

**IN THE COURT OF MS. SUNENA SHARMA,
SPECIAL JUDGE, PC ACT, CBI, ROUSE AVENUE DISTRICT
COURTS, NEW DELHI**

**Bail matter no. 02/2022
CT. No. 27 of 2022 (ECIR/DLZO-I/28/2022)
Enforcement Directorate Vs. Ravi Narain**

and

**Bail matter no. 232/2022
RC 221-2022-E 0030 dated 07.07.2022
Central Bureau of Investigating Vs. Ravi Narain**

Appearance : Sh. Adit S. Pujari with Sh. Siddharth Kaushal and
Sh. Maitreya Subramaniam, Ld. Counsels for the
applicant/accused Ravi Narain.

Sh. Naveen Kumar Matta, Ld. Special Public
Prosecutor and Sh. Rajan Dahiya, Ld. Special
Public Prosecutor for CBI.

ORDER

1. Vide this order, I shall dispose off two bail applications moved on behalf of applicant/accused Ravi Narain for grant of bail, one in ED case F.No. ECIR/DLZO-I/28/2022 dated 11.7.2022, under Section 439 Cr.P.C read with Section 45 of PMLA, 2002 and other under 439 Cr.P.C in the case RC no. 221-2022-E-0030 under Section 120B r/w 409/430 IPC, Section 20/21/24/26 of the Telegraph Act 1885, Section 3/6 of the Indian Wireless Telegraphy Act 1933, 13(2) r/w 13(1)(d) PC Act 1988 and 69B/72/72 A IT Act 2000.

2. As per the record, CBI registered aforementioned FIR/RC no. 221 2022 E 0030 on 07.7.2022 against M/s iSec Services Pvt. Ltd. & others regarding illegal interception/monitoring of telephone calls of NSE Employees. Since, some of aforementioned offences punishable under section 120B read with 420 IPC, Section 13(2) read with Section 13(1)(d) of PC Act and Section 72 of Information Technology Act are covered in the category of 'Scheduled Offences,' as defined under

Section 2(1)(Y) of The Prevention of Money Laundering Act, 2002 (PMLA), ED also registered aforementioned ECIR/DLZO-I/28/2022 on 11.7.2022 under PML Act for the offence of money laundering as defined under Section 3 and punishable under Section 4 of PMLA. During investigation ED arrested three accused. Accused Sanjay Pandey was arrested on 20.07.2022 and Chitra Ramkrishna on 14.7.2022 and accused Ravi Narain was arrested on 07.09.2022. Accused Ravi Narain was granted interim bail for two weeks vide order dated 26.09.2022. On the very next day i.e on 26.09.2022, CBI also arrested the accused Ravi Narain in aforementioned RC and subsequently, vide order dated 30.9.2022, accused was granted interim bail till 14.10.2022 in said case as well, while his regular bail applications were kept pending in both the said cases for awaiting report of the Medical Board of RML hospital. In the meantime, medical record of applicant's wife who is allegedly suffering from 4th stage breast cancer was also got verified through IO. Now both the report of Medical board and IO's verification report are on record.

3. The case set up in ECIR is that M/s iSec Services Pvt. Ltd. (hereinafter referred as 'iSec') at B-1/1810, Vasant Kunj, New Delhi-110070, is a company incorporated with ROC, Mumbai in 2001. In the year 2009, iSec submitted an undated proposal to NSE India Ltd. to conduct Periodic Study of Cyber Vulnerabilities. The proposal was processed by Mahesh Haldipur, (AVE), NSE through accused Chitra Ramkrishna and after approval given by the applicant/accused Ravi Narain, work order was issued to iSec on 03.6.2009. Thereafter, numerous such work orders were issued to M/s iSec Services Pvt. Ltd. ostensibly for the purpose of Periodic Study of Cyber Vulnerabilities of NSE during the period between 01.01.2009 to 13.02.2017.

4. The set up for monitoring of calls by iSec began in 2009 and initially, it was located on the 7th floor of Exchange Plaza. Till 2012, iSec used the set up provided by M/s Comtel to NSE to monitor/intercept the calls. Thereafter, NSE purchased a call

monitoring set up from iSec which was installed by them in the upper basement of the Exchange Plaza. NSE was provided with 04 primary rate interface (PRI) lines, each line having a capacity of 30 telephone connections by MTNL which originated from MTNL and terminated at EPABX of NSE. During the period from 01.01.2009 to 13.02.2017, iSec was monitoring/intercepting the calls of these four PRI lines used by employees of NSE and submitted copies of transcript of conversations to the top management of NSE.

