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had made certain seizures. Thereafter, the Directorate of Enforcement had registered the present ECIR on 27.08.2022 and raids were conducted at the office and residence of the applicant on 06.09.2022. The applicant in the present case was arrested on 28.09.2022 by the Directorate of Enforcement. In the case registered by the CBI, chargesheet had been filed against the applicant before the learned Trial Court without arrest in the predicate offence and the cognizance of the same was taken by the learned Trial Court vide order dated 15.12.2022. The prosecution complaint in the instant ECIR was filed on 26.11.2022 and the cognizance was taken vide order dated 20.12.2022. On 03.01.2023, interim bail was granted to the applicant in the predicate offence registered by CBI but on 16.02.2023, the learned Trial Court had dismissed the bail application filed by the applicant in the present ECIR. However, in the present ECIR, the applicant was granted interim medical bail for a period of 30 days by the learned Trial Court and was granted regular bail on the same day in the predicate offence registered by the CBI. Thereafter, the interim medical bail of the applicant was extended by the Trial Court till 01.05.2023.

3. In the meanwhile, the applicant had approached this Court seeking grant of regular bail by way of present bail application and had also sought extension of interim bail which had been granted by the learned Trial Court. It is stated that on 27.04.2023, when the present application was listed for arguments, this Court had directed the applicant to surrender on 01.05.2023, but had directed the jail authorities to ensure that the applicant is taken to the doctor concerned under whose advice he was being treated, and to get the

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applicant admitted in the hospital and get the required surgery done, if so advised, for his lower back problem. It is stated that thereafter, the applicant was taken to the hospital by concerned jail officials and a surgery was performed on the applicant on 08.05.2023. It is stated that pursuant to the said surgery, the applicant was prescribed bed rest of two months and accordingly, he had filed another application dated 11.05.2023 before this Court, on which, this Court had directed that the medical documents of the applicant be verified by the Director of All India Institute of Medical Sciences (AIIMS), New Delhi, and in the meanwhile, the applicant be kept in the concerned hospital till 24.05.2023. Thereafter, on 24.05.2023, this Court had directed that applicant be taken to AIIMS, New Delhi on 26.05.2023 and be presented before the concerned doctors for his medical examination. Further, on 29.05.2023, this Court had directed AIIMS, New Delhi to constitute a Medical Board and get the applicant examined.

4. Thereafter, the matter was heard on 07.06.2023 and *vide* judgment dated 12.06.2023, this Court had granted interim bail to the applicant on account of his medical condition for a period of 06 weeks till 25.07.2023. However, it is stated that on 16.07.2023, while the applicant was recovering from his surgery, he had fallen down in the bathroom at his home, leading to acute pain in his lower back and again had to be hospitalized and was advised strict bed rest for 02 months. It is stated that this Court on 24.07.2023, after hearing arguments from both the sides, had extended the interim medical bail of the applicant by a period of further 06 weeks i.e. till 04.09.2023.

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Thereafter, during this period, on 16.08.2023, the applicant had stumbled on the stairs at his home and had twisted his left knee and was accordingly advised rest of 5 days by his doctor. It is stated that when the MRI of his left knee was conducted on 22.08.2023, the concerned doctor had advised the applicant to undergo surgery to repair the damaged part of his left knee. It is stated that as per the advice of doctors, the applicant had got admitted at BLK Max Super Speciality Hospital, New Delhi on 30.08.2023 and on 31.08.2023, the surgery of his left knee had been conducted.

5. In the meanwhile, the applicant had sought extension of his interim bail by this Court, however, the application seeking such extension was dismissed by this Court *vide* order dated 01.09.2023. However, it was directed by this Court that considering the medical condition of the applicant, he may remain hospitalized in the same hospital till 04.09.2023 i.e. till the time he had been granted interim bail. It was also directed that the applicant shall remain hospitalized in the custody of the jail Superintendent thereafter, till the time the applicant is discharged from the hospital, which should not exceed 02 weeks, except in case of some medical advice. It was also directed that a Medical Board be constituted by AIIMS which would give a definite opinion on the medical condition of the applicant and will suggest as to whether he requires hospitalization in a particular hospital or whether can he be treated in the jail or the referral hospital. This Court had also directed that the applicant will be at liberty to move a fresh application seeking extension of interim bail before the learned

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Trial Court in view of any medical opinion given by the medical board constituted by AIIMS, New Delhi.

6. Thereafter, the applicant had again approached this Court and had sought modification of order dated 01.09.2023 to the limited extent that instead of BLK Max Hospital, the applicant be permitted to take his medical treatment at VNA Hospital under the care and supervision of his doctor. It is stated that on 04.09.2023, the applicant was discharged by BLK Max Hospital and was referred to the VNA Hospital, New Delhi where the doctor concerned had prescribed further treatment to the applicant including physiotherapy since the applicant was in acute pain, both at back and knee level.

