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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 14th January, 2025+ BAIL APPLN. 4819/2024**MOHD TAHIR HUSSAIN**

.....Petitioner

Through: Ms. Rebecca John, Sr. Advocate with Mr. Rajiv Mohan, Ms. Tara Narula, Ms. Shivangi Sharma, Ms. Sonal Sarda Mr Rishabh Bhati, Ms. Anushka Baravah, Mr. Rehan Khan, Mr. Chinmay Kanojia, Mr. Nilanjan Dey & Mr. Chandveer Shoran, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Chetan Sharma, ASG with Mr. Rajat Nair, SPP, through VC, Mr. Dhruv Pande, Mr. Amit Gupta, Mr. Shubham Sharma & Mr. Vikramaditya Singh, Advocates.
A copy of this order be placed in all the matters Sushil Kumar, Insp. Priyanka, AEKC Crime Branch Sunlight Colony.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****CRL.M.A. 516/2025 (Exemption)**

1. Allowed, subject to all just exceptions.
2. The Application is disposed of.

CRL.M.(BAIL) 50/2025



3. The present Application under *Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as “BNSS, 2023”)* has been filed on behalf of the Applicant/Petitioner seeking “*Interim Bail*” from 14.01.2025 to 09.02.2025 to participate in the election process and to contest the Delhi Assembly Elections, 2025 from Mustafabad Constituency, Delhi.

4. It is submitted in the Application that the Applicant/Petitioner is an accused in relation to the Delhi Riots which took place in February, 2020. The Applicant/Petitioner was taken in custody and arrested by the Police on 05.03.2020 in FIR No. 101/2020 dated 25.02.2020 under Sections 109/114/147/148/149/188/353/427/435/436/454/34 of the Indian Penal Code, 1860 (*hereinafter referred to as “IPC, 1860”*) registered at Police Station Khajuri Khas, Delhi; since then, he is in judicial custody.

5. It is further submitted that the Complaint Case bearing No. *ECIR 05-STF/2020* under the Prevention of Money Laundering Act, 2002 has been filed by the Enforcement Directorate. In the said PMLA case, the Applicant/Petitioner has already been in custody for more than half of the maximum punishment that can be imposed on him, thereby entitling him to the benefit of the erstwhile Section 436A of the Code of Criminal Procedure, 1973, now Section 479 of BNSS, 2023 and to Regular Bail/Anticipatory Bail.

6. Apart from aforesaid two cases, the Applicant/Petitioner was arrested in 9 other cases, all related to Delhi Riots, 2020.

7. It is submitted that the Applicant/Petitioner has been granted Regular Bail in FIR Nos. 80, 117, 91, 92, 120 all of 2020, all registered at Police Station Dayalpur, Delhi *vide* Judgment dated 12.07.2023 passed by the Co-ordinate Bench of this Court.



8. The Applicant/Petitioner has been admitted to Regular Bail in FIR No. 88/2020 dated 01.03.2020 under Sections 307/120B/34 of IPC, 1860 registered at Police Station Dayalpur, Delhi *vide* Order dated 02.09.2023 by the learned Additional Sessions Judge, Karkardooma Courts, Delhi.
9. The Applicant/Petitioner has also been admitted to Bail in FIR No. 114/2020 dated 01.03.2020 under Sections 147/148/149/427/392/435/34 of IPC, 1860 registered at Police Station Khajuri Khas, Delhi *vide* Order dated 06.05.2024 by the learned Additional Sessions Judge, Karkardooma Courts, Delhi.
10. It is submitted the FIR No. 116/2020 has already been quashed by this Court *vide* Judgment dated 26.11.2024 passed in CRL.M.C. 4654/2022.
11. It is further submitted that in the upcoming Delhi Assembly Elections, 2025, the Applicant/Petitioner, who was a former Municipal Councillor from the Aam Aadmi Party, now intends to contest the Elections from Mustafabad Assembly Constituency, as a Member of the All India Majlis-e-Ittehadul Muslimeen (AIMIM) Party.
12. The Election Schedule of the Delhi Assembly Elections, 2025 has been declared by the Election Commission of India which reads as under: -

<i>Poll Events</i>	<i>NCT of Delhi (All 70 Assembly Constituencies)</i>
<i>Date of issue of Gazette Notification</i>	<i>10.01.2025 (Friday)</i>
<i>Last date of making Nominations</i>	<i>17.01.2025 (Friday)</i>
<i>Date for scrutiny of Nominations</i>	<i>18.01.2025 (Saturday)</i>
<i>Last date for the withdrawal of candidates</i>	<i>20.01.2025 (Monday)</i>
<i>Date of Poll</i>	<i>05.02.2025 (Wednesday)</i>



