



CASE COMMENT: ARVIND KEJRIWAL V CENTRAL BUREAU OF INVESTIGATION

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INTRODUCTION

The arrest and subsequent bail of Delhi Chief Minister Arvind Kejriwal¹ the alleged Delhi Excise Policy scam has once again drawn attention to the role and credibility of India's central investigating agencies, particularly the Enforcement Directorate (ED). In a democracy governed by constitutional values and the rule of law, it is essential that investigating bodies remain not only impartial but are perceived to be so. This concern was vividly captured by the Supreme Court in 2013, when it likened the Central Bureau of Investigation (CBI) to a "caged parrot speaking in its master's voice".² The observation was made in the context of the Coalgate scam,³ where the Court severely criticised political interference in the agency's investigation into coal block allocations. Over a decade later, this metaphor has resurfaced with renewed force in the Kejriwal case. The Supreme Court, while granting interim bail, indirectly reignited the debate over the autonomy of investigation. In this case, the arrest of Delhi Chief Minister Arvind Kejriwal by the Enforcement Directorate (ED) in connection with the alleged irregularities in the Delhi Excise Policy has reignited concerns over the independence and neutrality of investigative agencies of India. In a functional democracy governed by the rule of law, perception matters as much as process.

FACTS OF THE CASE

A third elected Chief Minister of the Government of National Capital Territory of Delhi and National Convenor of a political party was implicated in a case registered by the Central Bureau of Investigation (CBI) on August 17, 2022. The FIR alleged irregularities, falsification, undue

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¹ CBI v Ashok Kumar Aggarwal (2013) 15 SCC 222.

² "Caged Parrot" Tag Returns To Haunt CBI After Supreme Court's Bail To Arvind Kejriwal' (NDTV, July 2024) <https://share.google/Ndge4woZeFWLAQaL0> accessed 12 July 20

³ CBI v Coalgate Writ Petition (Criminal) No 120 of 2012 (SC, 8 May 2013).

advantage, and conspiracy in the framing and implementation of the Excise Policy for the year 2021-2022. Notably, the appellant's name did not initially appear in this FIR.

Subsequently, the director of enforcement ED arrested the appellant on March 21, 2020. In a related money laundering case. The Supreme Court had granted an interim bail in the ED matter from May 10, 2024, till June 1, 2024, after which he surrendered. In June 2020, a special judge granted the appellant a regular bill in the EB case, but this order was stayed by the Delhi High Court on June 21, 2024 and conclusively stayed on June 25, 2024.

It was in this context that the CBI, on June 24, 2024, moved an application before the Special Judge under 41A of CrPC to interrogate the appellant, who was already in judicial custody in a separate matter. This permission was granted. Following interrogation on June 25, 2024, the CBI files another application on June 25, 2024, seeking permission to arrest the appellant in the CBI case, alleging evasive responses and the necessity of custodial interrogation to unearth a larger conspiracy. The trial Court allowed this application, and the upper length was formally arrested by the CBI on June 26, 2024 and remanded to police custody. He was subsequently remanded to judicial custody.

The appellant challenged this arrest and the denial of regular bail before the Delhi High Court. The High Court, in its judgement dated August 5, 2024, upheld the legality of CBI's arrest, stating that section 41(1)(b) CrPC⁴ (requiring reasons for arrest without warrant) did not apply to an arrest made under a court order (Section 41(2) CrPC,⁵ which the Supreme Court later clarified was a typographical error and should have been Section 41(1)(b)(ii)),⁶ and found no non-compliance with Section 41A CrPC.⁷ The High Court also denied regular bail, citing the complexity of facts and the recent filing of the chargesheet, relegating the appellant to approach the Trial Court first. The CBI filed its fifth and final chargesheet, naming the appellant as an accused for the first time, on July 29, 2024. The present appeals were filed before the Supreme Court, challenging the High Court's judgment on the legality of arrest and denial of regular bail.

⁴ Code of Criminal Procedure 1973, s 41(1)(b)

⁵ Code of Criminal Procedure 1973, s 41(1)(b)(ii)

⁶ Code of Criminal Procedure 1973, s 41(2)

⁷ Code of Criminal Procedure 1973, s 41A

ISSUES RAISED

1. Whether there was any illegality in the Appellant's arrest? If so, whether the Appellant is entitled to be released forthwith, even in the absence of a formal bail application?
2. Whether the Appellant, regardless of his lawful arrest, is entitled to be enlarged on regular bail?
3. Whether the filing of a chargesheet is a change in circumstances of such a decisive nature that an accused would be liable to be relegated to the Trial Court to make out a case for the grant of regular bail?