7. In the background of these facts and circumstances, the case of applicant now is that on 06.09.2023, the applicant was taken for physiotherapy to VNA Hospital by the jail authorities, however, in the intervening night of 06-07.08.2023, the applicant while trying to go to the washroom using his walker had a bad fall on the floor of his jail cell due to his fragile medical condition since he did not have the requisite assistance and care in the jail cell which was required considering his delicate medical condition. It is stated that after the said fall, the applicant had kept calling for help and had been left helpless on the floor for 12 to 13 minutes, after which he was finally attended by the jail officials and this incident had led to aggravating pain in the back and had caused swelling at the operated site of the knee and leg. It is the case of applicant that thereafter, the applicant had been taken to several hospitals, however no proper treatment was given to him by the jail authorities. It is stated that on 13.09.2023, the learned Trial Court had

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heard arguments on application filed by the applicant seeking directions to jail authorities to take the applicant for an urgent MRI of his left knee and the Court had also directed that CCTV footage of the concerned jail cell be preserved and a copy be given to the parties. It is stated that when the CCTV footage was received by the applicant, it became clear that the applicant had fallen and no attendant or jail official had come to his rescue for a considerable duration of around 12 to 13 minutes. It is also stated that during this time, the Medical Board which had been constituted *vide* order dated 01.09.2023 of this Court had examined the applicant and the report had been prepared on 22.09.2023.

8. Thereafter, in view of the precarious medical condition of the applicant and the orders dated 01.09.2023 and 04.09.2023 passed by this Court as well as the subsequent orders passed by the Trial Court and the medical report of the applicant prepared by AIIMS, the applicant had moved an application seeking interim bail on medical grounds before the learned Trial Court till the pendency of the present bail application before this Court. It is stated that after hearing both the parties and going through the record, the learned Trial Court on 06.10.2023 had dismissed the application seeking interim bail filed on behalf of the applicant.

9. It is in this scenario that the applicant had filed the interim bail application before this Court. However, during the course of arguments, it was contended on behalf of the applicant that the main bail application seeking regular bail be considered at this stage on medical grounds.

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ARGUMENTS ADDRESSED BEFORE THIS COURT

10. Learned Senior Counsels appearing on behalf of the accused/applicant argue that medical condition of the applicant is of such a nature that he may suffer disability in case he is not provided the medical treatment as has been prescribed by the doctors concerned. It is argued that the applicant has already undergone five surgeries and the facilities available at Tihar Jail, New Delhi are not sufficient to meet the medical requirements of the applicant. It is also stated that the applicant had suffered a fall on the intervening night of 06-07.08.2023 and thereafter, the condition of the applicant has deteriorated even further. The attention of this Court has been drawn to the report dated 03.10.2023 filed by the Office of Senior Medical Officer, Dispensary, Central Jail No. 04, Tihar, New Delhi before the learned Trial Court, wherein it is stated that the medical facilities in the jail are not adequate to meet the challenges passed by the applicant owing to his serious medical condition. Learned Senior Counsels further argue that the report dated 22.09.2023 submitted by the Medical Board of AIIMS, New Delhi also mentions that regular exercise is to be supplemented by patient at 'home'. It is also argued by learned Senior Counsels that the applicant has remained on interim bail for a substantial period of time and he has never misused the liberty granted to him. It is further contended that the order dated 12.06.2023 of this Court *vide* which the applicant was enlarged on interim bail for a period of 06 weeks had considered all the objections of the respondent and had observed that applicant will be entitled to grant of bail even as per Section 45 of PMLA as he would fall under the category of 'sick' or 'infirm'.

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Therefore, it is argued that in view of the serious medical condition of the applicant which has constantly deteriorated over the period of a few months, he be released on regular bail.

11. Controverting the arguments addressed on behalf of accused/applicant, learned Special Counsel for the Directorate of Enforcement argues that the medical condition of the accused/applicant is not such which will require him be enlarged on regular bail, and the hospital facilities which are available in the Jail hospital or any other specialized hospital/referral hospitals are adequate to meet the challenges, if so faced by the present applicant. It is argued that the report dated 22.09.2023 submitted by the Medical Board of AIIMS, New Delhi has categorically ruled out any requirement of hospitalization and the report only states that he requires to follow the rehabilitation protocol and regular exercise, and that the recovery of patient is normal and he can be monitored in the jail dispensary itself, and he can continue to get treatment from his doctor on out-patient basis as and when required. It is also argued by learned Special Counsel that on the basis of existing medical condition of the applicant, he cannot be categorized as a 'sick' or 'infirm' person under Section 45 of PMLA. The attention of this Court has also been drawn to the fact that a close analysis of the video recording which has been shown to this Court, of the incident when the applicant had fallen in his jail cell on the intervening night of 06-07.08.2023, would reveal that the fall of the applicant appears to be intentional, deliberate and self-inflicting. It is also stated that the applicant had the knowledge of his fragile health status, but he did not call for any medical attendant or anyone else

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while going to the washroom. It also stated that a walker was kept close to the applicant and he could have used that to visit the washroom, and further that he had fallen on a particular angle to cause impact on right side of his back. It is further argued that the order dated 06.10.2023 passed by the learned Trial Court has taken into account the present medical condition of the applicant and has passed and is a reasoned order denying the interim bail to the applicant on medical grounds. Thus, it is argued that there are no grounds to grant regular bail to the present applicant on medical grounds and therefore, the present bail application be dismissed.