5. The telephone monitoring was carried out by NSE through iSec without taking permission of the competent authority as required under Section 5 of the Indian Telegraph Act as well as without the knowledge or consent of the employees. These PRI lines were allegedly intercepted before their termination on EPABX of NSE. The telephone numbers to be monitored were identified by the co-accused Chitra Ramkrishna, NSE Mumbai and conveyed to Ravi Varanasi, Vice President NSE and he in turn provided the same to Mahesh Haldipur, Head (Premises) who gave it to iSec. The identified officers/departments included market Watch, market Surveillance, Risk Management having access to critical online information and access to online Real time data bases. In 2012, Naman Chaturvedi of iSec was deputed for this task and he provided confidential reports titled "Monitoring Reports for Call Logs" to Ravi Varanasi of NSE and these reports did not contain any data/report pertaining to cyber vulnerabilities of NSE but were merely the transcriptions of conversation of identified phone numbers.

6. All the incoming and outgoing calls made from landline numbers of the employees working in Market Surveillance Department and other employees who had the access to trading data were being monitored by iSec in the name of Cyber Vulnerability Study. The payment for this illegal act was made by NSE to iSec after Mahesh Haldipur received a go ahead from Ravi Varanasi of NSE about receipt of the report. The machines used for illegal monitoring/interception

between 2007 to 2017 was sold as e-waste scrap by NSE in the year 2019. During the period between 01.01.2009 to 13.02.2007, payment of Rs. 4.54 crores was approximately made by NSE to iSec for this work.

Role Attributed to Accused Ravi Narain

7. The role attributed to the present accused/applicant is that he was occupying the highest position of Managing Director of NSE during the period 2009 to 2013 and he was having knowledge of monitoring/recording/interception of telephone calls of NSE employees. Rather it was he who introduced accused Sanjay Pandey of iSec Services Pvt. Ltd. to accused Chitra Ramkrishna. He was part of the decision making process at NSE wherein, it was decided to engage M/s iSec Services Pvt. Ltd. for the said work from 01.01.2009 and got said work done under the garb of Periodic Study of Cyber Vulnerabilities. The system/equipment used for interception/monitoring/recording of telephone calls of NSE employees was upgraded in the year 2012 during his tenure as MD of NSE. Said job of up-gradation of software and hardware of the same was given to iSec Services Pvt. Ltd. with his approval. The said proposal was moved by Mahesh Haldipur to him and as per instructions received from accused Chitra Ramkrishna, Mahesh Haldipur forwarded the same for ultimate approval by accused Ravi Narain. During investigation, Mahesh Haldipur had corroborated the same and stated that in the year 1997, the management of NSE consisting of accused Ravi Narain and accused Chitra Ramkrishna decided to keep surveillance on Operation Department of NSE to prevent information leakage. In 2009, accused Ravi Narain and accused Chitra Ramkrishna decided to hire a specialized agency viz M/s iSec Services Pvt. Ltd. During the course of their deliberations with co-accused Sanjay Pandey, it was decided to call it "Cyber Vulnerabilities Studies" so as to keep the real activity concealed; that accused Ravi Narain was having active knowledge of this project being undertaken at NSE; that from the years 2009 to 2013, accused Ravi Narain had approved the proposals for grant of work order to iSec Services Pvt.

Ltd. for the said purpose. Abusing their official positions, both accused Chitra Ramkrishna and accused Ravi Narain decided on interception/monitoring/recording of telephone calls which was done under the garb of Periodic Study of Cyber Vulnerabilities. Ravi Narain was instrumental in according approval for payment of the proceeds of crime which would not have been acquired by M/s iSec Services Pvt. Ltd. without the said approval. Subsequent to the approvals granted by him as MD, a payment of Rs. 1,82,24,599/- was made by NSE to M/s iSec for this work out of the total payment of Rs. 4,54,38,162/-. As per investigating agency ED, the total amount of Rs. 4,54,38,162/- including the sum of Rs. 1,82,24,599/- paid under applicant's tenure as MD, NSE, represents the proceeds of crime, which were acquired by M/s iSec from NSE and same was projected as fees for non-existent 'Periodic Study of Cyber Vulnerabilities of NSE'. Thus, as per ED, the accused Ravi Narain is guilty of offence of money laundering as defined in Section 3 of PMLA, 2002 as he was directly or indirectly indulging in or knowingly assisting in and was actually involved in all or any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property.