<i>Date of Counting</i>	<i>08.02.2025 (Saturday)</i>
<i>Date before which Election shall be completed</i>	<i>10.02.2025 (Monday)</i>

13. It is asserted that the Applicant/Petitioner intends to represent the people and to contest from Mustfabad Assembly Constituency, Delhi. The entire Electrical process which commences with filing of Nomination Papers followed by opening of Bank Account after Nomination and canvassing and culminates in the Declaration of the Oath, necessitates the continuous and unhindered presence of the candidate, to ensure its smooth and efficient completion.

14. The nomination must be accompanied with an Affidavit informing that he has no prior conviction which is required to be executed by the Applicant on Stamp Paper with his signatures on each page and sworn before a First-Class Magistrate, a Notary Public, or an Oath Commissioner as designated by the concerned High Court. The candidate is also required to submit two identical recent photographs, conforming to the specified standard. Also, the Oath of Allegiance as per Articles 84 and 173 of the Constitution of India has to be also submitted by the Applicant on the prescribed Form given in Schedule-III of the Constitution of India.

15. In order to ensure meticulous and uninterrupted completion of the aforesaid procedure, it is imperative that the Applicant/Petitioner may be granted Interim Bail in FIR No. 65/2020 dated 26.02.2020 registered at Police Station Dayalpur, North-East, Delhi, from 14.01.2025 to 09.02.2025.

16. **Learned Senior Advocate on behalf of the Applicant/Petitioner** had vehemently contended that the Applicant/Petitioner is in judicial



custody since 2020. The testimony of eye witnesses has already been recorded and there is no apprehension of his tampering with the witnesses. The Applicant/Petitioner has a right to participate in the Assembly Elections and he cannot be denied this right merely because he is an accused in the present case.

17. Learned Senior Advocate on behalf of the Applicant/Petitioner has placed reliance on the decision of the Apex Court in Arvind Kejriwal vs. Directorate of Enforcement, (2024) 9 SCC 577 passed in Criminal Appeal No. 2493/2024, wherein it is held that while granting Bail, disregarding the peculiarities of the individual concerned and the attendant circumstances, would be “*iniquitous and wrong*”.

18. Reference is also made to the Order dated 02.07.2024 of the learned Special Judge passed in RC No. 10/2017/NIA/DLI titled NIA vs. Mohd. Hafiz Saeed & Ors., who in similar circumstances, granted the Custody Parole to enable the accused to file his Nomination Papers.

19. Reliance has been placed on the cases of Arvind Kejriwal, (supra) and Dhananjay Singh vs. State of NCT Delhi, SLP (Criminal) No. 3042/2014, wherein in similar situations, the accused had been granted Interim Bail to facilitate contesting of the Elections.

20. It is submitted that the Applicant/Petitioner would not be able to fulfil his obligations of filing Nomination papers and opening of the Account as well as to make effective campaigning for the Elections, if he is not granted Interim Bail. The Fundamental Right of the Applicant/Petitioner to be able to contest the Elections, cannot be scuttled by denying him the interim Bail.

21. Further, once the permission is granted in the present case, he would then seek his Bail in the Complaint Case bearing No. *ECIR 05-STF/2020*



under the Prevention of Money Laundering Act, 2002, in which he has already undergone more than half of the maximum sentence which entitles him to grant of Regular Bail. The Applicant/Petitioner would also be seeking Bail in FIR No. 59/2020 for grant of Bail for the purpose of contesting the Elections.

22. The present Application has been made *bona fide* with the prayer that the Applicant/Petitioner may be granted Interim Bail from 14.01.2025 to 09.02.2025 to contest the Assembly Elections of Delhi.

23. **Learned Additional Solicitor General of India** on behalf of the Respondent has vehemently opposed the present Application.

24. It is submitted that there are serious allegations against the Applicant/Petitioner of murder of Mr. Ankit Sharma, an Official of the Intelligence Bureau, Ministry of Home Affairs, Government of India by the riotous mob, whose body was recovered from Khajuri Khas Nala, near Chand Bagh Pulia. He was found only in his underwear and all his clothes were missing. He had 51 blunt and sharp injuries on his head, face, chest, back and his waist.