12. This Court has heard arguments addressed by learned Senior Counsels for the applicant and learned Special Counsel for the respondent. The material placed on record has also been perused and examined.

ANALYSIS AND FINDINGS

(i) Grant of Bail under PMLA: Section 45 and its Exceptions

13. Since the applicant herein is an accused in an ECIR registered by the Directorate of Enforcement for the offences punishable under PMLA, the grant of bail shall be subject to the provisions of Section 45 of the Act, relevant portion of which reads as under:

> "45. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless—
>
> (i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and

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> (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:
>
> Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs…"

14. Section 45 of PMLA prescribes the mandatory twin conditions that are required to be met before bail can be granted to an accused, which are as under:

a. there are reasonable grounds for believing that the accused is not guilty of the offence of money laundering, and

b. he is not likely to commit any offence while on bail.

15. However, the *proviso* to Section 45 provides exceptions to the general rule i.e. the cases where Special Courts can exercise their discretion *de hors* the satisfaction of twin conditions. These exceptions are as follows:

a. accused is less than the age of 16 years,

b. accused is a woman,

c. accused is sick or infirm, or

d. if the allegations of money laundering against the accused are of an amount less than one crore rupees.

16. It is also relevant to note that Section 437 of Cr.P.C., which provides as to 'when bail may be taken in case of non-bailable offence', also contains a similar *proviso* that accused may be released in such

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cases on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.

17. In the case at hand, learned Senior Counsels for the applicant have argued that the applicant herein is 'sick' and 'infirm', and thus, should be granted regular bail in the present ECIR.

18. A Co-ordinate Bench of this Court in case of ***Kewal Krishan Kumar v. Enforcement Directorate*** *2023 SCC OnLine Del 1547*, while dealing with a case wherein regular bail had been sought under PMLA on medical grounds, had analyzed as to who would qualify as a 'sick' or 'infirm' person under the proviso to Section 45 of PMLA, which is also analogous to the proviso under Section 437 of Cr.P.C., and the relevant observations read as under:

> "20. In view of the above, a purposive interpretation of the proviso to section 45(1) shows that it has been incorporated as a lenient provision or to afford '*relaxation*' to a sick or infirm person as noted in the Statement of Objects and Reasons to PMLA.
>
> 21. Proviso to Section 45(1) PMLA is analogous to the proviso to section 437 CrPC.
>
> 22. Report No. 268 of the Law Commission of India ("LCI") on bail reforms titled '*Amendments to Criminal Procedure Code, 1973 - Provisions Relating To Bail*' discusses the intent behind inclusion of the proviso in section 437 CrPC. The relevant extract of Report 268, LCI reads as under:
>
> > *"L. Exceptions*
> >
> > *11.34 Absolute restriction on granting of bail would undermine the right to liberty of the person accused of an offence. Therefore, when certain supervening and inexorable circumstances exist, bail must be allowed. If the person accused of an offence is suffering from serious life-threatening ailment and requires medical help which may*

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not be available in jail hospitals, then the bail shall be granted."

***

24. The next question before me is - What is that level of sickness or infirmity that brings an Accused within the parameters of "*sick or infirm*" as envisaged in the proviso to section 45(1) PMLA?

25. I am of the opinion that when the sickness or infirmity is of such a nature that it is life-threatening and requires medical assistance that cannot be provided in penitentiary hospitals, then the accused should be granted bail under the proviso to section 45(1) PMLA.

26. The Hon'ble Supreme Court in *Pawan alias Tamatar* v. *Ramprakash Pandey*, (2002) 9 SCC 166 and the Bombay High Court in *Mahendra Manilal Shah* (supra) have noted that **every sickness does not *ipso facto* entitle an accused to medical bail**.

27. The Court in *Mahendra Manilal Shah* (supra) whilst noting the Apex Court's decision in *Pawan alias Tamatar* (supra) observed as under:

"47....(1) Pawan alias Tamatar *v.* Ramprakash Pandey *((2002) 9 SCC 166 : AIR 2002 SC 2224) (supra). In this case the Hon'ble Supreme Court has set aside the order of the Allahabad High Court granting bail to the accused inter alia on the ground that the allegation of ailment of the applicant is not specifically denied. The Hon'ble Supreme Court was of the view that the ailment of the accused was not of such a nature as to require him to be released on bail. It was observed that the accused can always apply to the jail authorities to see that he gets the required treatment. It was observed that in the application, the applicant had not stated that he still needs medical treatment or that he has not received proper medical treatment from the jail authorities.*

……

50. As observed in the various judgments cited above, mere admission of an accused to a hospital for medical treatment does not entitle an accused to obtain bail under the proviso to Section 437(1)Cr. P.C. In fact as observed earlier the said proviso cannot be resorted to in all cases of sickness. The Court must assess the nature of sickness and whether

