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2024:DHC:5794

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

Reserved on: 17th July, 2024

% ***Pronounced on: 5th August, 2024***

\+ **W.P.(CRL) 1939/2024 & CRL.M.A. 18890/2024 (for direction)**

ARVIND KEJRIWAL

S/o Shri G.R. Kejriwal,
R/o 6, Flag Staff Road,
Civil Lines, New Delhi-110054
Through Pairokar Sunita Kejriwal ..... Petitioner

Through: Mr. Abhishek Manu Singhvi, Senior Advocate, Mr. N. Hariharan, Mr. Ramesh Gupta, Mr.Vikram Chaudhary, Senior Advocates with Mr. Vivek Jain, Mohd. Irshad, Mr. Rajat Bhardwaj, Ms. Punya Rekha Anagra, Mr. Sharian Mukherji, Mr. Amit Bhandari, Mr. Karan Sharma, Mr. Rajat Jain, Mr. Sadiq Noor, Mr. Mohit Siwach, Mr. Rishikesh Kumar, Mr. Kaustubh Khanna, Mr. Prateek Bhalla, Mr. Mudit Jain, Ms. Muskan Khurana & Mr. Siddharth S. Yadav, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

Through Director,
6th Floor, Lodhi Road,
Plot No. 5-B,
CGO Complex, New Delhi,
Delhi-110003 ..... Respondent

Through: Mr. D.P. Singh, SPP with Mr. Manu Mishra & Ms. Shreya Dutt, Mr. Imaan Khera & Mr. Achal Mittal,

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Advocates with DSP Alok Shahi & ASP Rajiv Kumar, CBI.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition under Article 226 of the Constitution of India read with Section 482 of the *Code of Criminal Procedure, 1973 (hereinafter referred to as* "Cr.P.C.") has been filed on behalf of the petitioner for declaration of the arrest of the Petitioner on 26.04.2024 and all subsequent remands and his incarceration in jail, as illegal.

2. To succinctly put forth the factual matrix, it is stated in the Petition that the petitioner is Ramon Magsaysay Award winner and is known for his social work and is three times elected Chief Minister of Government of National Capital Territory of Delhi. He is the National Convenor of the political party viz., Aam Aadmi Party.

3. An FIR bearing No. RC0032022A0053 was registered under Sections 120B read with Section 477A of the *Indian Penal Code, 1860 (hereinafter referred to as* "IPC, 1860") and Section 7 of the *Prevention of Corruption Act, 1988* (*hereinafter referred to as* "PC Act, 1988") at Police Station Central Bureau of Investigation, ACB, New Delhi, was registered against him in regard to the Excise Policy, 2021-2022.

4. The respondent/CBI has filed the Chargesheet against seven accused persons, out of which, five were chargesheeted without arrest and the other two i.e., Vijay Nair and Abhishek Boinpally had been granted regular bail by the Special Judge *vide* Order dated 14.11.2022 passed. Moreover, the

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regular bail was also granted to the co-accused, Butchi Babu by the learned Special Judge *vide* Order dated 06.03.2023.

5. On 25.04.2023, the **first Supplementary Chargesheet** had been filed by the respondent/CBI before the learned Special Judge, Rouse Avenue District Courts, New Delhi.

6. The **second Supplementary Chargesheet** got filed on 06.07.2023 by the respondent/CBI before the Special Judge, Rouse Avenue District Courts. Also, the regular bail was granted to the co-accused/Charanpreet Singh *vide* Order dated 22.07.2023 by the Special Judge. However, the regular bail to co-accused/Manish Sisodia had been rejected by the Apex Court *vide* Order dated 30.10.2023.

7. Pertinently, *the petitioner* was neither a suspect nor an accused in the main Chargesheet or two Supplementary Chargesheets that have been already filed in the past more than one year by the CBI.

8. It is asserted by the petitioner that there are absolutely no allegations of any involvement of the petitioner in the offence. Despite this, a Notice under Section 160 of the Cr.P.C. dated 14.04.2023 was sent to the petitioner for recording of his Statement under Section 161 of Cr.P.C., 1973 on 16.04.2023. The petitioner duly complied with the Notice and appeared before the respondent/CBI and answered the queries and questions, for over nine hours.

9. There were simultaneous proceedings initiated by the Directorate of Enforcement (*hereinafter referred to as* "ED") whereby ED registered ECIR/HIU-II/14/2022 on 22.08.2022, wherein *one prosecution complaint and seven supplementary complaints* have been filed implicating as many as 38 accused and has cited more than 260 witnesses.

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10. It is submitted that the ED had purportedly in exercise of power under Section 19 of the *Prevention of Money Laundering Act, 2002 (hereinafter referred to as* "PMLA, 2002"*)* arrested the petitioner solely on the statements made by the co-accused and the Approver, wherein the name of the petitioner was mentioned. The arrest of the petitioner was challenged by ED, however, it was dismissed by this Court, *vide* Order dated 09.04.2024.

11. Aggrieved by the said ***Order/Judgment dated 09.04.2024***, the petitioner approached the Apex Court *vide* SLP (Crl.) No. 5154/2024 which was allowed *vide* Order dated 10.05.2024, wherein the *Apex Court held* that the Appellant-Mr. Arvind Kejriwal is the Chief Minister of Delhi and a leader of one of the national parties. It was noted further that no doubt, serious accusations have been made against the Appellant, 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 (PMLA) has remained pending since August, 2022. Arvind Kejriwal was arrested under Section 19 of PMLA, 2002 on 21.03.2024. More importantly, legality and validity of the arrest itself is under challenge (*before the Apex Court*) which was yet to be finally decided. The fact situation cannot be compared with harvesting of crops or plea to look after business affairs. In this background, *it was observed* that once the matter is *sub judice* and the questions relating to legality of arrest are under consideration, a more holistic and libertarian view was justified in the background that the 18th Lok Sabha General Elections are being held, and granted interim Bail till 01.06.2024 to the Petitioner by the Apex Court in the PMLA matter, vide Order dated 10.05.2024.

12. It is submitted that on 20.06.2024, the learned Special Judge admitted

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the petitioner to regular bail in the PMLA case. Against the Order dated 20.06.2024 passed by the Special Judge in I.A. No. 92/2024, the ED filed C*RL.M.C. 4858/2024 under Section 439(2)* read with Section 482 of Cr.P.C., 1973 seeking cancellation of the bail and *CRL.M.A. 18446/2024* seeking stay of the operation of the Order dated 20.05.2024. This Court *vide* ***Order dated 25.06.2024*** allowed the Application and stayed the operation of the bail granted vide Order dated 20.06.2024.

13. In the interim on 24.06.2024, in this case CBI moved an Application for interrogation of the accused before the Special Judge. Thereafter, according to the petitioner, he was produced before the Special Judge at 11:05 A.M. and without complying the provisions of Section 41 of Cr.P.C., 1973, arrested the petitioner on 26.06.2024 and thereafter, the petitioner was remanded to the custody of respondent/CBI for three days overlooking the blatant non-compliance of the statutory requirements of Section 41 Cr.P.C.

14. On 29.06.2024, on the Application filed by the respondent/CBI, the petitioner was remanded to judicial custody for 14 days, and the petitioner has been in judicial custody since then.

15. It is contended on behalf of the petitioner that this Court may set aside the brazen, illegal, arbitrary and unconstitutional acts of the respondent/CBI, in arresting the petitioner, on the following ***grounds:***

(i) *that the arrest of the petitioner is in violation of Sections 41 and 60A of Cr.P.C., 1973*. Despite the offence being punishable with seven years, the requirement of Sections 41 and 60A of Cr.P.C., 1973 Notice has not been adhered to by the Investigating Officer.

(ii) *that* the arrest of the petitioner is carried out in breach

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and in violation of Section 41(1)(b)(ii) of Cr.P.C., 1973 inasmuch as the grounds of arrest failed to justify any of its mandatory conditions. The learned Special Judge failed to satisfy itself as to how the arrest of the petitioner was necessitated under any of the Sub-Clause (a) to (e);

(iii) *that* in the **Arrest Memo dated 26.06.2024**, the grounds of arrest merely stated that ***the petitioner is not cooperating with the investigation and not disclosing the facts which are within his knowledge,*** which cannot be the ground of arrest as has been settled by the Apex Court as well as High Courts in their various decisions. It shows maliciousness on the part of the respondent/CBI which was merely to create a frivolous reason for arresting the petitioner in complete violation of the guidelines laid down by the Apex Court in the decisions of *Chanda Kocchar vs. CBI*, 2023 SCC OnLine Bom 72, *Lalita Kumari vs. Govt. of U.P.*, (2014) 2 SCC 1, *Joginder Kumar vs. State of U.P.*, (1994) 4 SCC 260, *Arnab Manoranjan Goswami vs. State of Maharashtra*, (2021) 2 SCC 427 and *Satender Kumar Antil vs. Central Bureau of Investigation*, (2022) 10 SCC 51;

(iv) *that* the petition raises important question of law as to whether a person in judicial custody be arrested under the guise of S.41(1)(b)(ii) Cr.P.C. when the offence alleged against him is punishable with an imprisonment upto 7 years;

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(v) *that* the FIR was registered by the CBI on 17.08.2022 and the investigations were being carried out since last about two years. No new evidence or material has been collected or indicated in the remand Application or in the arrest memo/grounds of arrest since he was examined under S. 160 Cr.P.C. on 16.04.2023 i.e., more than one year back, which justified his arrest. All the facts and allegations made in the remand Application of the CBI, were part of the **Chargesheets dated 24.11.2022, 25.04.2023 and 06.07.2023**.