ARGUMENTS FROM PETITIONER/APPELLANT

Dr. Abhishek Manu Singhvi, learned Senior Counsel for the appellant, contended that the arrest was illegal, violating Section 41(1)⁸ and 41A CrPC.⁹ He argued that the arrest was made without providing valid reasons as required by Section 41A(3) CrPC¹⁰ (Precondition for changing a case from 'non-arrest' to 'arrest') and without satisfying the conditions under Section 41(1)(b)(ii).¹¹ It was argued that the High Court erred in applying Section 41(2) CrPC¹² (For non-cognizable offences) to justify non-compliance with Section 41(1)(b)(ii)¹³ in cognizable offences cases.

The appellant deserved bail as his continued incarceration was unnecessary, given that all material was with the CBI. His prior interim and regular bail in the ED matter (with stricter conditions) demonstrated that he met the 'triple test'¹⁴ (no criminal antecedents, not a flight risk, no threat of tampering).

The High Court should not have relegated the appellant to the Trial Court, as it possessed concurrent jurisdiction under Section 439 CrPC.¹⁵ Relegation amounted to a "travesty of justice" and unwarranted delay. The trial was unlikely to conclude soon, with multiple charge sheets, numerous accused, hundreds of witnesses, and extensive records, justifying bail.

⁸ Code of Criminal Procedure 1973, s 41(1)

⁹ *ibid*

¹⁰ Code of Criminal Procedure 1973, s 41A(3)

¹¹ *ibid*

¹² *ibid*

¹³ *ibid*

¹⁴ *ibid*

¹⁵ Code of Criminal Procedure 1973, s 439

ARGUMENTS FROM DEFENDANT/RESPONDENTS

Mr.S.v.Raju, learned Additional Solicitor General, argued that the arrest complied with Section 41(1)¹⁶ and 41A CrPC.¹⁷ He asserted that these provisions do not ban arrest for cognizable offences punishable up to seven years if the investigating authority is satisfied of the necessity. The CBI deemed custodial interrogation imperative to unearth a larger conspiracy and establish the money trail. Since the appellant was already in judicial custody, a formal Section 41A¹⁸ notice would have been an “empty formality.” The CBI obtained prior permission from the Trial Court, which acted as judicial scrutiny.

Mr. Raju opposed bail, citing the likelihood of witness intimidation, alluding to past instances in related cases, and highlighting the appellant’s political influence. He vehemently argued that the appellant should have approached the Trial Court first, despite concurrent jurisdiction, and should not receive special treatment due to his political stature. The High Court’s jurisdiction is discretionary and should be exercised only in “rare and exceptional circumstances.” The filing of the chargesheet after the bail application was filed before the High Court constituted a significant change in circumstances, warranting relegation to the Trial Court for a fresh consideration of bail based on the collected evidence.

JUDGMENT AND RATIONALE

The Supreme Court delivered a split verdict on the legality of arrest, but a concurrent opinion on the grant of bail. On the Legality of Arrest - Majority Opinion by Justice Surya Kant:

The Court held that the appellant’s arrest did not suffer from any procedural infirmity. The Court found that Section 41A CrPC¹⁹ does not mandate the issuance of a notice to an individual already in judicial custody. Seeking prior permission from the Trial Court for interrogation and subsequent arrest (after recording reasons for necessity) effectively satisfied the intent and purpose of Section 41A.²⁰ The Trial Court's approval provided judicial scrutiny.

The Court clarified that Section 41(1) CrPC,²¹ which governs arrests without a Magistrate’s order or warrant, does not apply when a Court has already accorded approval for arrest and

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ *ibid*

²¹ *ibid*

issued a warrant. In such a case, the police officer is absolved of the statutory obligation to form an independent opinion regarding the necessity of arrest under section 41(1)(b)(ii).²² The High Court's reference to Section 41(2)²³ was acknowledged as a typographical error.

On the Legality of Arrest -Concurring but Separate Opinion by Justice Ujjal Bhuyan:

Justice Bhuyan concurred with the conclusion to grant bail but expressed strong reservations about the necessity and timing of the arrest. He noted that the CBI did not find it necessary to arrest the appellant for over 22 months (from August 2022 to June 2024), even after interrogating him in April 2023. The arrest occurred only after the Special Judge granted regular bail to the appellant in the ED case (which was subsequently stayed by the High Court). This raised a "serious question mark on the timing of the arrest; rather on the arrest itself," suggesting it might have been made "only to frustrate the bail granted to the appellant in the ED case."

He stated that "power to arrest is one thing, but the need to arrest is altogether a different thing." Citing *Joginder Kumar v. State of U.P.*²⁴ and *Arnesh Kumar V. State of Bihar*,²⁵ he highlighted Article 20(3) of the Constitution²⁶ (Right against self-incrimination), stating that an accused has the right to remain silent, and evasive replies or non-cooperation cannot be grounds for arrest or continued detention. Justice Bhuyan stressed that the CBI, as a premier investigation agency, must not only be "above board but must also be seen to be so", urging it to "dispel the notion of it being a caged parrot."