Case of the Defence as set out in their respective applications.

8. As per the case put forward by the accused/applicant Ravi Narain in the applications, he has no connection either with alleged scheduled offences or with the offence of money laundering. Accused is innocent and has been wrongly implicated in the present case. Further that due to the medical condition of the accused who is a patient of enlarged prostate and Ulcerative Colitis, which is a chronic inflammatory bowel disease that causes ulcers in the digestive track, he has to maintain strict diet. Further he is the sole care-giver to his wife, who is suffering from Stage 4 Breast Cancer and requires constant treatment and support.

Grounds of Bail.

9. Following are the various grounds enumerated in the applications under Section 437/439 Cr.P.C for seeking bail:-

a) That the applicant is a senior citizen aged 67 years with sever medical ailments and he has no criminal antecedents. Applicant is having deep roots in society and can account for the legitimacy of each entry into his bank account statements.

b) That the applicant is the sole caregiver for his wife, who is suffering from stage IV cancer and several other ailments and there is no one in the family to give care to her as both the daughters of applicant are resident of United Kingdom having their own family responsibilities.

c) That the applicant satisfies the triple test for grant of bail and the role attributed to the applicant as MD & CEO of the NSE itself indicate that the applicant was not involved in the day to day affairs of the NSE and the alleged illegal interception and he himself expressed the willingness to retire in 2009.

d) That the applicant has no technological or IT expertise and had no role in alleged phone-tapping and the logistics relating to alleged tapping such as installation of hardware etc. or in the running of the entire operation.

e) That the applicant was not associated with the NSE since 2017 in any manner and was not aware of any financial authorization/powers and was not in a position to place his role in relation thereto on account of lack of access to documents.

f) That the applicant suffers from sever Ulcerative Colitis, a

chronic inflammatory bowel disease that causes ulcers in the digestive tract and he is undergoing treatments for this condition for 20 years, which requires prompt and regular medication and strict diet.

g) That the applicant is prone of flare-ups which are accompanied by symptoms such as rectal bleedings, bloody diarrhoea, abdominal cramps and pain.

h) That the applicant is also a patient of bronchial asthma since his childhood and requires to use 'Foracort' Inhaler daily. Further applicant has also been diagnosed to have intermittent tachycardia and Grade-I Diastolic Dysfunction.

i) That applicant also suffers from memory loss/mental health and prostatomegaly and has been advised to undergo surgery for prostate. Applicant is also suffering from skin infection that is prone to flare-ups in unhygienic conditions and requires medication.

j) That the applicant is suffering from multiple lesions i.e. abnormal growths in the liver and left liver lobe and indicated a benign growth and such lesions are required to be biopsied again and again. Applicant is also suffering from serious mental health issues and required to take anti anxiety medications for the same.

k) That the applicant is not a flight risk and there is no chance of his absconding. Applicant had always fully co-operated in the investigation as he always complied the summons issued by ED and got arrested in this case without any cogent basis and necessity.

l) The apprehension of applicant tampering with the

evidence is baseless for the reason that entire case of CBI is based on documentary evidence, which has already been seized by CBI or ED, during various searches effected from the premises of applicant, iSec and NSE office and residence of office bearers of NSE.

m) No useful purpose would be served with incarceration of applicant as denial of liberty can be neither punitive nor preventive and there is no justification for suspending the right to liberty of the applicant, especially when he is neither a threat to the investigation nor to the judicial process.

n) No offence of money laundering under Section 3 PMLA punishable under Section 4 PMLA is even prima facie made out against the applicant. Applicant is ready and willing to abide by the terms and conditions of the bail, if any imposed by the court and further undertakes to not misuse the liberty of bail.

10. Bail applications filed by accused has been vehemently opposed by Sh.Zoheb Hossain, Spl. Counsel with Sh. Naveen Kumar Matta, Ld. Special Public Prosecutor for ED and Sh. Rajan Dahiya, Ld. Special Public Prosecutor for CBI by filing their respective written replies. The verification report in respect of medical records of accused and his wife was also filed by the the IO of ED case.