(vi) *that* in the remand Application, the respondent/CBI relied upon the statements of Magunta Sreenivasalu Reddy *(hereinafter referred to as* "MSR"*)* and Raghav Magunta, but these statements were available with ED since July, 2023 and were in the knowledge of respondent/CBI as the matter was widely reported. The statements being in the knowledge of the respondent/CBI, *there existed no new justification or reason for arrest of the petitioner.*

(vii) On the basis of material available with the respondent/CBI, an opinion was formed that arresting the petitioner was not necessary and CBI was in the process of concluding the investigations as the learned Solicitor General during the bail hearing proceedings of co-accused/Manish Sisodia on 04.06.2024, had stated before the Apex Court that the investigations would be

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concluded and the final Chargesheet would be filed expeditiously on or before 03.07.2024. So much so, the respondent/CBI got the sanction for prosecution of the petitioner on 23.04.2024 based on the similar grounds as stated for the arrest of the petitioner.

16. It is thus, contended that the allegations that the petitioner was the key conspirator, obviously had to be based on the material which came into the possession of the respondent/CBI after 04.06.2024, but no discovery of a new material has been stated. Therefore, the arrest on the material that was in possession of the respondent/CBI prior to 04.06.2024, is illegal and not permissible under law.

17. Therefore, *the petitioner makes the prayer* to:

(i) Hold that the entire proceedings leading to the arrest and incarceration of the Petitioner is in violation of Petitioner's Fundamental Rights under articles 21 and 22(1) & (2) of the Constitution and contrary to the provisions of The Code Of Criminal Procedure,1973;

(ii) Quash and set aside the order dated 26.06.2024 whereby remand of the petitioner to the custody of CBI was allowed for a period of 3 days, and order dated 29.06.2024 whereby the Petitioner was sent to Judicial custody for the period of 14 days; and

(iii) Direct the forthwith release of the Petitioner from custody.

18. **The respondent/CBI in its short Reply** has stated that the investigation in the CBI case is independent of the investigation carried out in the case of PMLA by ED. The grant of bail to co-accused in this case has

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been given in the different circumstances depending on their respective roles which cannot have any bearing on the adjudication of the present petition.

19. The facts leading to registration of the case under S. 120-B,477-A IPC and Section 7 P.C. Act,1988 against various accused is on the basis of source information as well as written complaint from Praveen Kumar Rai, Director MHA Govt. of India vide OM No. 14035/2022 dated 22.07.2022 conveying the directions of Competent Authority for enquiry into the matter of irregularities in framing and implementation of the Excise Policy of GNCTD for thew year 2021-2022 by the CBI. This information was conveyed to the Hon'ble L.G.

20. On enquiry, it was found that the Excise Policy had been manipulated to facilitate the monopolization and cartelization of the wholesale and retail liquor trade in Delhi by the accused from South India, a new policy was formulated increasing the profit margin from 6% to 12% resulting in windfall profit margin and consequent giving of money in lieu thereof.

21. It is stated that the petitioner as Chief Minister of Delhi, is the Party Supremo and National Convenor of Aam Aadmi Party *(hereinafter referred to as* "AAP"*)*. While he does not hold any Ministerial Portfolio in GNCT of Delhi, all the decisions of the Government as well as of the Party are taken on his directions and with his concurrence. These include decisions not only in regard to Delhi but also throughout the country where AAP is present. It is the petitioner who decides the appointments, not only of the Ministers but also the Officials and all such other important functionaries in the Party.

22. It is explained that though the petitioner had no Ministerial Portfolio including that of Excise, but over a period of time, all the critical decisions in the formulation of a new Excise Policy were taken at the behest of the

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petitioner in connivance with the then Deputy Chief Minister and Minister of Excise, Manish Sisodia. The petitioner was initially asked to join the investigations under Section 160 of Cr.P.C., 1973 being understood as one of the person acquainted with the facts of the case. However, there were certain materials which pointed a needle of suspicion towards the petitioner. As the investigations progressed, it became clear that the petitioner had played a pivotal role in the formulation of the New Excise Policy. Therefore, the permission under Section 17-A PC Act, 1988 was sought to investigate the petitioner which was obtained on 23.04.2024. During this period, investigations against the other accused persons were ongoing and the material was being collected. The material was pieced together and thus, emerged the role of the petitioner.

23. **To briefly explain the facets of the Excise Policy**, it is stated by the respondent/CBI that an Expert Committee was constituted in September, 2020 under the Chairmanship of Shri Ravi Dhawan, the then Excise Commissioner, GNCTD, to study the various models of Excise Policy. From time to time, the Head of the Committee was changed to the then Excise Commissioner. The Expert Committee submitted its Report on 13.10.2020 and the same was put in public domain for comments on 31.12.2020. The comments from public/stakeholders were obtained through fabrication of certain e-mails through Zakir Khan, Chairperson of Delhi Minorities Commission on the e-mail id of Excise Department with copy to Manish Sisodia. It was done with the *mala fide* intention to manipulate the process by getting the comments from the public to bypass the Expert Committee Report which did not recommend the *Private Wholesale Model* as well as the option of *Retail Trade through auctioning of zones*.

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24. Sh. Manish Sisodia on 27.01.2021, presented a Draft Note to Rahul Singh, Head of the Expert Committee, with the direction to put up a Cabinet Note in accordance with the Draft Note, along with the Expert Committee Report and summary of feedback received from public/stakeholders on the same lines. The objective of this Cabinet Note was to constitute a Group of Ministers *(hereinafter referred to as* "GoM"*)* to examine the Report of the Expert Committee, with the intention to make out a case for incorporating suitable provisions in the upcoming Excise Policy. The Cabinet Note that was drafted, included legal opinion and also additions which were made by Rahul Singh on his own. This did not meet the pleasure of Manish Sisodia, but neither the said file was sent back to Excise Department nor was it traceable thereafter.

25. It is further submitted that conveniently a new File was initiated on 02.02.2021 for putting up a Cabinet Note along with the Expert Committee's Report and feedback received from the public/stakeholders. The Cabinet headed by the petitioner, constituted the GoM with the pre-conceived notion to bring about changes in the Retail and Wholesale models of the Excise Policy in total variance to the Model suggested by the Expert Committee. The GoM was headed by Manish Sisodia as the Excise Minister.

26. It is also stated that a few meetings of GoM were held till 03rd week of February, 2021, in which there was no discussion on the Wholesale model. Thereafter, there was a lull period and no Meetings were held till 22.03.2021. The actions of Manish Sisodia were in consultation with and at the behest of the petitioner, the Chief Minister of Delhi, the Supremo and the National Convenor of AAP.

27. According to the respondent/CBI, further investigations revealed that

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Vijay Nair as the close associate of the petitioner, met the Representatives of International Spirits and Wines Association of India, on 01.03.2021. Vijay Nair also got in touch with the powerful liquor lobby of the South (*South Group*) and met the representatives in Hyderabad on 06.03.2021.

28. During this time, MSR, Member of Parliament from Ongole Parliamentary Constituency expressed his interest in the New Excise Policy and met the petitioner at his Delhi Office and Delhi Secretariat on 16.03.2024 for support in liquor business at Delhi in the upcoming Excise Policy. The petitioner told MSR to provide monetary funding to AAP. Vijay Nair then visited K. Kavitha at Hyderabad and the meeting was consequently held on 20.03.2021. MSR was told that a total amount of Rs. 100 crores had to be arranged for AAP as an upfront money to be given by March, 2021 out of which MSR was to contribute Rs. 50 crores.

