, enlarged on interim bail, however, only upto the noon of 04.02.2025, imposing the conditions prescribed in Sections 480(3)

(b)[that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is

suspected; Ã¢â‚¬Â¦Ã¢â‚¬â„¢] and 482(2)(ii)[Ã¢â‚¬Ëœa condition that the person shall not, directly or indirectly, make 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 any police officer;Ã¢â‚¬â„¢] of the

Bharatiya Nagarik Suraksha Sanhita, 2023. It is further directed that the Petitioner shall not, during campaigning, make any reference whatsoever to

any of the pending cases and/or the Delhi Riots of 2020. The Petitioner shall, during the period of his release, confine himself to the limits of the

Mustafabad Constituency. The Petitioner will deposit his passport, if any, with the Trial Court. The Trial Court may impose additional conditions

consistent with the above.

31. The Petitioner shall surrender before the concerned jail authorities at/before the time afore-indicated, failing which coercive steps shall be resorted

to by the respondent. I pondered over whether to issue a direction to the Petitioner to share his real-time location with the Investigating Officer, but in

view of the pronouncement directly on point in Frank Vitus v Narcotics Control Bureau, [2024] 7 SCR 97 [Ã¢â‚¬Ëœ0.2. Imposing any bail condition which

enables the Police/ Investigation Agency to track every movement of the accused released on bail by using any technology or otherwise would undoubtedly

violate the right to privacy guaranteed under Article 21. In this case, the condition of dropping a PIN on Google Maps has been incorporated without even

considering the technical effect of dropping a PIN and the relevance of the said condition as a condition of bail. This cannot be a condition of bail. The condition

deserves to be deleted and ordered accordingly. In some cases, this Court may have imposed a similar condition. But in those cases, this Court was not called

upon to decide the issue of the effect and legality of such a condition.Ã¢â‚¬â„¢], am not so inclined.

32. This Special Leave Petition (Criminal) is disposed of accordingly, modifying the Impugned Judgment pro tanto. Needless to state, observations

made are only on the issue which arose for determination.

SEQUEL:

33. The grant of interim bail vide the present Judgment is not to be treated as a conclusive opinion on the merits of the underlying bail application or

the main case before the Trial Court, lest it prejudice either side.

34. Learned Brother Mithal has rightly opined that a PandoraÃ¢â‚¬â„¢s Box cannot be permitted to be opened by letting a horde of convicts and/or

undertrial prisoners seek release for the purpose of trying their luck at the electoral hustings. Likewise, the learned ASGÃ¢â‚¬â„¢s apprehension that

others, whether similarly-situated or not, may seek to (mis)use this Judgment, is not unjustified.

35. I would therefore, necessarily, insert the caveat that this Judgment has been passed in facts and circumstances specific to this case. Were any

litigant, in futuro, to cite this in a later case, I am sure the Court concerned would examine such case on its merits and on its own factual prism. When

any court is called upon to apply and/or follow precedent, it is for that court to examine whether or not the precedent is attracted in that particular

case. It would not be out of place to recall the following passage from Sanjay Dubey v State of Madhya Pradesh, 2023 SCC OnLine SC 610:

Ã¢â‚¬Ëœ18. ... Yet, as our discussions in the preceding paragraphs display, the same are inapplicable to the extant factual matrix. It is too well-

settled that judgments are not to be read as Euclid's theorems; they are not to be construed as statutes, and; specific cases are authorities

only for what they actually decide. We do not want to be verbose in reproducing the relevant paragraphs but deem it proper to indicate

some authorities on this point - Sreenivasa General Traders v. State of Andhra Pradesh, (1983) 4 SCC 353 and Amar Nath Om Prakash v.

State of Punjab, (1985) 1 SCC 345 - which have been reiterated, inter alia, in BGS SGS Soma JV v. NHPC Limited, (2020) 4 SCC 234 , and

Chintels India Limited v. Bhayana Builders Private Limited, (2021) 4 SCC 602 .Ã¢â‚¬â„¢

(emphasis supplied)

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