On Grant of Regular Bail - Concurrent Opinion by both Justices:

The Court allowed the appeal challenging the denial of regular bail by the High Court, setting aside the High Court's order. The Court emphasised that prolonged incarceration pending trial infringes upon the right to liberty under Article 21.²⁷ It reiterated the principle from *Union of India v. K.A. Najeeb*²⁸ that statutory embargoes on bail melt down if the trial is unlikely to be completed within a reasonable time.

²² *ibid*

²³ *ibid*

²⁴ *Joginder Kumar v State of UP* (1994) 4 SCC 260

²⁵ *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273

²⁶ Constitution of India 1950, art 20(3)

²⁷ Constitution of India 1950, art 21

²⁸ *Union of India v KA Najeeb* (2021) 3 SCC 713

The Court found that the appellant satisfied the “triple test” for bail: no flight risk (due to his position and roots), minimal likelihood of tampering with evidence (as most evidence is documentary and with CBI), and the apprehension of influencing witnesses can be addressed by stringent bail conditions.

The Court held that while ordinarily, the Trial Court should first consider bail after a chargesheet is filed, there is no “straitjacket formula.” It criticised the High Court for hearing the matter extensively and reserving judgment, only to then relegate the appellant to the Trial Court. Such a course, it noted, “has only resulted in prolonging the incarceration of the appellant for a far longer period, impacting his personal liberty” and amounted to “procedure triumphing the cause of justice.”

The appellant was directed to be released on bail upon furnishing bail bonds of Rs. 10,00,000 with two sureties. Conditions included not making public comments on the merits of the CBI case, remaining present at hearings, and cooperating with the trial. The conditions imposed in his ED bail (including not entering the CM’s office or signing files) were also imposed *mutatis mutandis*.

ANALYSIS OF THE JUDGMENT

The Supreme Court’s judgment in *Arvind Kejriwal v. CBI*,²⁹ it is a significant pronouncement that navigates the complex terrain of criminal procedure, individual rights, and the powers of investigative agencies.

The judgment presents an interesting dichotomy. While the majority found no procedural errors, they sharply questioned the necessity and timing of the arrest. This highlights a crucial distinction: an arrest might be procedurally compliant, but its timing and underlying justification can still be subject to judicial scrutiny, especially when it appears to frustrate a bail order in a related case. Justice Bhuyan’s “Caged Parrot”²⁹ analogy for the CBI serves as a powerful reminder of the need for investigative agencies to maintain independence and avoid any perception of bias or political motivation.

The judgment strongly reiterates the fundamental principle that “Bail is the rule, and Jail is the exception”.By granting bail despite the High Court’s reluctance and the gravity of the

²⁹ 'Why has SC recalled its reference to CBI as a “caged parrot” (Indian Express, July 2024) <https://share.google/vIAPI9paWshC1KN98> accessed 15 July 2025

allegations, the Supreme Court underscored the importance of personal liberty under Article 21,³⁰ especially when trials are likely to be prolonged. This serves as a vital directive to all lower courts to avoid a “Play Safe” approach in bail matters.

The Court’s disapproval of the High Court’s decision to relegate the bail application to the Trial Court after extensive hearings is a crucial aspect. It emphasises that in matters concerning personal liberty, procedural technicalities should not overshadow the substantive adjudication of rights. The “Snake and Ladder” analogy vividly illustrates the frustration faced by an accused when courts engage in unnecessary procedural back-and-forth, prolonging incarceration. This aspect of the judgment promotes judicial efficiency and prioritises the swift disposal of liberty-related matters.

Justice Bhuyan’s opinion on the ground of arrest (evasive replies, non-cooperation) is particularly noteworthy. By linking it to the constitutional right against self-incrimination (Article 20(3)).³¹ He asserts that an accused cannot be compelled to provide an answer that incriminates them and their silence cannot be used as justification for arrest or continued detention.

This is a vital safeguard against coercive interrogation tactics. The case, involving a sitting Chief Minister, inevitably carries political overtones. The judgment, particularly Justice Bhuyan’s observations, implicitly addresses the concerns often raised about the timing of arrest and investigations in high-profile cases, urging investigative agencies to act with unimpeachable fairness and transparency.

CONCLUSION

The Supreme Court’s judgment in *Arvind Kejriwal v Central Bureau of Investigation*³² is a significant contribution to India’s criminal jurisprudence. While upholding the procedural aspects of arrest in the specific factual matrix. It delivers a powerful message on the substantive necessity of arrest. The Court’s strong emphasis on the “Bail is the Rule, Jail is the exception” principle coupled with its critique of unnecessary procedure delays, will unnecessary procedural delays, will undoubtedly serve as a guiding light for lower courts. Furthermore, Justice Bhuyan’s concurring opinion acts as a crucial reminder to investigation agencies about

³⁰ Constitution of India 1950, art 21

³¹ *ibid*

³² *ibid*

the importance of perceived impartiality and the constitutional rights of the accused, reinforcing the foundational principles of a fair criminal justice system in a democratic republic.