29. On 21.03.2021, accused/Butchibaba Gorantla, CA of K. Kavitha, met MSR and his son *Raghav Magunta (Approver*) for demanding the money. Subsequently, Rs. 25 crores were delivered by Raghav Magunta to K. Kavitha between March, 2021 to June, 2021. In lieu thereof, Raghav Magunta was given a partnership of 32.5% in the Wholesale Liquor Licence (L-1) firm *M/s Indospirits* under Delhi Excise Policy 2021-22 though as a proxy. Vijay Nair was instrumental in getting wholesale business of manufacturer *M/s Pernod Ricard India Pvt. Ltd.* which was having the largest share i.e., around 35% of market share in Delhi, to M/s Indospirits in which K. Kavitha also had the same stake through a proxy, Arun Pillai. The Wholesale business was in violation of the Rules and inspite of pendency of complaints of cartelisation and blacklisting against the partners of M/s Indospirits.

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30. ***In regard to the Policy finalisation,*** it has been stated that the first draft of GoM Report dated 15.03.2021 was retrieved from the computer of Manish Sisodia, in which the profit margin for wholesalers in New Excise Policy was 5% only. Subsequently, the same had been revised in the subsequent report to 12% thereby incorporating the provision for windfall gain to the Wholesalers.

31. The final GoM Report came on 22.03.2021, in which the enhanced profit margin was 12% for the Wholesalers was incorporated. The Cabinet approved this draft New Excise Policy on 15.04.2021 and the file was sent on 20.04.2021 to the Hon'ble Lieutenant Governor to express any difference of opinion under proviso to Article 239 AA(4) of the Constitution of India, who gave seven suggestions to be incorporated in the New Excise Policy on 20.05.2021, on which the Hon'ble Lieutenant Governor had expressed his reservation about authorisation of the Finance Minister for amendments in the Policy, since any amendment required the Cabinet approval.

32. On 21.05.2021, the file of Delhi Excise Department regarding formulation of a New Excise Policy was got approved through circulation on the directions of the petitioner on 21.05.2021. The File was again sent to Hon'ble Lieutenant Governor on the same day and the same was returned on 24.05.2021 after which the Policy was notified on 25.05.2021 having the provisions of enhanced profit margin of 12% for the Wholesalers.

33. ***The trail of money*** has been explained by stating that total amounts of Rs. 44.54 crores had been sent through *hawala* channels to Goa from Delhi to be used towards the election expenses of AAP during Goa Assembly Election 2021-22. Out of total amount of Rs. 44.54 crores, Rs. 11.94 crores was sent by accused/Rajesh Joshi of M/s Chariot Media Production Pvt. Ltd.

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which was engaged for outdoor campaigning work during Goa Assembly Election for making payment in cash to the vendors engaged for outdoor campaign work of AAP. Rs. 30 crores was sent by *accused/Abhishek Boinpally* through the *Approver-Dinesh Arora*, which was collected by Rajesh Joshi on the directions of accused-Vijay Nair. The ill-gotten money transferred to Goa through *hawala* channels from Delhi, was collected from the *Hawala* operator, Sagar Patel of M/s Kanti Lal & Sons by accused, *Chanpreet Singh Rayat*, a Volunteer of AAP at Goa. This amount so received by Chanpreet Singh Rayat, was towards his salary during the relevant period.

34. During investigations, the respondent-CBI also retrieved data from the hard disc containing the cloned data from mobile phones of the *accused, Vinod Chauhan* revealed that he was closely associated with the petitioner and other functionaries of AAP, which was also corroborated by various statements placed on record.

35. *It is summarised* that the petitioner had been involved in the criminal conspiracy in formulation and implementation of Delhi Excise Policy 2021-22; more specifically any or all the decisions of the Government and the Party were taken only as per his directions. According to the investigations conducted by the respondent/CBI, the petitioner, in connivance with the other accused persons, deliberately tweaked and manipulated the Excise Policy 2021-22 to enhance the profit margin of the wholesalers from 5% to 12% without any rationale.

36. Moreover, it was only on 14.07.2022, after the Report of the Chief Secretary in regard to the alleged offences, that the *ex post facto* approval to the decisions taken by Manish Sisodia, was given by the Cabinet again

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headed by the petitioner.

37. *The Competent Authority on 23.04.2024 accorded the permission under Section 17-A of PC Act, 1988 which led to the respondent-CBI proceeding to investigate in the role of the petitioner.*

38. It is submitted that after securing the permission under Section 17-A of PC Act, 1988, the respondent-CBI deemed it appropriate to interrogate the petitioner as an accused on 24.06.2024 after taking permission from the ld. Special Judge.

39. The petitioner was interrogated in Tihar Jail on 25.06.2024, during which *he remained evasive and non-cooperative,* failing to give satisfactory replies to the questions raised to him in regard to his role in the matter of demand of upfront money of Rs. 100 crores from co-accused persons of South Group, the acceptance of the delivery of the same to AAP through his close associate, Vijay Nair as well as utilisation of the ill-gotten money so received in the Assembly Election of Goa during the year 2021-22 to meet the election-related expenditures of AAP.

40. The petitioner *further remained evasive* in regard to his role as well as of the co-accused persons in respect of the criminal conspiracy hatched therein. The petitioner's Replies were contrary to the oral and documentary evidence gathered by the respondent-CBI during the investigations and he failed to disclose the facts truthfully, despite being confronted with the incriminating evidence. The *petitioner also concealed the vital facts* which were exclusively in his knowledge and which were relevant for the investigation to reach to the just conclusion of the case.

41. Based on this interrogation, the respondent-CBI *vide* Application dated 25.06.2024, sought the permission to formally arrest the petitioner as

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an accused. The petitioner was produced on production warrants in the Court on 26.04.2024, on which date he was formally arrested in accordance with the mandate of the law.

42. The respondent-CBI then sought the remand of the petitioner on the grounds as stated above. The remand was opposed on behalf of the petitioner. The learned Special Judge heard the arguments and after considering the necessity of custodial interrogation of the accused-petitioner and also after perusing the entire material on record, found no illegality in the arrest or in the applicability of Section 41-A of Cr.P.C., 1973. The respondent-CBI because of the non-cooperative and evasive attitude of the petitioner when confronted with the evidence on record, sought the police custody on 26.06.2024 which was again opposed by the petitioner. However, after recording the cogent reasons, the Special Judge granyed Police Custody for three days.

43. Thereafter, the Application was moved on 29.06.2024 by CBI for judicial remand of the Petitioner as there was reasonable apprehension of the respondent-CBI that the petitioner being the most prominent politician and Chief Minister of Delhi, he was very influential and he may influence the witnesses and evidences already exposed before him during the custodial interrogation and also the potential witnesses. The petitioner was also likely to tamper with the evidence to be further collected and may also hamper the on-going investigations. The Special Judge thus, remanded the petitioner to judicial custody till 12.07.2024 having satisfied itself after perusing the Case Diaries and applying the judicial mind.

44. The respondent-CBI has further asserted that the investigation including the arrest, is the sole domain of the investigating agency, and

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whether the answers given by the accused-petitioner, are satisfactory or evasive remain purely in the of the investigating agency. The attempts made by the petitioner to sensationalise the case are unfortunate.

45. Since the sanction was received under Section 17-A of PC Act, 1988 on 23.04.2024, the respondent-CBI started examining the role of the petitioner. In the interim, the respondent-CBI had conducted investigations, leading to the arrest of the co-accused-K. Kavitha on 11.04.2024 and the third Supplementary Chargesheet against K.Kavitha was filed on 06.06.2024.

46. The investigations against the petitioner were necessary to bring the investigation to its logical conclusion. Since the petitioner was in judicial custody, his presence could not have been secured without the permission of the Court. The due permission to interrogate the petitioner had been sought from the learned Special Judge as per the provisions of Section 41A of Cr.P.C., 1973 on 24.06.2024 because of the petitioner remained evasive during interrogation. Custodial interrogation was deemed appropriate for further elicitation which is an important right of the investigating agency to unearth the truth. By this time, the bail granted to the petitioner in the ED case, was stayed by this Court, as such dispelling any or all notions of *mala fide* against the petitioner which otherwise ought to be seen only in the light of the law governing remand and arrest.

47. It is further contended that Section 41A of Cr.P.C., 1973 read with Section 41A(3) of Cr.P.C., 1973 does not mandate the blanket ban on arrest against whom there is reasonable suspicion of commission of a cognizable offence punishable with imprisonment upto seven years. The law mandates the Investigating Officer to be satisfied about the necessity of the arrest on

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the conditions as stated in Sub-Clauses (a) to (e) of Section 41(1)(b)(ii) of Cr.P.C., 1973 and to record the reasons for the same. This requirement has been duly met in the present case.