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> *the sickness can be treated whilst in the custody or in government hospitals. The Court should also be satisfied that a case is made out by the Respondent Accused by himself or through the doctors attending to him that the treatment required to be administered to the Respondent Accused, considering the nature of his ailment cannot be adequately or efficiently be administrated in the hospital in which he is at present and that he needs a better equipped or a speciality hospital…."*
>
> (emphasis supplied)
>
> 28. The court in *Sardool Singh* (supra) held, "*The* ***sickness contemplated by the proviso is a sickness which involves a risk or danger to the life of the accused person***".
>
> 29. A combined reading of the PMLA Objects and Reasons, Finance Bill, 2018, the 268th LCI Report and above mentioned precedents indicates that the proviso to Section 45(1) PMLA is a **relaxation for sick or infirm persons provided their sickness or infirmity is so grave that it is life endangering and cannot be treated by jail hospitals**.
>
> 30. Though no straight jacket formula can be laid down as to what is the level of sickness that a person is to suffer to entitle him to bail under section 45(1) proviso, **the thumb rule is that the sickness should be so serious that it is life threatening and the treatment is so specialized that it cannot be provided in the jail hospital.** However, this is not an exhaustive parameter and each case will depend on its own peculiar facts and circumstances…"
>
> (Emphasis supplied)

19. Further, a Co-ordinate Bench of this Court in ***Sanjay Jain (in JC) v. Enforcement Directorate*** *2023 SCC OnLine Del 3519*, while relying upon the observations in case of ***Kewal Krishan Kumar*** *(supra)*, had also observed that power to grant bail on medical grounds under PMLA is discretionary and must be exercised in a judicious manner.

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(ii) Importance of Right to Medical Treatment of the Prisoners

20. There is no denying that the act of preserving health of a prisoner/undertrial is one of the rights of the prisoners as interpreted by various judgments in India as well as in International Law. The prisoners in jail have acceptable medical infrastructure in consonance with the duty and legal obligation of the State to provide access to medical care for all prisoners and under trials.

21. The jurisprudence of medical care and attention to the prisoners mandates that timely medical care must be available to all undertrials/ prisoners, and in appropriate cases, timely medical care includes regular access to specialized diagnostic care or post surgery care etc. which should be made available without interruption.

22. In this regard, a reference can be made to the decision of Hon'ble Apex Court in case of ***In Re Inhuman Conditions in 1382 Prisons*** *(2017) 10 SCC 658*

> "....34. Adverting to the Nelson Mandela Rules, the learned Attorney General also expressed the view that the State Governments have several development priorities and while they will certainly look after the interests of prisoners, there are other issues that might require greater attention and greater financial commitment. While this may be so, we are clearly of the view that Article 21 of the Constitution cannot be put on the back-burner and as mentioned in the Mandela Rules even prisoners are entitled to live a life of dignity. Therefore, no State Government can shirk its duties and responsibilities for providing better facilities to prisoners. If a State Government is unable to do so, it should be far more circumspect in arresting and detaining persons, particularly undertrial prisoners who constitute the vast majority of those in judicial custody. The State Governments and the prosecution do not have to oppose every bail application nor do they have to ask for the remand of every suspect pending investigation. If the fundamental right to life and liberty postulated by Article 21 of the Constitution is to

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> be given its true meaning, the Central Government and the State Governments must accept reality and not proceed on the basis that prisoners can be treated as chattel.
>
> ***
>
> 58.8. **Providing medical assistance and facilities to inmates in prisons needs no reaffirmation. The right to health is undoubtedly a human right and all State Governments should concentrate on making this a reality for all, including prisoners.** The experiences in Karnataka, West Bengal and Delhi to the effect that medical facilities in prisons do not meet minimum standards of care is an indication that the human right to health is not given adequate importance in prisons and that may also be one of the causes of unnatural deaths in prisons. The State Governments are directed to study the availability of medical assistance to prisoners and take remedial steps wherever necessary…"
>
> (Emphasis supplied)

(iii) The Medical Condition of Applicant: Examining the AIIMS Report and the Jail Report

23. Advancing the case of applicant herein that he should be granted regular bail in present ECIR in view of his serious medical condition, learned Senior Counsels had heavily relied upon the report dated 22.09.2023 submitted by the Medical Board of AIIMS, New Delhi.

24. Before examining the contents of the report submitted by AIIMS, it is essential to first take note of the circumstances and the orders passed by this Court preceding the same. This Court notes that *vide* order dated 01.09.2023, this Court had rejected the application filed on behalf of the applicant seeking extension of interim bail and had *inter alia* directed that a medical board be constituted by Medical Superintendent, AIIMS to examine the applicant and offer a definite

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opinion about his medical condition and as to whether he requires hospitalization or if he can be treated in jail or the referral hospital. The relevant portion of the order dated 01.09.2023 reads as under:

> "9. Let the medical documents on record be verified from the AIIMS. **Medical Superintendent, AIIMS is requested to constitute a medical board and give a definite opinion about the medical condition of the petitioner and also to suggest whether the present disease and all the medical problems taken together or singly, require hospitalization in a particular hospital or can the petitioner be treated in the jail or the referral hospital**.
>
> 10.The petitioner shall be at liberty to move an application for extension of interim bail before the learned Trial Court in view of the medical opinion being given by the AIIMS."