25. Looking at the gravity of the offence, the Applicant/Petitioner cannot be released on Interim Bail.

26. It is further submitted that the right to contest the Elections is not a Fundamental but a Statutory Right, as has been held in the case of Vishwanath Pratap Singh vs. Election Commission of India and Another, Special Leave to Appeal (Civil) No. 13013/2022 decided on 09.09.2022.

27. It is stated that the Applicant/Petitioner has been arrayed and arrested in as many as 11 FIRs, including the FIR bearing No. 59/2020 under Sections 109 / 114 / 124A / 147 / 148 / 149 / 153A /



186/201/212/295/302/307/341/353/395/420/427/435/436/452/454/468/471/120B/34 of IPC, 1860 and Sections 25/27 of Arms Act and Sections 13/16/17/18 of Unlawful Activities (Prevention) Act, 1967 and Sections 3/4 Prevention of Damage to Public Property Act registered at Police Station Crime Branch, Delhi, which is being investigated by the Special Cell, Delhi, wherein Sections 13/16/17/18 of Unlawful Activities (Prevention) Act, 1967 have been invoked. In addition to this, a Complaint Case bearing No. ECIR 05-STF/2020 under the Prevention of Money Laundering Act, 2002 is also pending against the Applicant/Petitioner.

28. Further, it is *ex facie* manifest that the Applicant/Petitioner has a tendency to indulge in criminal conduct and the FIRs registered against him are in regard to serious offences, including the provision of Unlawful Activities (Prevention) Act, 1967.

29. It is further submitted that the Applicant/Petitioner is not a sitting Chief Minister or a Leader of a National Party. The Applicant/Petitioner was only a Municipal Councillor of Aam Aadmi Party. Also, the Applicant/Petitioner is the main conspirator behind Delhi Riots that occurred in North-East, Delhi in 2020, leading to as many as 53 deaths.

30. Furthermore, from the rooftop of the Applicant/Petitioner's building, stones, bricks and petrol bombs, acid drums were found stacked which were used in the riots and the video of the same was widely circulated on social media. The bottles were found which were used to throw Molotov Cocktail on the Hindu Community and the riot control Police party. A separate FIR No. 101/2020 registered at Police Station Khajuri Khas, Delhi, wherein the Seizure Memos were prepared to seize all these materials recovered from the rooftop of the Applicant/Petitioner. The FSL Report also confirms that the



bottles contained either kerosene oil or acid.

31. Furthermore, the prosecution evidence is at a pivotal stage. Many material witnesses in FIR Nos. 88, 65, 120, 91, 92 all of 2020 are yet to be examined.

32. It is submitted that in case the Applicant/Petitioner is granted Interim Bail to contest the Assembly Elections of Delhi, there is every likelihood of his tampering with the evidence and would most certainly influence the witnesses whether directly or indirectly.

33. It is argued that the Applicant/Petitioner intends to contest the Elections from Mustfabad Constituency located in North-East, Delhi and this area was one of the locations affected by the Delhi Riots, 2020.

34. Given the totality of the circumstances, it is evident that the Applicant/Petitioner holds the substantial influence over the local population within this area. Such influence, including his community connections, poses a credible risk and interference in the fair and impartial conduct of the ongoing trial. These factors are required to be given due consideration while assessing the implication of Interim Bail on the trial's integrity and fairness.

35. **Learned Additional Solicitor General of India** has further argued that the Bail granted in the case of Arvind Kejriwal, (2024) 9 SCC 577 is totally on different set of factors. The High Court of Bombay in Bail Application No. 4054/2024 titled Digambar Rohidas Agawane vs. Directorate of Enforcement, distinguished the judgment of Arvind Kejriwal, (supra) by noting that the Applicant therein was neither a sitting Chief Minister or a Leader of a National Party.

36. Furthermore, similar Interim Bail Applications have been declined in many a cases by the High Court and the Supreme Court.



37. It is submitted that the Respondent/State is willing to cooperate and support the Applicant/Petitioner to comply with the requisite formalities and to file and submit the Nomination Papers and to open his Bank Account for which the Custody Parole instead of Interim Bail, may be granted to the Applicant/Petitioner.

38. **Submissions heard and the record perused.**

39. The Applicant/Petitioner was a former Municipal Councillor of Aam Aadmi Party. He is an accused in as many as 9 FIRs that have been registered in regard to the Delhi Riots, 2020 which took place in North-East Delhi. In FIR No.101/2020, the seizure of materials i.e., Stones, Bricks and Petrol Bombs and Acid drums which were stacked on the roof of his house and were used in the riots, the videos of which have been widely circulated in the social media, had been recovered. The present FIR No.65/2020 is in regard to the murder of Mr. Ankit Sharma, an Official of Intelligence Bureau, Ministry of Home Affairs, Government of India.