48. Learned counsel appearing on behalf of the CBI, has placed reliance on the decisions in *State vs. Anil Sharma*, (1997) 7 SCC 187; *CBI vs. Vikas Mishra*, (2023) 6 SCC 49; *The King Emperor vs. Khawaja Nazir Ahmad*, AIR 1944 PC 18; *State of Bihar vs. J.A.C. Saldhana*, (1980) 1 SCC 554; *Dukhishyam Benupani vs. Arun K Bajoria*, (1998) 1 SCC 52; *M.C. Abraham vs. State of Maharashtra*, (2003) 2 SCC 649; *P. Chidambaram vs. Directorate of Enforcement*, (2019) 9 SCC 24; Delhi Prison Rules, 2018; *Serious Fraud Investigation Office vs. Shivinder Mohan Singh and Ors*., Crl. Rev. P. 410/2020 (Delhi High Court); *CBI vs. Anupam J. Kulkarni*, (1992) 3 SCC 141; *Poolpandi and Ors. Vs. Superintendent, Central Excise and others*, (1992) 3 SCC 259; *Mohammed Ajmal Mohammad Amir Kasab vs. State of Maharashtra*, (2012) 9 SCC 1; *Arnesh Kumar vs. State of Bihar*, (2014) 8 SCC 273; *Bhanu Prakash Singh vs. State*, 2021 DHC 1814; *Prateek Arora vs. CBI*, 2022 DHC 5831; *D.K. Basu vs. State of West Bengal*, (1997) 1 SCC 416; In the matter of *Madhu Limaye and Others;* (1969) 1 SCC 292; *Jasbir Singh Sodhi vs. Union of India*; 2010 DHC 33; *Imran vs. State*, 2016 DHC 7713; *Y.S. Jagan Mohan Reddy vs. CBI*, (2013) 7 SCC 439; *Nimmagadda Prasad vs. CBI*, (2013) 7 SCC 466; *Manoj Kumar Khokar vs. State of Rajasthan*, (2022) 3 SCC 501; *Manish Sisodia vs. CBI*, 2024 SCC OnLine Del 3731; *Manish Sisodia vs. CBI*, 2023 SCC OnLine Del 3231; *Prahlad Singh Bhati vs. NCT of Delhi & Ors*., (2001) 4 SCC 280; Paramjeet vs. *State of NCT of Delhi*, Bail Appl. 1770/2013 (Delhi High Court) and *K.K. Jerath vs. Union Territory, Chandigarh*; (1998) 4 SCC 80.

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49. It is also submitted that similar plea of illegal arrest of the petitioner on 21.03.2024 in the ED Case No. ECIR/HIU-II/14/2022 was also taken but was dismissed by this Court *vide* Order dated 09.04.2024.

50. In the end, it is submitted that the Petition has no merit and is liable to be dismissed.

Submissions:

51. ***Learned Senior Advocate on behalf of the petitioner*** has argued that the arrest in the present Case, is nothing but an ***Insurance arrest*** to ensure that the petitioner is prevented from coming out of the jail once he was granted bail in the PMLA Case. There was no material whatsoever for arrest and there was no intention of CBI ever to arrest the petitioner in the present Case, which is borne out from the fact that the FIR bearing No. RC0032022A0053 under Section 120-B read with Section 477A IPC and Section 7 of the PC Act, was registered by CBI, **on 17.08.2022,** despite which no steps had been taken in the last two years to secure the arrest of the petitioner. It is further contended that this is one of the unique cases, where the arrest under PMLA which is the predicate offence, has been made prior to arrest of the petitioner in CBI case. It is clearly reflective of there being no intent of CBI, to arrest the petitioner in the CBI matter.

52. *Learned Senior Advocate* has pointed out that there is not one but *three releases*, which have been granted to the petitioner, ***in the PMLA case.*** He was *firstly* granted interim bail from 10.05.2024 till 01.06.2024, which was duly complied with by the petitioner and he made the surrender within the time granted to him. The *second release* has been granted by the learned Special Judge by way of *Regular Bail on merit, vide* Order dated

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20.06.2024, though the impugned Order has been **stayed by this Court on 25.06.2024**. The *third release* has been directed by the Apex Court *vide* Order dated **12.07.2024** wherein it has been held that the arrest of the petitioner in the PMLA case, was illegal.

53. It is vehemently argued that the three releases from which two are by the Orders of the Apex Court, clearly inure to the benefit of the petitioner and establishes his credibility.

54. Learned Senior Advocate has further drawn attention to the fact that despite registration of FIR by CBI on 17.08.2022, the petitioner was **summoned on 16.04.2023** i.e. after eight months, under Section 160 Cr.PC. It is argued that the Notice under Section 160 Cr.P.C. is only given to a person who is either a witness or is acquainted with the facts of the case under investigations. The very fact that the Notice had been served under Section 160 Cr.P.C., reflects the intention of the CBI of not summoning the petitioner as an accused.

55. The petitioner duly **appeared before the respondent/CBI on 16.04.2023**, in compliance of the Notice under section 160 Cr.P.C. and he *was questioned for nine long hours*. Thereafter again, there was a lull on the side of the respondent, who arrested the petitioner in the PMLA Case, on 21.03.2024. Subsequently, the petitioner in the present CBI case, was questioned in the jail with the permission of the Court on 24.06.2024. Thereafter, on 25.06.2024, the Application for arrest of the present petitioner in the CBI case, was made and he was sent to police custody for three days, *vide* Order dated 26.06.2024. It is argued that there was no interrogation done of the petitioner from the date of registration of FIR in August, 2022 till June, 2024. There can only be one conclusion that the petitioner was not

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intended to be arrayed as an accused and that there was no necessity of taking the petitioner into the custody.

56. *Ld. Senior Advocate* has further argued that there can be no justification to arrest the person purely for the purpose of interrogation/investigation; Section 41A of CrPC absolutely mandates otherwise. It provides that in case any interrogation is required to be made, a Notice be served under Section 41A Cr.P.C. to the concerned person; and so long as he joins the investigations, he shall not be arrested. Despite this mandate of Law, no prior Notice of Section 41A was given to the petitioner before his arrest. The petitioner was interrogated in jail on 24.06.2024 and based on this interrogation, the respondent-CBI *vide* Application dated 25.06.2024, sought the permission to formally arrest the petitioner as an accused. The petitioner was produced on production warrants in the Court on 26.04.2024, on which date he was formally arrested in accordance with the mandate of the law. The remand Order/Production Warrants issued against the petitioner, were otiose as the arrest had already been validated *vide* **Order dated 25.06.2024.** The very fact that an earlier Application dated 24.06.2024, was served upon the petitioner and he had been interrogated for **three hours** in the jail with the permission of the Court, further re-affirms that no custodial interrogation of the petitioner was required. He had all throughout co-operated in joining the investigations and thus, there are no grounds to justify his arrest, which has been made arbitrarily and for ulterior reasons.

57. *Learned Senior Advocate* has adverted to the Right to Liberty as envisaged in Article 21 of the Constitution of India. It is argued that the Article 21 of the Constitution of India, guarantees the right to liberty and it

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permits it to be impacted only in accordance with the procedure established by law. The petitioner was already under arrest in the case of Enforcement Directorate (ED) and had already joined the investigations and there was no reason for his arrest in the present CBI Case.

58. The attention has been drawn to the *Application dated 25.06.2024* filed before the learned Special Judge, for arrest of the petitioner. It is argued that the bare perusal of this Application would show that it does not specify the grounds of arrest in its Application. In Paragraph 16 of the Application dated 25.06.2024 for arrest of the accused in jail, it has been claimed that the petitioner has failed to give satisfactory reply to the questions put to him and therefore, in Paragraph 17 of the said Application, had sought his custodial interrogation.

59. The reliance has been placed on *'Arnesh Kumar vs. State of Bihar', (*2014) 8 SCC 273*; 'Chanda Kochhar* (supra); *'Lalita Kumari* (supra), (2014) 2 SCC 1; *'Joginder Kumar* (supra); '*Arnab Manoranjan Goswami* (supra); *'Satender Kumar Antil* (supra); *'Santosh vs. State of Maharashtra'*, (2017) 9 SCC 714 and *'Pankaj Bansal vs. Union of India'*, 2023 SCC OnLine SC 1244, to argue that this ground has not been held to be a justiciable ground for seeking the custody/arrest of the person.

60. Ld. Senior Advocate has re-emphasised that as per the statement made by Ld. S.G. before the learned Apex Court, the investigations were almost complete and the Charge-Sheet was intended to be filed by 03.07.2024 which has indeed been filed in the Court on 29.07.2024. Once the investigations were almost complete, it reflects that there remained nothing to be inquired from the petitioner.

61. It is further argued that the act of arrest of the petitioner, was nothing

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but an ***act of malice in law*** as the arrest was not necessary. It has been vehemently argued that *the triple test*, which has been historically holding ground for arrest of a person, have not been satisfied while making the arrest. The petitioner is the Chief Minister of NCT of Delhi and there cannot *be any flight risk* of the petitioner. He has *roots in the society* and has *no criminal antecedents*. He is also *not a habitual offender*. There are *no chances of his interfering with the documentary evidence* and there is also *not chance of his non-cooperation*.