25. As per records, the applicant was examined by the Medical Board of AIIMS, New Delhi, consisting of seven doctors from different departments, on 09.09.2023 and 11.09.2023. Thereafter, the report dated 22.09.2023 was prepared, which has been repeatedly referred to by the learned Senior Counsels for the applicant. Thus, this Court has gone through the contents of the said report, and the relevant portion of the same is reproduced hereunder for reference:

> " The Medical Board first meeting was held on Saturday 09th September 2023 at 9.00 A.M. and second meeting was held on Monday 11th September 2023 at 04:00 P.M. in Consultation Room No. 13, M.S. Office Wing, Ground floor, AIIMS, New Delhi. All the board members were present.
>
> The patient was comprehensively examined, his previous report reviewed by a team of experts from Neurosurgery, Urology, Orthopedics, Neurology, Psychiatry and PMR.
>
> On clinical examination, the patient has no localised tenderness/redness, with no ongoing inflammation or discharge from surgical site. Hinged knee ROM brace in situ was present.

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> At the point of current assessment, the patient does not require inpatient admission, however, given his recent history of surgical intervention on Left knee, he requires reasonable activity restriction to allow him to follow the precautions prescribed in the discharge advice by the surgical team.
>
> The patient is also required to follow the rehabilitation protocol prescribed the surgical team. Regular exercise to be supplemented by patient at home and activity modifications, light work & care of the neck, back & operated knee and precautions as advised to be followed. The patient has no significant psychopathology at present. No active intervention required from psychiatry currently.
>
> The medical board is of the opinion that based on present assessment the patient does not require hospitalization in any particular hospital. Mr. Sameer Mahandru requires periodic follow up for his ongoing conditions and can be treated on an outpatient basis at any Jail referral hospital."

26. The report dated 22.09.2023 prepared by the Medical Board of AIIMS explicitly notes that the patient i.e. applicant herein does not require inpatient admission or hospitalization in any particular hospital. The report further mentions that the patient has to follow the precautions and rehabilitation protocol prescribed in the discharge advice given by his surgical team. As regards the contention raised on behalf of applicant that the report says that regular exercise is to be supplemented by patient at 'home', this Court is of the considered opinion that the word 'home' used in the medical report is with regard to hospitalization and discharge from the hospital. In normal course, while discharging a patient, the doctors presume that the patient will be going back to his home and will need post-operative assistance or treatment at his home. At present, the applicant being lodged in jail, he was to go back to jail which at present is his residing abode, and

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therefore, the contents of report are to be read with reference to the facts and circumstances of the case. This view is fortified by the last paragraph of the report dated 22.09.2023 which states that the applicant herein does not require hospitalization and requires periodic follow-ups and can be treated on an outpatient basis at any jail referral hospital. Therefore, the main argument of the learned Senior Counsels appearing on behalf of the applicant that the Medical Board of AIIMS has suggested that applicant should be treated at his home and not in jail, is bereft of any merit.

27. At this stage, it is also crucial to note that the grievance of the applicant herein primarily emanates from the incident dated 06-07.09.2023, when after being denied the benefit of extension of interim bail, the applicant had suffered a fall in the jail and his condition had allegedly deteriorated. However, it is to be noted that the applicant was examined before the Medical Board constituted by AIIMS on 09.09.2023 and 11.09.2023 i.e. after a few days from the said incident and thus, there can be no dispute about the fact that the report dated 22.09.2023 furnished by the Medical Board of AIIMS, New Delhi would have taken into account the injuries, if any, suffered by the applicant due to such fall in the jail and it is only after considering the same, that the medical board had opined that the applicant herein did not require any hospitalization.

28. To further contend the need to release the applicant on regular bail, learned Senior Counsels had relied upon a report dated 03.10.2023 furnished before the learned Trial Court on 04.10.2023 by the Office of Senior Medical Officer, Dispensary, Central Jail No. 04, Tihar and had

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argued that jail dispensary was not equipped with the necessary instruments and equipment which were required for post surgery physiotherapy of the applicant. In this regard, this Court notes that the jail doctor has only opined that certain facilities for the purpose of physiotherapy of the applicant are not available in the jail dispensary such as IFT Gait Training on Anti-Gravity Treadmill/ Strengthening on Isometric Machine. However, it is relevant to consider at this juncture that this situation has already been addressed *vide* order dated 04.09.2023 passed by this Court whereby it was *inter alia* directed as under:

> "c) The petitioner shall be taken in custody for follow-up with Operating Spine Surgeon for post-operative spine review, as and when required.
>
> d) The Superintendent Jail shall strictly follow up the medical advice as given in the discharge summary of BLK-Max Super Specialty Hospital; and
>
> e) The petitioner be also taken for rehabilitation sessions twice a week at Centre for Sports Rehabilitation, VNA Hospital, situated at 1, Navjeevan Vihar, Geetanjali Enclave, Malviya Nagar for gait training on an anti-gravity treadmill and strengthening on isokinetic machine.
>
> f) The petitioner be provided appropriate medical treatment as per rules…"

29. The report dated 03.10.2023 prepared by the Senior Medical Officer of Jail also mentions that applicant has been under regular follow-up and physiotherapy at VNA Hospital and had visited the department of physiotherapy at VNA Hospital on 12.09.2023, 13.09.2023, 14.09.2023, 15.09.2023, 19.09.2023, 20.09.2023, 21.09.2023, 22.09.2023, 23.06.2023, 26.09.2023, 27.09.2023,

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30.09.2023 and the next scheduled appointment was on 03.10.2023. The report also mentions that the applicant since 04.09.2023 has been kept in MI room of Central Jail No. 04 Dispensary and is under follow-up from Doctor on duty and Jail visiting Specialists and he is being given pain killer injections as and when required for the persisting knee/back/neck pain.