40. In the case of Arvind Kejriwal, (supra) while considering the Interim Bail for contesting/campaigning the General Elections, 2024, it was observed that the Courts, while considering such Application, must always take into consideration the peculiarities associated with the person in question and the surrounding circumstances. In the said case, considering that the Applicant was the sitting Chief Minister of Delhi and a Leader of a National Party i.e., Aam Aadmi Party, the Interim Bail for contesting the Elections, was granted.

41. Much reliance has been placed on the Application of Abdul Rashid Sheikh @ Er. Rashid which was decided *vide* Order dated 10.09.2024 passed in NIA vs. Hafiz Saeed & Ors.



42. Abdul Rashid Sheikh @ Er. Rashid, (supra) in which an Interim Bail had been granted to the Applicant for contesting the Legislative Assembly Elections of J&K, but as rightly argued, in the said case the State had no objection to the release of the Applicant on Interim Bail for the purpose of the Elections; consequently, the Interim Bail was granted.

43. The circumstances of the said case in which Interim Bail was granted, cannot be considered as a precedent. Rather, as observed in the case of Arvind Kejriwal, (supra), the peculiarities of each case have to be considered independently to ascertain whether Interim Bail can be granted.

44. It is also pertinent to refer to the Order of the Bombay High Court in Digambar Rohidas Agawane (supra), wherein it was observed by the High Court of Judicature at Bombay that the peculiarity attached to Arvind Kejriwal was that he was a sitting Chief Minister and Member of a National Party.

45. Reliance has been placed by the Applicant/Petitioner on the case of Dhananjay Singh, (supra), wherein in similar circumstances, Interim Bail had been granted to the Applicant/Petitioner for the purpose of filing the Nomination Papers. However, the said case was under Section 302 of IPC, 1860. Moreover, there also, it had been observed that the Petitioner has been a Member of Parliament and consequently was directed to be released for one week temporarily for submitting the Nomination Papers.

46. However, as already discussed above, each case has to be determined on its own peculiar facts and the judgment so cited, cannot be said to be a precedent on the proposition of law that in every case where the Applicant intends to contest the Elections, he shall be entitled to Interim Bail.

47. In the present case, the Applicant/Petitioner is a former Municipal



Councilor of Aam Aadmi Party and is not a sitting Member of Parliament. The gravity of allegations against the Applicant/Petitioner is that he was the main perpetrator to the Riots which took place in the year 2020 in North-East District, Delhi, which resulted in death of about 59 persons, cannot be overlooked. Merely because the Applicant/Petitioner had earlier been a Municipal Councilor, cannot be a peculiar circumstance entitling him to grant of Interim Bail.

48. The Applicant/Petitioner has as many as 11 FIRs registered against him in regard to Riots of North East, Delhi. He is in Judicial Custody since 2020. He may have been admitted to bail in 9 FIRs, but admittedly, he continues to be in custody in the PMLA case as well as FIR No. 59/2020 aside from the present case.

49. Considering the antecedents, nature of allegations and having regard to the totality of circumstances, he is granted **Custody Parole** for subscribing the Oath and to complete the formalities in respect of filing his Nomination Papers. He is granted Custody Parole on the following conditions: -

- (i) that he shall not have any access to the phone, whether mobile or landline or the internet;
- (ii) that he would not interact with any person except the officials concerned in the Nomination process;
- (iii) that he will not address the media; and
- (iv) that the family members of the accused may remain present, but they would not be permitted to click photographs of the filing of Nomination, or to post the same on social media.

50. The Respondent/State shall accordingly facilitate the filing of the



Nomination Papers on the concerned date and shall accordingly provide the facility for completing the formalities before and after the filing of Nomination Papers for contesting the Delhi Assembly Elections, 2025.

51. The State may co-ordinate accordingly with the concerned Authorities so that the entire process is completed in a timely manner and the Applicant/Petitioner's right of filing Nomination is not impacted in any manner.

52. The copy of the Order be sent to the Jail Superintendent and to the concerned Authorities for compliance.

53. The copy of the Order be also given *Dasti* to the learned counsel for the Applicant/Petitioner.

54. The Application is accordingly disposed of.

BAIL APPLN.4819/2024

55. List for arguments on 20.02.2025.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 14, 2025

S.Sharma/va/rk