62. In the end, it is again argued that aside from non-satisfaction of the triple test prescribed for the arrest of a person, it cannot be ignored and overlooked that in the past two years, there was no need felt by the CBI to arrest the accused and there is nothing which can be spelled out by the CBI to show that the petitioner had not been co-operating in the investigations. Thus, the arrest is liable to be declared illegal and the bail be granted to the petitioner or in the alternative, interim bail may be granted to the petitioner.

63. ***Learned Special Public Prosecutor on behalf of the State***, has repelled all the arguments raised on behalf of the petitioner, by submitting that Notice under Section 160 Cr.P.C. can be given to any person who appears to be acquainted with the facts and circumstances of the case. It does not limit itself to the witnesses. Initially, the Notice had been given to the petitioner only to elicit the relevant facts pertaining to this case. This reflects that the CBI had *no agenda or a malice* against the petitioner but the entire progress of the investigations, has been done on the merits. In regard to the interrogation done of the petitioner on 16.04.2023 for nine hours, it has been explained that it is purely a prerogative of the Investigating Agency, to do the investigation/interrogation and this cannot be

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circumscribed by any limits. The privilege of the Investigating Officer is understandable as it is to collect the best evidence.

64. Learned Special Public Prosecutor for the State, in regard to the procedure for arrest under Section 41, has explained that in accordance with the ***Rule 1347 of Delhi Prison Rules, 2018***, the permission for interrogation of the petitioner, was sought *vide* Application dated 24.06.2024. Since the petitioner was in judicial custody in jail, there could not have been interrogation, without the permission of the Court. To establish the *bona fide* of the CBI, it has been further submitted that the documents which have not been relied upon by the CBI, have also been placed on the record. *There is no concealment of any evidence but the investigations have been carried out in the most objective manner.*

65. Learned Special Public Prosecutor for the State, has further stated that five people who were directly involved in the commission of offence, have been arrested in this matter. The independence of the CBI is evident from the fact that there are many other accused which have been named, against whom the Charge-Sheet has been filed, without arrest. It is only against those persons whose arrest was considered inevitable, that were arrested. This is manifest from the fact that the bail of co-accused K. Kavitha and Mr. Manish Sisodia, have been rejected in the first round, right up to the Apex Court.

66. Learned Special Public Prosecutor for the State, has further explained that while the FIR had been registered in August, 2022, it was collecting, interrogating, investigating other co-accused and was collecting the relevant evidence in this case. It is only after sufficient incriminating material was collected against the petitioner, in a period of about one and a half year that

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the Application for sanction under Section 17A P.C. Act was moved in January, 2024, which was granted on 23.04.2024. Thereafter, the petitioner had been granted interim bail under the PMLA from 10.05.2024 till 01.06.2024 by the Supreme Court of India, on account of the Lok Sabha Elections. In respect and reverence to the Orders of the Apex Court, the CBI held back its hands and no investigations were undertaken during this period. In the interim, the CBI was continuing with his investigations in regard to the accusations made in the FIR. Once, the bail granted in the PMLA case was stayed by the Special Judge, there was no likelihood of release of the petitioner and therefore, the arrest was not to pre-empt the release of the petitioner but only because of the necessity considering the nature of the evidence collected during the investigations against him.

67. Learned Special Public Prosecutor for the State, *in regard to the procedure for arrest under Section 41Cr.P.C.* has explained that in accordance with the ***Rule 1347 of Delhi Prison Rules, 2018***, the permission for interrogation of the petitioner, was sought *vide* Application dated 24.06.2024. Since the petitioner was in judicial custody in jail, there could not have been interrogation without the permission of the Court. Further *bona fide* of the CBI is manifested from the fact that the arrest in this case, was made only after the bail granted by the learned Special Judge under PMLA, had been stayed by this Court. There was a window of a few days from the date of grant of bail and the interim stay of the bail, which could have been utilised by CBI, had it got any ulterior intentions. It is in deference to the Order of the Court and respect for the fundamental rights of the petitioner, that no arrest was made till the bail granted in PMLA, was stayed. Once the bail granted by the Special Judge was stayed, there was no

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likelihood of release of the petitioner and therefore, the arrest was not to pre-empt the release of the petitioner but only because of the necessity, considering the nature of the evidence collected during the investigations against him.

68. Learned Special Public Prosecutor for the State, has further submitted that for the arrest of the petitioner, the I.O. had stated the reasons which were taken to the Supervisory Officer, for approval. The valid grounds for arrest which had been formulated on his subjective satisfaction, had been given in the Arrest Memo, as were also mentioned in the Application for arrest. The Learned Special Judge had deliberated over the incriminating evidence available against the petitioner and had also perused the case diary and considered that significant aspects of Mahadev Liquors having been given 17% share, sizeable money having been siphoned off for Goa elections and the role of the petitioner and also perused the case diary before permitting the arrest of the petitioner. It is contended that due compliance of the procedures of law especially Section 41Cr.P.C. and Section 41A Cr.P.C., had been duly followed in the arrest of the petitioner and there are no grounds on which the arrest can be termed as illegal.

69. **Submissions heard in detail and the Written Submissions as well as documents filed on behalf of both the parties, perused.**

70. The arrest brings humiliation, curtails freedom and costs scars forever, the Apex Court observed in the case of *Arnesh Kumar vs. State of Bihar*, (2014) 8 SCC 273. It further lamented that despite so many years of Independence, the Police has not been able to come out of its colonial mindset and arrest is largely being used as a tool of harassment and oppression and the Police has not been able to change its image of being

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considered as a friend of public. It was further observed in *Arnesh Kumar* (supra) that the attitude to arrest first and then proceed with the rest, is despicable. It has worked as a handy tool for the Police Officers who lack sensitivity or act with oblique motives.

71. The Apex Court has emphasized in the case of *Arnab Manoranjan Goswami* (supra) *that the liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.* While so observing, it was further stated that on one side of the spectrum is the human liberty which is a precious constitutional value though undoubtedly, subject to regulation by validly enacted legislation. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to *"prevent abuse of the process of any Court or otherwise to secure the ends of justice"*. While on the one end of the spectrum is the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The Apex Court, however, further observed that on the other side of the spectrum is that the misuse of criminal law, which is a matter to which the courts, whether High Courts or District Courts, must be alive. *The need to ensure fair investigation of crime is undoubtedly important itself because it protects the rights of the victim and at a more fundamental level, the societal interest in ensuring that the crime is investigated in accordance with law.*

Compliance of Section 41A Code of Criminal Procedure:

72. Traditionally, the Criminal Procedure Code recognized arrest as the

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only mode of a procedure for investigations. Section 41 provided for the arrest to be made by the police officer in the defined situations for the offences without warrant and with warrants. However, experience reflected that such arrest became a tool of harassment, oppression and custodial torture much to the chagrin of the police as to the violation of human rights of the inmates. The experience prompted the legislature to introduce Section 41A of Cr.PC, by way of amendment w.e.f. 01.11.2010 wherein it made mandatory for a police officer not to arrest an accused under Section 41(1)Cr.P.C. without first giving a Notice and so long as such person complies in continues to comply with the Notice. It is only when such person fails to comply with the Notice that the Investigating Officer may arrest the such person. Therefore, if the arrest is not necessitated on account of the reasons stated in **41(1)(b)(ii)(a) to (e)**, the law mandates that no arrest be made without warrants and the Notice under Section 41A Cr.P.C. be given to the accused and so long as he joins the investigations, he shall not be arrested.

73. It is a bounden duty of every court, more so the courts of first instance, to ensure that the extraordinary powers of arrest and remand are not misused or are resorted to by the Police in a casual and cavalier manner. The procedure for arrest and remand is expressly provided and detailed in Cr.P.C., 1973 and must be scrupulously adhered to.

74. In the scheme of things, under Section 160 of Cr.P.C., 1973, where a person is considered as a witness, he may be interrogated, investigated or questioned in case he is suspected to be in special knowledge of the facts related to commission of offence. It has been explained by the prosecution that initially when the investigations were at the nascent stage, the petitioner

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was only thought of as a person who was in the know-how of the facts and thus, examined under Section 160 Cr.P.C. However, after thorough investigations, the layers of crime started opening and role of various accused persons became evident. After, about one and a half years of thorough investigations, the role of the petitioner as an accused started emerging and to interrogate him, Application for his sanction was moved in January, 2024 which was granted in April, 2024. It is only thereafter the I.O. could interrogate him by giving a Notice under Section 41 A Cr.P.C.