11. As per reply of CBI, accused Ravi Narain was the MD of NSE from 01.01.2009 to 31.03.2013 and from 31.03.2013 to 13.02.2017, he was non executive Director at NSE and it was during this time, work orders/contracts/agreements were approved by him while he was MD, NSE up to March 2013. It is further stated in the reply that as MD and CEO of NSE, accused had good understanding of business and understanding of IT or cyber was not necessarily required for the work of call interception/monitoring for which, they engaged

specialised agencies. Further it is only the accused/applicant who introduced co-accused Sanjay Pandey to the accused Chitra Ramakrishna. The reply further mentions that in the light of the law laid down by Hon'ble Delhi High Court in WPC No. 4748/2007 **National Stock Exchange Vs Central Information Commission Ltd. & Ors** and by Hon'ble Supreme Court in **K.C.Sharma Vs. DSE & Ors.**, NSE is a statutory body and therefore, applicant is the public servant within the meaning of Section 2(c) of PC Act, 1988. Further, CBI apprehends that accused, if released on bail may influence the witnesses and temper with the evidences.

12. In the reply filed on behalf of ED, the application has been broadly opposed on the ground that unless the rigours of twin conditions of Section 45 PMLA are satisfied, no accused booked for an offence of Money Laundering, can be released on bail. Whereas, on account of ample evidence on record, no such finding of lack of prima facie case can be recorded against the accused/applicant for releasing him on bail. Further, accused is not entitled to bail on medical ground as his medical conditions are found stable as per the opinion of the medical board and jail authorities are capable of providing adequate health facilities required by the accused. It is further stated that ailing health conditions of applicant's wife also can not be a ground for grant of bail to the accused Ravi Narain who is claiming himself to be a chronic patient suffering from various diseases. In such a situation, how could he be expected to be caregiver to his wife as such, there are inherent contradiction in the stand taken by the applicant. It is further stated that as per the evidence collected so far, the applicant by way of criminal activity related to scheduled offences has indulged in or actually involved in or knowingly assisted in process or activity connected with the proceeds of crime including its acquisition, use and projection thereof as untainted property and therefore, committed offence of money laundering defined under Section 3 of PMLA, 2022. Further it is well settled by catena of judgments that the economic offences in itself are considered as grave offences against the society

and are required to be treated differently in the matter of bail.

Arguments of Sh. Siddharth Aggarwal Ld. Sr. Advocate with Adit S.Pujari Ld. Defence Counsel.

13. The arguments of Ld. Defence Counsel Sh. Siddharth Aggarwal for grant of bail are more or less on the lines of averments contained in the bail application. In addition to that, it was further argued that on account of her low immunity, applicant's wife Ms. Geeta Narain has recently developed mouth ulcer infection/swollen right mandibular lymph node requiring urgent medical intervention. Ld. Counsel argued that since applicant's wife is suffering from stage IV breast cancer, she requires regular close monitoring with frequent blood tests and regular co-ordination with an Oncologist as she is prone to catching fresh infection as side effects of medication given to her for curing cancer.

14. It is further submitted by Ld Senior Counsel that keeping in account aforementioned medical condition of applicant's wife, she requires urgent care and treatment through some close family member and since except applicant, no other family member is available to take care of her, applicant deserves to be granted bail on humanitarian ground. Ld. Senior Counsel further argued that as both the daughters of applicant are married and settled in U.K., they have their own family responsibilities and therefore, applicant is the only care giver to his wife. It is stated that applicant's sister Ms. Sandhya Venkateswaran has to look after applicant's i.e her own 96 year old mother therefore, she is also not in a position to look after applicant's wife, who had to live alone after applicant's arrest by ED in aforementioned ECIR and before this court granted him (applicant) interim bail. Ld. Senior Counsel has also placed on record the details of activities undertaken by accused as sole caregiver to his ailing wife during the period of his interim bail from 11.10.2022 to 04.11.2022, for the perusal of this court.