30. Therefore, this Court is of the opinion that all the basic medical facilities have been provided to the applicant in the jail dispensary itself and as far some other specialized activities are concerned, the same have been taken care of by the order dated 04.09.2023 passed by this Court which has been discussed in preceding paragraph. In any case, the report of the Medical Board of AIIMS has suggested that the applicant can be treated on an outpatient basis at any of the jail referral hospitals.

31. It is also important to take note of some of the directions issued by the learned Trial Court *vide* order dated 06.10.2023 *vide* which the interim bail application of the applicant was dismissed, as well as the subsequent developments thereafter.

32. In the order dated 06.10.2023, the learned Trial Court had duly taken note of the directions issued by this Court *vide* order dated 04.09.2023 and since as per the report of jail doctor, the applicant was not showing signs of improvement even after his repeated visits to VNA Hospital, learned Trial Court had observed that if the applicant requires or desires any further specialized physiotherapy sessions and rehabilitation process from the Sports Injury Centre of Safdarjung

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Hospital or any other referral or private hospital, then he may also be taken to the said hospital for the same.

33. In light of such direction issued by the learned Trial Court, a letter dated 17.10.2023, issued by the Office of Superintendent, Central Jail No. 04, Tihar has been placed before this Court whereby it is stated that on 14.10.2023, an appointment for the applicant had been scheduled at Sports Injury Centre of Safdarjung Hospital, however, the applicant himself had requested the jail authorities to cancel the appointment and not take him to Safdarjung Hospital, which is one of the jail referral hospitals, since he wished to get treated at VNA Hospital only.

34. This reflects a peculiar situation where on one hand, it is contended on behalf of applicant that even after constant visits to VNA Hospital, the situation of the applicant has not improved and thus he should be enlarged on bail, and on the other hand, the applicant himself is requesting the jail authorities to not take him to Sports Injury Centre of Safdarjung Hospital, but to VNA Hospital only, for which the directions have otherwise been issued already by this Court *vide* order dated 04.09.2023 and the same are being complied by the jail authorities.

35. Learned counsel for the applicant had also argued that the applicant is wheelchair bound and needs constant support for attending to his daily needs. To support this claim, the attention of this Court was repeatedly drawn to a video clip of the incident dated 06-07.09.2023 when the applicant had fallen in his jail cell and it was argued that the video clip clearly shows that the applicant had fallen down and no one

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had come for his help. In this regard, Directorate of Enforcement has placed on record its reply, wherein it has been stated that the applicant had witnessed only one fall and at the time of the fall, he had a walker placed near his bed which could have been used by him, as he was well aware of his situation or he could have even called an attendant or anyone else if he wanted to go to the washroom. Be that as it may, this Court does not wish to comment on whether the fall was intentional to seek bail as suggested by the respondent or whether it was actual as pleaded by the applicant, since this Court is not solely relying upon only one incident to decide the present bail application.

36. However, the Directorate of Enforcement in its reply has also submitted that considering the history of 'self-inflicting falls' of the applicant, this Court may direct the medical staff of the jail to monitor the applicant closely. This Court notes that the learned Trial Court, while rejecting the prayer for interim bail of the applicant, has already directed *vide* order dated 06.10.2023 that one full-time attendant be provided to take care of the applicant by rotation of their duties so that the incident as the one that had happened on 06-07.09.2023 when the applicant had remained fallen on the ground for around 12 to 13 minutes without any help, is not repeated.

(iv) Right of Accused to Medical Treatment in Custody: Duty of The Court

37. Learned Senior Counsels for the applicant have tried to make out a case that this is a special case where the applicant is suffering from life threatening condition, to the extent that in case he is not provided

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care and medical treatment at home, despite the fact that he has already undergone treatment outside the prison, it may lead to a very serious situation.

38. To the contrary, learned Special Counsel for the respondent had argued that if medical treatment can be provided by prison authorities, bail on medical grounds should not be granted.

39. This Court observes that undoubtedly, in cases of a prisoner suffering life threatening conditions, the Court by whose orders the accused is in judicial custody will be understandably concerned to ensure that his medical treatment does not in any way affect him adversely.

40. Therefore, in this regard, the Court obtains re-assurance from a specialist or other medical practitioners, and as in the present case, examination of the applicant by a Board of specialized doctors of AIIMS, New Delhi to reach a decision as to whether the medical care or treatment necessary for the undertrial prisoner i.e. the applicant herein is being provided or not.

41. In the preceding discussion, this Court has already discussed *in extenso* the present medical condition of the applicant and the fact that he does not even require hospitalization. There is no denying the fact that the applicant has undergone about five surgeries in the past, however, as on date, he is recovering in the jail itself and as per the report of AIIMS, he is only required to follow the medical and rehabilitation protocols as suggested to him and supplement the same by regular exercise and physiotherapy. It is also important to note that to address the issue that certain rehabilitation protocols cannot be

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followed by the applicant owing to non-availability of necessary equipment in jail, this Court has already directed *vide* order dated 04.09.2023 that the applicant be taken to VNA Hospital for rehabilitation sessions twice a week.