75. Section 41A of Cr.P.C., 1973 reads as under: -

> *"**Section 41A** — **Notice of appearance before police officer.**— (1) The police offer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*
>
> *(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.*
>
> *(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.*
>
> *(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."*

76. *Section 41A of Cr.P.C., 1973* provides that a person whose arrest is not required under the provisions of Sub-Section 1 of Section 41A of Cr.P.C., 1973, must be issued a Notice directing him to appear before the

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Police Officer or any such other place as may be specified in the Notice. Sub-Clause 2 of Section 41A of Cr.P.C., 1973 provides that when a Notice is issued to the person, it shall be the duty of that person to comply with the said Notice. ***Sub-Clause 3 of Section 41A of Cr.P.C.*** further provides that so long as such person complies and continues to comply with the Notice, he shall not be arrested in respect of the offence unless for the reasons to be recorded, the Police Officer is of the opinion that he ought to be arrested.

77. In this context of ***Section 41A of Cr.P.C., 1973, we may refer to the*** sequence of events in the present case. An *Application dated 24.06.2024 was filed on behalf of the prosecution* before the learned Special Judge, PC Act by the respondent-CBI seeking permission to examine the petitioner. The said Application succinctly encapsulated the crux of the allegations and also detailed the investigations which had been carried out in taking out the New Excise Policy 2021-22, whereby the profit margin of the wholesalers was enhanced from 5% to 12%, pursuant to alleged conspiracy amongst the various persons in order to cause a windfall gain for the wholesalers with an understanding of getting kickbacks in lieu thereof, upfront money to the tune of Rs. 92 crores.

78. It was further detailed in this Application dated *24.06.2024* seeking examination of the petitioner that the Chargesheet followed by three Supplementary Chargesheets against various persons, had been filed. It further detailed that from the investigations, the statements of the witnesses and approvers under Section 161 and Section 164 of Cr.P.C., 1973 as well as the WhatsApp chats retrieved from the mobile phones of the accused persons, documents related to formulation of Excise Policy and records of *hawala* operators relating to transfer of ill-gotten money to Goa through

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hawala channel to meet the expenditures related to Goa Assembly Election during 2021-22 by AAP, it had been revealed that the petitioner was the key conspirator in the criminal conspiracy in formulation and implementation of Delhi Excise Policy 2021-22. *According to the said Application, there was reasonable suspicion of involvement of the petitioner in the commission of offence for which his examination was sought by the respondent-CBI.*

79. The I.O. could carry out the the interrogation by giving Notice under Section 41A Cr. P.C. but he came to be faced with a hurdle of the petitioner being in custody in PMLA case and he could not be asked to join the investigations in the CBI case which was independent. The only option left was for the I.O. to go to the accused for the purpose, which he could not have done without the permission of the Court. Thus, with no other alternative, sought requisite permission from the Court by moving the Application dated 24.06.2024. *Learned Special Judge* considered all these contents and also referred to the statements of Raghav Magunta and MSR recorded on 20.01.2024 and 25.01.2024, to grant the permission for interrogation of the petitioner at Central Jail, Tihar, on the same day i.e. 24.06.2024.

80. Learned Senior Advocates on behalf of the petitioner have argued that no such permission was warranted or required under law as the petitioner was already in Judicial custody. This argument is fallacious for the simple reason that this Application dated 26.04.2024 had to be moved since the accused-petitioner was detained in judicial custody in the PMLA case and would not have been permitted the I.O. of the CBI case to examine the accused-petitioner without the requisite permission of the Court.

81. Essentially, even though the requisite Section has not been mentioned

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in the said Application dated 24.06.2024, but it is evident that it was an application filed under *Section 41A of Cr.P.C., 1973.*The accused may have been in judicial custody in PMLA case, but without permission of the Court, he could not have been interrogated in the CBI case. Further, arrest is not prohibited absolutely, but Section 41A(3) Cr.P.C. states that *where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice* ***for reasons to be recorded, unless the police officer is of the opinion that he ought to be arrested.***

82. The Police Officer, may thus, seek arrest of the suspect even if he has joined the interrogation under Section 41A of Cr.P.C., 1973 but it has to be only for cogent reasons. Therefore, the argument that there existed no occasion to arrest is not tenable; what needs to be considered is whether the Application dated 25.04.2024 moved for seeking permission to arrest contained justiciable reasons.

Compliance of S.41(1) Code of Criminal Procedure for Arrest without Warrants:

83. Ld. Senior advocate has addressed much arguments that the conditions of Section 41(1)(b)(ii) Cr.P. C. were not satisfied while the arrest was effected and was therefore illegal. The attention has been drawn to the Application dated 25.06.2024 filed for arrest of the petitioner wherein it does not specify the grounds of arrest in its Application. In Paragraph 16 of the Application dated 25.06.2024, for arrest of the accused in jail, it has claimed that the petitioner has failed to give satisfactory reply to the questions put to him and that he has not been given the custodial answers and therefore, in Paragraph 17 of the said Application, has sought his

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custodial interrogation.

84. The reliance has been placed on *'Arnesh Kumar vs. State of Bihar'*, *(*2014) 8 SCC 273*; 'Chanda Kochhar vs. CBI'*, 2023 SCC OnLine Bom 72; *'Chandra Deepak Kochhar vs. CBI'*, Writ Petition No.378 of 2023; *'Lalita Kumari vs. Govt. of U.P.'*, (2014) 2 SCC 1; *'Joginder Kumar vs. State of U.P.'*, (1994) 4 SCC 260; '*Arnab Manoranjan Goswami vs. State of Maharashtra',* (2021) 2 SCC 427; *'Satender Kumar Antil vs. Central Bureau of Investigation'*, (2022) 10 SCC 51; *'Santosh vs. State of Maharashtra'*, (2017) 9 SCC 714 and *'Pankaj Bansal vs. Union of India'*, 2023 SCC OnLine SC 1244, to argue that this ground has not been held to be a justiciable ground for seeking the custody/arrest of the person.

85. Much has been argued on behalf of the petitioner that neither being non-cooperative nor being evasive, can tantamount to justiciable grounds for arrest. In the case of *Chanda Kochhar (supra)* where in the grounds of arrest in the Arrest Memo, it was merely stated that *"accused as a FIR named*". She has been not co-operating and disclosing true and full facts of the case, were considered and it was observed by the Apex Court that nothing specific had been noted/set out therein as mandated by Section 41(1)(b)(ii)(a) to (e) and the same could not be held as a ground for arrest. *It was concluded that "not disclosing true and correct facts, cannot be a reason inasmuch as the right against self-incrimination, is provided in Article 20(3) of the Constitution of India."*

86. The Constitution Bench in its decision in **'***Selvi vs. State of Karnataka*', (2010) 7 SCC 263: (2010) 3 SCC (Crl.) 1, had noted that Article 20(3) is an essential safeguard in criminal cases and is meant to be a vital protection against the torture and other coercive methods used by the

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Investigating Agencies. Hence, merely because an accused does not confess, it cannot be said that he has not co-operated in the investigation.

87. On the similar lines, the Apex Court in *'Santosh vs. State of Maharashtra*', held that Article 20(3) enjoys an '*exalted status*' and serves as an essential safeguard against torture and coercive measures used by the Investigating Officers. The consequences of non-compliance of the mandatory provisions of Section 41 and Section 41A, have been considered in the case of *Satender Kumar Antil* (supra), wherein it has observed that consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. Any non-compliance would entitle the accused to the grant of bail.

88. It was further observed that in case of non-cooperation on the part of the appellant, for the completion of the investigation, it would certainly be open for the prosecution to seek cancellation of bail. Similarly, in the case of *Pankaj Bansal* (supra), after making a reference to the aforesaid Judgments, it has again been reiterated that mere claim of accused not confessing, cannot be termed as an act of non-cooperation with the investigation.

89. The Law in regard to arrest without warrants under Section 41(1) Cr.P.C. is thus well defined and settled that mere non responsiveness during interrogation carried out under Section 41A, cannot be a ground to arrest, but the core issue is to consider what is the requirement of arrest under Section 41 Cr.P.C.

90. Before adverting to the contents of the Application dated 25.06.2024 and in order to appreciate the contention that the arrest was illegal, Section 41(1) Cr.P.C. may be reproduced which reads as under: -

*"**Section 41 — When Police may arrest without warrant**. —*

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1. *Any police officer may* ***without an order from a Magistrate and without a warrant, arrest any person—***

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

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

[...]

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91. From the bare perusal of this Section 41(1), it is evident that the Police in cognizable offences *where the person accused of an offence punishable with a term which may be less or extend to seven years with or without fine,* can be arrested ***without warrants by the Police Officer***. However, this power to arrest without warrants is circumscribed by Section 41(1)(b) which provides that the arrest without warrants can only be *on the satisfaction of the existence* of three circumstances i.e., (i) *the credible information* (ii) *reasonable complaint* or (iii) reasonable suspicion. However, such power of arrest is further subject to *five circumstances described in Section 41(1)(ii) (a) to (e).*

92. The reliance has been heavily placed by the Ld. Senior Advocate on the decision of Apex Court in *Arvind Kejriwal v. Directorate of Enforcement* Crl. App. 2493 of 2024 dated 12.07.2024 wherein under similar circumstances the arrest of petitioner in the PMLA case has been held as illegal. However, this judgement is distinguishable as the arrest was made under Section 41(1) Cr.P.C. without warrants, which is not the case herein involving the arrest of petitioner by the CBI with the Orders of the Court.