15. Ld. Senior Counsel further argued that since the accused is a senior citizen of 67 years of age suffering from various medical issues as is evident from the medical record placed on record, therefore, his case falls in the category of proviso to Section 45(2) Cr.P.C in the light of which, the court may grant bail even without the fulfillment of twin conditions. Counsel further argued that nothing can come in the way of the court in granting bail on humanitarian grounds and there are many instances where in similar set of circumstances when one of close family of accused was terminally ill and there was none else in the family to take care, the Hon'ble High Courts and Apex Court were pleased to grant bail. Ld Senior counsel has placed reliance on the judgement **Syed Abdul Ala v. Narcotic Control Bureau, South Zone CrI. Petition no. 5434/2002** (Karnataka High Court) to urge that powers of courts are not curtailed when bail is to be granted on extenuating circumstances or humanitarian ground. **Jitender v. State (NCT of Delhi) 2015 SCC Online Del. 11283**, has also been cited to buttress above point by saying that in said judgement in a case under NDPS, where also a provision akin to provision of Section 45 PMLA exists, accused was granted interim bail to take care of her mentally disabled daughter who was undergoing regular treatment. It was further argued that although as per opinion of medical board of RML hospital, accused does not require any immediate surgery for prostate but, considering the overall medical conditions of accused who is suffering from multiple ailments as mentioned in the application (also enumerated hereinabove), the accused requires specialised medical facilities and diets, which could not be provided to him in jail.

16. Arguments of Sh.Zoheb Hossain, Spl. Counsel for ED and Sh. Rajan Dahiya, Ld. Special Public Prosecutor for CBI are more or less on the lines of their respective replies filed to the application. In addition to that, Sh. Rajan Dahiya argued that CBI case is at the stage of investigation and considering the fact that applicant was holding high position in NSE before his retirement in the year 2017, he may try to influence the witnesses and temper with the evidence. Further,

applicant's two daughters who are stated to be residing in London, can very well take care of their mother and may take her to UK with them for her care and treatment and therefore, the argument raised on behalf of applicant that he is a sole caregiver to his wife is totally false. The bail application has been vehemently opposed by Ld. Sr. PP for CBI on the ground that accused is involved in very serious economic offence of high magnitude and does not deserve to be granted bail at this stage when even the chargesheet has not been filed.

17. Sh.Zoheb Hossain, Spl. Counsel for ED further argued that the reliance placed by the applicant on the judgements where bails were granted by the Hon'ble High Courts on humanitarian grounds is misplaced in as much as all said orders were passed by the Hon'ble High Courts while exercising its inherent powers whereas, no such powers lies with this court. Therefore, requirement of twin condition cannot be dispensed with by the court and no bail can be granted on humanitarian ground. In support of his above argument, Ld. Counsel relied upon the judgment **Bindeshwari Prasad Singh v. Kali Singh Crl. Appeal no. 74/1976 (DOD 05.08.1976)**. It was further argued that applicant's other family members like daughters, brother-in-law, sister-in-law etc can also play role of care giver to the ailing wife of accused.

Court observation

18. I have given my thoughtful consideration to the submissions raised from both the sides and also carefully gone through the material placed on record including the judgements relied upon by both the sided. Although in the applications, accused/applicant is seeking bail both on the merits as well as on medical grounds of his own and his wife Ms. Geeta Narain but, during course of arguments, Ld Senior Counsel restricted his arguments only on the medical/ humanitarian grounds for the reasons of applicant's own ailing health conditions as well for his role as sole caregiver of his wife, who is suffering from 4th stage breast cancer.

19. As per medical documents of applicant annexed with the application, which were got verified through IO during the course of proceedings, accused is a patient of 'Ulcerative Colitis' which is an inflammatory condition affecting large intestine requiring lifelong medication and periodic monitoring. Restricted diet hygienically prepared with low spices is to be adhered in order to avoid any further complication. Accused is also stated to have a history of 'Bronchial Asthma' for which he is on inhaler for quite long time. He has also been diagnosed with intermittent 'Tachycardia and 'Grade -1 Diastolic Dysfunction' involving some heart complications. Accused is also shown to have some neurological issues involving memory loss and age related mobility issues. He is also stated to be suffering from enlarged prostate requiring urgent medical attention. In his recent medical report, accused is also found to have multiple lesions in left liver lobe indicating some benign growth for which he is required to be biopsied regularly.

20. During course of proceedings, the medical record was found to be correct upon verification done by IO from concerned doctors. As it was alleged that accused needs to urgently undergo prostate surgery, he was ordered to be examined through medical board of RML hospital to ascertain if any such surgery is actually required at this stage. The opinion of the medical board available on record though confirms that accused has the history of ulcerative colitis for last 20 years for which he is on regular treatment and needs to follow dietary advice but, according to urologist, there is no absolute indication of prostate surgery. In the light of the above report, accused does not require any urgent surgery. However it is argued on behalf of accused that considering his age and the multiple health issues with which accused/aplicant is currently suffering, lodging him (accused) in the jail would certainly put him at risk of his life and health. Attention of the court is also drawn to the judgement of Hon'ble High Court in **Devki Nandan Garg Vs. Directorate of Enforcement 2022 SSC Online Del 3086**, where while granting bail on medical ground to an

accused involved in a case of money laundering, the Hon'ble High Court had observed that 'prison medical facilities are of a general nature and character and are inadequate to monitor the health of an applicant suffering from multiple serious ailments'.