42. In these facts and circumstances, this Court deems it appropriate to refer to the observations of the Hon'ble Apex Court in case of ***State v. Jaspal Singh Gill*** *(1984) 3 SCC 555*, wherein it was held as under:

> "11. In the circumstances, I am of the view that the High Court should not have enlarged the respondent on bail in the larger interests of the State. It is urged that the respondent is a person who has undergone a cardiac operation and needs constant medical attention. I am sure that the prison authorities will arrange for proper treatment of the view that the High Court of the respondent whenever the need for it arises…"

43. In ***State of U.P. v. Gayatri Prasad Prajapati*** *2020 SCC Online SC 843*, the Hon'ble Apex Court, while setting aside an order granting bail on medical grounds, had made the following important observations:

> "15. The above report of the S.G.P.G.I.M.S., i.e., the super-speciality hospital, which was on the record as well as report of the medical board dated 10.06.2020, which was brought in the notice of the High Court have neither been considered nor referred to by the High Court in the impugned order. When the respondent was being given treatment in the super-speciality hospital, i.e., S.G.P.G.I.M.S. as recommended by K.G.M.U., we fail to see as to what were the shortcomings in the medical treatment offered to respondent, which could have been the basis for grant of interim bail on medical ground. Further, as per condition (ii) mentioned in paragraph 27, the High Court contemplated that respondent shall ordinarily reside at a place of residence, as assured, far from the place of residence of the prosecutrix and her immediate family, thus, the contemplation was that respondent shall reside at his residence. There was no satisfaction recorded by the High Court that treatment offered to respondent was not adequate and he requires any further

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> treatment by any particular medical institute for which it is necessary to release the respondent on interim bail on medical grounds.
>
> 16. Dr. Dhawan submits that every person, who is accused of an offence, even if the offence is a serious offence, requires a humane treatment by the prison authorities. There can be no two views with regard to above. Humane treatment to all including an accused is requirement of law. Furthermore, a prisoner, who is suffering from an ailment, has to be given due treatment and care while in prison.
>
> 17. Learned counsel for both the parties have referred to Clinical Summary dated 09.09.2020 as well as the letter dated 05.10.2020 of K.G.M.U. referring the respondent to S.G.P.G.I.M.S. for NCV testing.
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> 18. Even as on date, due medical care is being taken of the respondent, which is apparent from the additional documents filed as Annexure A-2 and Annexure A-3 alongwith the application dated 10.10.2020. The High Court, without considering the entire materials on record, has passed the impugned order dated 03.09.2020, which is unsustainable.
>
> 19. In result, we allow this appeal, set aside the order dated 03.09.2020. We may again make it clear that observations made by us in this order are only for deciding this appeal and shall have no bearing on the merits of the Bail Application No. 5743 of 2019, which is still pending before the High Court for consideration."

44. In the present case, the attention of this Court was drawn to the report dated 03.10.2023 prepared by Senior Medical Officer of Tihar Jail in which it was mentioned that as per the directions issued vide order dated 04.09.2023 by this Court, the applicant was being regularly taken to VNA Hospital for follow-up and physiotherapy sessions. It was also informed that the applicant was being kept in the jail dispensary and was under constant follow-up from doctors on duty as well as jail visiting specialists. It is also important to consider that the Medical

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Board of AIIMS, New Delhi had suggested that the applicant may be taken to any of the Jail Referral Hospital for periodic follow-ups and he need not be admitted in any hospital.

(v) Medical Facilities and Policies in Delhi Prisons

45. Further, learned Special counsel for the respondent had also placed reliance upon the Jail Hospital Referral Policy, issued *vide* orders dated 10.02.2011 and 27.06.2022 by the office of Director General (Prisons), GNCTD.

46. As per the jail referral policy, three categories of referral hospitals have been specified as per the medical condition of the prisoner, where the prisoner can be referred as and when required. The jail referral policy includes hospitals such as DDU Hospital, G.B. Pant Hospital, LNJP Hospital, Safdarjung Hospital, AIIMS, etc.

47. Therefore, this Court notes that while the medical facility in Delhi provides both primary medical care and provision of medical services in prison, the orders dated 10.02.2011 and 27.06.2022 contain guidelines that streamline the outside OPD and referrals which provides an exhaustive list of measures which aim to attain the goal of preserving the health of prisoners.

(vi) Right of Accused to receive Medical Treatment vs. Right of Prosecuting Agency to Investigate Fairly

48. In the present case, this Court faces a situation where it has to balance the applicant's right to healthcare and medical treatment with the rights and interest of the State and investigating agencies, since the

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present case pertains to the offence of money laundering. In such cases, the Court has to strike intricate balance, remaining conscious of the inherent nexus between individual rights and societal interests.

49. Though the Courts will never, by their orders, expose the health of a prisoner to risk or danger, at the same time, the right of the State and the investigating agency to conduct fair investigation and confining an accused to a prison as undertrial to ensure that investigation is carried out without tampering of evidence or witnesses cannot also be undermined.