Compliance with S.41(2) Cr.P.C. for Arrest with Warrants:

93. However, **Section 41(1) Cr.P.C**. gets attracted only when the arrest is made without the warrant of the Court. Pertinently, in the present case, the I.O. after having interrogated the petitioner on 24.06.2024 with the permission from the Court, moved another Application on the next day i.e. 25.06.2024 seeking permission to arrest the petitioner. The said Application though again did not mention the Section in which it was filed, but from its

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title as well as the contents, it is evident that it was an application filed not under Section 41(1) but under Section 41(2) of Cr.P.C., 1973 which reads as under:

> *"Section 41:*
>
> *……*
>
> *(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or* ***against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate."***
>
> .

94. The five circumstances as provided in Section 41(1)(b) apply only when an accused can be arrested without a warrant. According to Section 41(2) of Cr.P.C., 1973, if the arrest is by way of a warrant or under the Order of Magistrate, the only conditions to be satisfied are that a person may be arrested for an offence in respect of which *a complaint has been made* or *credible information has been received* or *reasonable suspicion exists*. Therefore, it is explicit that the additional conditions specified in Sub-Clauses (a) to (e) of Section 41(1)(b)(ii) of Cr.P.C., 1973 were not attracted, since the arrest of the petitioner was with the Order of the Court.

95. Here also, the CBI did not directly proceed to arrest the petitioner but sought the interrogation by serving an Application/Notice dated 24.06.2024. It is pertinent to state that thereafter, in the Application dated 25.06.2024 while seeking arrest, the details of the evidence *prima facie* available against the petitioner, was also detailed therein. The meetings of the petitioner with Mr. Magunta Sreenivasalu Reddy, Ms. K. Kavitha and other meetings held *inter se* between them and also the manner in which the new

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Excise Policy for Delhi in the year 2021-2022, was formulated and the role of the petitioner in the entire policy and the monetary benefits so derived had been explained in some detail. Thereafter, it was explained that *"the petitioner had not given satisfactory replies to the question raised to him regarding his role in the matter of demand of upfront money of 100 Crores, from co-accused persons of South Group and the acceptance in delivery of the same to Aam Aadmi Party, through his close associates and accused Vijay Nair, in lieu of favourable provisions in the Excise Policy of Delhi, 2021-2022, as well as, utilisation of ill-gotten money so received in the Assembly Elections of Goa, during the year 2021-2022 to meet the election related expenditure of Aam Aadmi Party*". It was further stated that *"Mr. Kejriwal also gave evasive replies regarding his role and the role of other co-accused persons in respect of criminal conspiracy hatched regarding the formulation and implementation of the Excise Policy of Delhi, 2021-2022. He did not divulge true facts and gave evasive replies to most of the relevant questions asked to him. His replies were contrary to the oral and documentary evidences gathered by CBI, during the investigation. He was not disclosed the facts truthfully despite being confronted with the incriminating evidence and also concealing the vital facts, which are exclusively in his knowledge.* These facts are relevant for the purpose of investigation, to reach to the just conclusion of the case.

96. It was thus, stated that the custodial interrogation for confronting him with the evidence and to unearth the larger conspiracy hatched amongst the accused/suspect persons regarding the formulation and implementation of Excise Policy, as well as, to establish the money trail of ill-gotten money generated and to establish the role of other suspect persons including public

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servants, as well as, to unearth the facts, which were in his exclusive knowledge.

97. This Application, therefore, fully explained the aspects on which he was evasive or was not disclosing the true facts. It also listed the basis of suspicion of involvement of petitioner in commission of the crime. It is not a case where the petitioner was being compelled to be a witness to himself or to make confession but to disclose such facts, which were within his special knowledge. To be able to pin exactly what facts are in his special knowledge, may not be possible for the Investigating Agency, for it is only after thorough investigation can they make the person reveal the facts, which are till then not known to any person.

98. This Application was duly considered by the learned Special Judge, in his Order dated 25.06.2024 and since the petitioner was in judicial custody in another case, his production warrant was issued for the next day i.e. 26.06.2024.

99. When the petitioner got produced, pursuant to the production warrants on 26.06.2024, *the Application seeking police remand,* was moved. In this Application, again further details were given about the role of the petitioner and also other material and facts that have surfaced during further investigations. It was again explained in Paragraph 17, about the aspects on which the petitioner had remained evasive and non-cooperative, as had been earlier stated in the Application seeking permission to arrest the petitioner. It further explained the need for custodial interrogation, which was to unearth the criminal conspiracy in formulation and implementation of Delhi Excise Policy, 2021-2022; custodial interrogation to confront him with the evidence to unearth larger conspiracy hatched amongst the accused persons, to

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confront him with witnesses/suspects or such other persons, as may be deemed and necessary; to establish the money trail of ill-gotten money to unearth the facts, which were in his exclusive knowledge and to establish the role of other accused and suspects. It was mentioned that more specifically custodial interrogation was required since he was an influential person and may derail the investigation including tampering with the evidence and influencing witnesses.

100. *Learned Special Judge*, considered the arguments of learned Senior Advocate that there was no necessity to arrest the accused considering the nature of the offence and passed the detailed Order dated 26.04.2024 giving all the reasons for permitting the arrest. The relevant part of the Order reads as under:

> *"**10. (i)** The present case registered under Section 120 B IPC r/w 477 A IPC & Section of 7 of Prevention of Corruption Act, 1988 pertains to the formulation and implementation of Excise Policy of Govt. of NCT of Delhi for the 2021-2022. The investigation in this case is continuing and so far four charge-sheets have been filed.*
> ***(ii)** CBI has arrested the accused Sh. Arvind Kejriwal today in the Court. As per CBI, the accused has turned out to be one of the main conspirators of the Excise Policy. He was the Chief Minister.*
> ***(iii) Ld. Special Prosecutor had referred to the entire Excise Policy which has also been discussed earlier in the previous applications of other co-accused persons. Though he admitted that Sh. Arvind Kejriwal was earlier served a notice under Section 160 Cr.P.C, yet it was forcefully submitted that further investigation has revealed his role as an accused. He has, in particular, referred to the statements of Magunta Sreenivasulu Reddy (Member of Parliament) under Section 164 Cr.P.C. recorded on 25.01.2024 and statement of his son***

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Raghav Magunta recorded on 20.01.2024 under Section 164 Cr.P.C. Apart from other material adverted to, reference was also made to the statement of C. Arvind. It was argued that the role of the present accused became clear and permission under Section 17 A of PC Act was given on 23.04.2024. Thereafter, accused was examined and interrogated at Tihar Jail (he is in custody in connected PMLA matter). They found his replies to be evasive and non-cooperative and he did not give any satisfactory reply to the questions raised regarding his role in demand of money of 100 Crores from co-accused persons from South Group, acceptance and delivery of the same through his associate Vijay Nair and utilization of ill-gotten money for the Assembly Election of Goa. His replies were found contrary to the oral and documentary evidence gathered during investigation and gave evasive replies regarding co-accused persons in respect of criminal conspiracy. For the said reasons, the accused was arrested so that his custodial interrogation could be taken for unearthing the entire conspiracy.

(iv) *Ld. Sr. Advocate had stressed that there was no* ***necessity to arrest*** *the accused at this stage. He had referred to the timing of the arrest. This Court has to consider, at this stage, the merits of the case. The timing may be circumspect but it is not the clear criterion for declaring an arrest illegal.*

(v) *Regarding the applicability of* ***Section 41A of Cr.P.C.*** *the CBI has taken the permission of the Court before examining and interrogating the accused and based upon the interrogation report and the evidence collected during investigation, have found the necessity to arrest the accused as stated above in* ***point III****. At this stage of investigation, statement of witnesses and documentary evidence will be considered as it is. The police custody remand of the accused is, therefore, warranted.*

(vi) *Investigation is the prerogative of the investigating agency. There are certain safeguards provided in the law*

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> *and at this stage, on the material on record, it cannot be said that the arrest is illegal. The agency, however, should not be over zealous.*
> ***(vii)*** *In view of the factum of the investigation leading to the arrest of the accused, the role ascribed to him and the necessity to confront the accused with the evidence in the present case of conspiracy,* ***the present police remand application of the accused is allowed****...."*

101. *The Ld. Special judge* observed that at this stage of investigation, statement of witnesses and documentary evidence warranted the remand of the petitioner, to police custody. Investigation was held to be the prerogative of the Investigating Agency and on the basis of the safeguard provided in the law and from the material on record, it was held that the arrest could not be said illegal especially when the arrest had been made by the CBI, after taking permission from the Court. After considering all these facts, *Ld. Special judge* held that there existed sufficient grounds for remanding the accused to judicial custody, which was granted till 12.07.2024.