21. However, after going through said judgement, with all due respect I do find the same to be of much help to the accused as same is distinguishable on facts in as much as in said case, the petitioner was suffering from multitude of serious ailments such as one of his kidneys was non functional and the other kidney was impaired, he was also having serious heart condition resulting into pacemaker being installed in past, he was already operated for Hernia, Gall bladder removal, colostomy and peptic ulcer. Additionally, he was also suffering from Spondilitis and Vertigo. In the instant case, applicant is though 67 years of age but, he is not having any such serious ailment requiring some complex treatment or surgery for which jail authorities are not adequately equipped with. Diet and other medications required by accused for management of his health issues can be easily provided to the accused even in jail.

22. As already noted above, applicant is seeking bail also on the humanitarian ground as he is stated to be the sole caregiver to his wife Ms. Geeta Narain. As per her health summary given by concerned doctor Dr. Nitesh Rohtagi, Senior Director, Fortis Cancer Institute, Gurugram, Ms. Geeta who is 65 years of age, was diagnosed from 4 Metastatic Breast Cancer involving pleura (covering lungs) and axillary lymph nodes in March, 2019. Some of the medication provided to her for curing cancer, has the potential for some very serious side effects including drop of WBC counts and at times, the low immunity can result into life threatening infections. Additionally, she is also suffering from mouth ulcer with inability to eat and frequent vertigo attacks. For her above noted health conditions, she requires close monitoring with frequent blood tests and regular coordination with oncologist for which she is required to visit hospital for investigation, treatment and

management of disease.

23. As noted in preceding paras, an argument has been raised on behalf of ED that in all the judgments relied upon by the accused, the Hon'ble High Court had granted bail in exercise of its inherent jurisdiction and since no such power lies with this court, therefore, considering the bar of the twin condition contained in Section 45 of PMLA, no bail can be granted to the accused by this court on the humanitarian ground. For the correct understanding of the argument, it is necessary to quote the relevant paragraphs of the judgment "**Syed Abdul Ala**" (Supra), which read as under :

9. The provisions of Section 37 of the NDPS Act makes a drastic departure from the conventional cannons of burden of proof of prima facie case against the accused on the prosecution even at the stage of bail. In respect of the offences under the NDPS Act, the onus is on the accused to prove the innocence/non-complicity in order to secure bail. The restrictions in Section 37 relates to prima facie material regarding the guilt of the accused. The powers of High Court to grant bail under Section 439 are quite wide and discretionary. Notwithstanding a prima facie case of guilt, under exceptional circumstances, the High Court in its discretion can grant bail. The embargo placed under Section 37 of the NDPS Act operates only when the Court is considering the bail application on merits. Thus, the provisions of Section 37 does not clamp or cap the powers of High Court to grant bail under Section 439 in its entirety. In other words Section 37 operates only as partial eclipse on the powers of the High Court. While deciding the application on merits with reference to prima facie material of guilt then only the provisions of Section 37 operate and they have to be read into the provisions of Section 439 of the Cr. P.C. When the bail is to be granted on other extenuating circumstances or humanitarian ground like the medical ground, the powers of the High Court under Section 439 are not curtailed. The provisions of Section 37 does not act as a blanket ban on the powers of the High Court under Section 439 of the Cr. P.C.

10. On careful reading of the decisions of the Supreme Court in Kishan Lal's case, supra, I find that there is no ratio laid down to the effect declaring that [Section 37](#) of the NDPS Act, operates as a total blanket ban on the powers of High Court under [Section 439](#) of the Cr. P.C. In the present case, the accused is seeking bail on medical grounds and the Court is considering the case of the petitioner de hors, prima facie material of guilt placed by the prosecution. On

humanitarian considerations, the powers of High Court under [Section 439](#) of the Cr. P.C., to grant bail is not eroded or affected by the provisions of [Section 37](#) of the NDPS Act.