50. Though the State is under obligation to provide medical care to the prisoners and undertrials, in absence of any report or material to justify that the prisoner concerned is suffering from any life threatening disease or condition or health challenges, an exception cannot be carved out in his favour to grant him regular bail, especially when other material exists on record for his being not entitled to bail. Thus, before exercising the discretion of granting bail to an accused on medical grounds, the Court must satisfy itself that the medical necessity has convincingly shown that the prisoner concerned has health challenges of a nature that his confinement in the prison will cause threat to his life.

51. As taken note of in the preceding discussion, the State has provided adequate and essential health care to the applicant herein, even at his own expenses in the hospital of his choice. It is not a case of inadequate access to medication, any delay in getting diagnostic tests or medical treatment which is clear by the treatment that he has been receiving since the time he was released on interim bail for the purpose

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of his health care *vide* order dated 12.06.2022 which was also extended *vide* order dated 24.07.2023. The records also reflect that sufficient treatment is being provided to the applicant in jail hospital itself and the jail referral policy as well as the directions issued by this Court previously addressed the medical issues faced by the applicant.

52. To encapsulate briefly, the allegations against the present applicant in the present FIR have been that he was one of the main conspirators and a key player in the formulation of the excise policy and its exploitation later, and was also involved in the formulation of a super cartel between the manufacturers, wholesalers and retailers. The applicant had allegedly earned huge profits of around Rs. 192 crores against meagre investment of Rs. 15 crores, in his firm M/s. Indo Spirits which is the proceeds of crime. As regards the conduct of applicant, it is the case of respondent that the applicant had not cooperated during the investigation and had not provided the relevant details, and on his behest, his counsels had also made attempts to influence the witnesses, who were the employees of applicant, who had been called for investigation by the respondent. The applicant had allegedly also destroyed the evidence i.e. his mobile phone at least four times at the time of alleged scam being exposed in public.

53. Thus, while the applicant's right to healthcare and medical treatment is a fundamental consideration, it cannot be allowed to overshadow the pressing need to investigate fairly and ensure that due legal processes are followed.

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CONCLUSION

54. This Court while passing this order remains conscious of the fact that the undertrial prisoners are sent to prison not as a matter of punishment, but in light of the law regarding there being grounds to confine them in prison. The laws of individual's right to liberty while being a precious right has to be surrendered in favour of the State when the grounds so exist for the same. While the prisoners generally are unable to look after themselves while being in detention and it is primarily the responsibility of the State to provide for health services, the health services and care have to be equivalent to that available to the outside general citizen.

55. This Court is conscious of the fundamental right enshrined in Article 14 of the Indian Constitution, which establishes equality of all individuals before the law. It guarantees that everyone, regardless of their background or economic standing, should be subjected to same set of laws and be granted equal protection by the legal system. This serves as a safeguard against discrimination, ensuring that justice is blind to external factors that might otherwise influence legal outcomes.

56. The significance of this principle becomes particularly evident in cases where individuals, regardless of their economic status, come before the Court seeking protection of their rights. The Court, in accordance with Article 14 of the Indian Constitution, is duty-bound to approach such matters with impartiality and objectivity. It cannot be swayed by the economic stature of the litigants, rather, it must focus on the merits of the case and the settled principles of law and be guided by judicial precedents.

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57. The State carries a dual obligation in the matters such as the present one. Firstly, it is bound by its commitment to thoroughly investigate the case, ensuring that the process is conducted fairly and impartially. Simultaneously, the State is entrusted with the responsibility of providing adequate medical care to the accused. The prospect of seeking bail on medical grounds arises when the prison authorities are incapable of providing the required care or treatment essential for the treatment of accused including the referral hospitals according to the circular mentioned above. It is also crucial that the sickness should be of such a nature that if the accused is not released on bail, he cannot be ensured proper treatment for his ailment.

58. In view of the observations made in the preceding paragraphs, this Court is of the opinion that the applicant is not suffering from any life threatening condition or sickness or infirmity which involves danger to his life and for which treatment cannot be provided to the applicant in jail.

59. With regard to the contention of the learned Senior Counsel for the applicant that the applicant needs medical assistance at home, this Court notes that at this stage, the applicant is getting adequate medical attention as required by him, and the Jail authorities in view of the medical condition of the applicant have even allowed him to get treatment from his doctor on an out patient basis, as and when required.

60. Thus, there are no grounds to enlarge the applicant on regular bail in the present ECIR.

61. This Court, however, clarifies that the directions issued by this Court *vide* order dated 04.09.2023 shall be complied with by the jail

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authorities to ensure that applicant is taken for follow-up and physiotherapy sessions at VNA Hospital. It is also directed that the concerned Jail Superintendent shall ensure that the applicant is not left unattended in the jail cell/dispensary, and as also directed by the learned Trial Court *vide* order dated 06.10.2023, one full time attendant is provided to the applicant either on rotational basis or in a manner as deemed fit by the Jail Superintendent concerned.

62. With these directions, the present bail application stands disposed of alongwith all pending applications.

63. It is however clarified that any observation made by this Court in this judgment shall not be construed as an opinion of this Court on merits of the case.

64. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J.

OCTOBER 19, 2023/ns