102. It is, therefore, on record that the "*arrest was not solely based on ambiguous terms of non-cooperative attitude and evasive replies but these terms were duly qualified and explained.*" It was pointed out the aspects on which the petitioner was not forthcoming. It is not a case where he was being compelled to be a witness against himself in contradiction to his valuable rights enshrined and protected under Article 20(3) of Constitution of India, but it was his specific non-cooperative attitude, which was also borne out from the case diary, that hampered the collection of relevant evidence that prompted the arrest.

103. Significant it is to state at this point that the I.O. is the master of all

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the investigations and he should not be hampered of prohibited from conducting the investigations and the Courts must step in only when there appears to be an abuse of power or arbitrary exercise of procedures especially the power of arrest.

104. ***In the present case***, while permitting the arrest, the only factors to be considered by the Court were whether there is a reasonable suspicion or credible information about the commission of the offence. These factors were clearly detailed in the Application for arrest dated 26.04.2024 and it is not the argument of either party that there were no suspicious circumstances against the petitioner in regard to the conspiracy to commit the offence.

105. In this context, reference be made to the decision of the Apex Court in *Union of India vs. Padam Narayan Aggarwal* AIR 2009 SC 254 wherein while examining the Power of Arrest under Section 104 of 1962 Act, it was observed that Power to Arrest is statutory in nature and cannot be interfered with and can be exercised only on objective considerations free from whims, caprice or fancy of the Officer. The law takes due care to ensure individual freedom and liberty by laying down norms and providing safeguards so that the Authorities may not misuse such power. The requirement of *Reasons to Believe* to be recorded in writing prevents arbitrariness and makes the provision compliant with Article 14 of the Constitution of India. Canadian judgment *Gifford vs. Carlsen* explained the phrase *'Reason to Believe'* as conveying a conviction in mind, founded on evidence regarding the existence of a fact or the doing of an act which is of higher standard than a mere suspicion.

106. So being the case, the formal arrest of the petitioner was with the written Orders dated 26.04.2024 of the Special Judge, which was in

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accordance with the procedure laid down in Section 41 (2) Cr.P.C. Further, more relevant than the non-responsiveness or evasiveness of the Petitioner, was whether there existed sufficient suspicion and circumstances for his arrest. The argument that the arrest was illegal as violative of due procedure envisaged in Cr. P. C., and that no prior Notice of Section 41A as mandated by law, was given to the petitioner, is without any merit. From the circumstances as detailed above, it cannot be said that there was illegal exercise of power by the I.O.

107. That there were reasons to further remand the Petitioner to judicial custody were explained by the CBI, thereafter, while seeking judicial remand of the accused *vide* Application dated 29.06.2024. Ld. Special Judge before allowing the Application, considered the relevant facts. It was observed that the case diary is an effective instrument for the Court to keep a tab on the investigation and for the purpose of satisfy the Court regarding the grounds for Judicial Custody Remand. The Investigating Officer was asked to show the case diary wherein he had pointed out that during three days in police/CBI custody, the accused was confronted with the evidence including the statement of witnesses and other relevant documents, but there was no co-operation from the side of the accused as he came up with the evasive replies and was not truthful in disclosing the facts on many material aspects. The Investigating Officer also pointed out certain incriminatory material collected during the investigation, to show how the ill-gotten money had been used for Goa Assembly Elections for making payments towards the expenses of air-tickets and hotel booking during the visits of the accused to Goa, during the period from June 2021 to February, 2022. From the case diary, the Investigating Officer has also pointed out certain other

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incriminatory material showing chats of the accused with the certain persons involved in transfer of ill-gotten money to Goa, through Hawala Channels and submitted that for the custodial investigation may be required to unearth the larger conspiracy.

108. There was evidently, enough evidence than has been projected on behalf of the petitioner which justified permission to Arrest and to remand the petitioner to the Custody by the Orders of the Ld. Special Judge for which the procedure was duly followed.

Arrest reflects Malice In Law:

109. ***Learned Senior Advocate on behalf of the petitioner*** has argued that the arrest in the present Case, is nothing but is an *Insurance Arrest* to ensure that the petitioner is prevented from coming out of the jail, and this power was exercised *maliciously*. There was no material whatsoever for arrest and there was no intention of CBI ever to arrest the petitioner in the present Case, which is borne out from the fact that though the FIR bearing No. RC0032022A0053 under Section 120-B read with Section 477A IPC and Section 7 of the PC Act, was registered by CBI, **on 17.08.2022,** no steps have ever been taken in the last two years to secure the arrest of the petitioner in the CBI matter. It is further contended that this is one of the unique cases, where the arrest under PMLA, which is the predicate offence, has been made prior to arrest of the petitioner in CBI case, clearly reflective of there being no intent of CBI, to arrest the petitioner in this matter. Moreover, there is not one but three releases granted to the petitioner in the PMLA case, clearly inure to the benefit of the petitioner and establishes his credibility. It was further argued that the act of arrest of the petitioner, was

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nothing but an act of malice and law and the arrest was not necessary.

110. It has been vehemently argued that *the triple test*, which has been historically holding ground for arrest of a person, have not been satisfied while making the arrest. The petitioner, who is the Chief Minister of NCT of Delhi cannot be any flight risk; he has roots in the society; has no criminal antecedents and is also not a habitual offender. There are no chances of his interfering with the documentary evidence and there is also not chance of his non-cooperation.

111. It is also argued that as per the statement made before the learned Apex Court, the investigations were almost complete and the Charge-Sheet was intended to be filed by 03.07.2024 and that the Charge Sheet has indeed been filed in the Court on 29.07.2024. The gravamen of the argument was that there was no reason to arrest the petitioner as the investigations stood almost concluded.

112. **In the present case,** it is not in dispute that initially, after registration of FIR on 17.08.2022, the petitioner was examined on 16.04.2023 for 9-10 hours after service of summons under Section 160 CrP.C. dated 14.04.2023 since at that stage he was identified only as a person, who was acquainted with the facts and circumstances of the case. The prosecution has explained that respecting his position as a Chief Minister of NCT of Delhi, the police treaded with trepidation and caution and proceeded to collect the evidence from other persons suspected to be the accused. Consequently, extensive investigations were carried out across India to ascertain the entire web of conspiracy involving numerous persons. The Investigating Agency has further explained that it is only after sufficient material was collected against the Petitioner over a period of one and a half years, that they sought the

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sanction for prosecution of the petitioner, which was granted on 23.04.2024. The reasons for not proceeding immediately against the petitioner, after registration of the FIR is thus, well explained by the CBI and does not reek of malice.

113. It would also not be out of place to observe that Ld. S.G. may have stated that Charge Sheet would soon be filed, cannot be interpreted to state that the entire investigations stood completed; to interpret that the investigations stood completed, may not be correct. The petitioner was still being investigated; the investigations were at their last leg.

114. It is not on account of malice or a well-planned strategy, as has been argued on behalf of the petitioner that the accused was not arrayed as an accused or arrested soon after the registration of the FIR. It is only after sufficient evidence was collected and the sanction was obtained in April, 2024 that the CBI proceeded with further investigations in this matter, against the petitioner and his eventual arrest.

115. ***It has been further explained*** that the petitioner is not an ordinary person but it is the Chief Minister of NCT of Delhi and the convenor of Aam Aadmi Party, which has its Government in Punjab. There were links of this crime even in Punjab but the material witnesses were not forthcoming for the simple reason of the influence exercised by the petitioner, by virtue of his position. It is only when he was arrested that the witnesses from the Punjab came forth to get their statements recorded and in fact, two of those witnesses, turned approver against the petitioner.

116. The argument of the Ld. Special public Prosecutor has merit. It is correct and true that the petitioner *herein* is not an ordinary citizen of this country but is a distinguished holder of Magsaysay Award and a convenor

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of Aam Aadmi Party. The control and the influence which he has on the witnesses, is *prima facie* borne out from the fact that these witnesses could muster the courage to be a witness only after the arrest of the petitioner, as highlighted by the learned Special Prosecutor. Also, it establishes that the loop of evidence against the Petitioner got closed after collection of relevant evidence after his arrest. No malice whatsoever, can be gathered from the acts of the respondent.

Conclusion:

117. In the light of the aforesaid discussion, it cannot be said that the arrest was without any justiciable reasons or was illegal.

118. The Writ Petition is hereby dismissed. The pending application, if any, also stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 05, 2024
S.Sharma/RS