24. In the light of aforementioned observation of Hon'ble High Court, it is categorically clear that the embargo placed under Section 45 of PMLA operates only when the court is considering the bail application on merits, whereas, in the instant case, the accused has pressed the bail on the medical ground of his wife as well as his own. Furthermore, the bail was granted on the humanitarian ground by the Hon'ble High court of Karnataka while exercising the powers vested by virtue of Section 439 Cr.P.C. Here, I may also refer to Section 439 Cr.P.C, which reads as under :

"439. Special powers of High Court or Court of Session regarding bail.

[\(1\)](#) A High Court or Court of Session may direct-

[\(a\)](#) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub- section;

[\(b\)](#) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

[\(2\)](#) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

25. From the bare perusal of the aforementioned Section, it is very clear that Section 439 Cr.P.C vests similar powers to both the Hon'ble High Court as well as to the Court of Sessions to grant bail. Hence arguments advanced on behalf of ED to the effect that this court cannot grant bail on humanitarian ground is liable to be rejected as same is bereft of any merits. Reliance placed by ED upon the judgment **Bindeshwari Prasad Singh (supra)** is also misplaced for the

reason that in said judgment, the court of Magistrate was held to be not having powers of review which by virtue of provisions of section 397 to 405 CrPC vests only in Court of Session or Hon'ble High Courts, which is certainly not the case herein. As such, said judgment is not applicable to the facts of this case.

26. Another contention raised by both the ED as well CBI is that accused is not the only caregiver to his wife because the couple has two daughters who are though living abroad. It is argued that daughters are also equally responsible to take care to their ailing mother and they can take their mother with them to UK in absence of any other family member being available in India. However, I find this argument quite insensitive. There is no denying to the fact that daughters do have the responsibility to take care of their parents but in the instant case, daughters of the applicant, owing to the fact that they are settled in U.K, married having children, can not be expected to neglect their responsibility towards their own families. It would be highly insensitive to expect them to move from U.K to India permanently for giving care and treatment to their mother who on account of nature and condition of her ailment, requires constant care and treatment.

27. Whereas, taking their mother to UK at her this age and health condition, would be so inconvenient and should be taken as a last recourse. The lady, who is suffering from 4th stage breast cancer cannot be expected to move to a different country for the purpose of her treatment when she has been already undergoing treatment in India for last 2-3 years. Furthermore, the applicant is well versed with the course of treatment she has been taking for last 2-3 years and in such a situation, no other family member can be expected to provide her better care and treatment than her husband i.e the applicant. Applicant is no doubt also old and ailing but his health condition are far better than the health condition of his wife and it cannot be said that he is not in a position to provide care to his wife with his present

conditions of health. Even otherwise, it is the moral, social and legal obligation of the husband to take care of his wife during his lifetime.

28. In the light of the observation given by the Hon'ble High Court of Karnataka in the aforementioned judgment in "**Syed Abdul Ala**" (Supra), and many others relied upon judgments of different Hon'ble High Courts granting bail in similar set of circumstances, there remains no room for doubt that under section 439 CrPC, both the Hon'ble High Court as well as the Court of Sessions, have the powers to grant bail to the accused under extenuating circumstances or humanitarian ground like the medical ground and embargo of section 45 PMLA will operate only when the bail is decided on merits. At this age, stage and conditions of her health, the applicant's wife cannot be left on the mercy of the outsiders (non family).

29. In the above facts and circumstances of the case, accused/applicant is the sole caregiver for his wife who is suffering from 4th stage cancer. Hence, without going into the merits of the case, I am inclined to grant bail to accused/applicant on the humanitarian grounds in both the aforementioned cases. In view thereof, in both the aforementioned cases, the interim bail granted to the accused is hereby confirmed on same terms and conditions which are reproduced herein again for the sake of convenience and read as under:

1. Applicant shall furnish personal bond in the sum of Rs.1,00,000/- with two sureties in the like amount.
2. Accused shall always share his location with the IO by dropping a Google Pin on Google map.
3. Accused shall surrender his passport to the IO.
4. Accused shall not leave Delhi/NCR without the permission of the court.
5. The details of the hospital/medical facility where the accused is to seek medical care for his wife or for himself shall also be immediately informed to the IO.

Nothing stated herein shall amount to expression of opinion on merits of the case.

Let a copy of this order be sent to the Superintendent Tihar Jail. Copy of the order be given dasti to both the parties as prayed.

(SUNENA SHARMA)
SPECIAL JUDGE (PC ACT) (CBI)
ROUSE AVENUE DISTRICT COURTS
NEW DELHI/07.11.2022