BLOGS

Arvind Kejriwal v. Central Bureau of Investigation: Examining the Legality of Arrest and Bail Granted in Judicial Custody

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Read this article examining the legality of arrest and bail granted to Mr. Arvind Kejriwal.

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Introduction

In a recent decision by the Supreme Court of India in **Arvind Kejriwal v. Central Bureau of Investigation**, the Court addressed critical questions about the legality of arrests made during judicial custody and the **standards for granting bail**.

The Court was divided in its opinion, with Justices Surya Kant and Ujjal Bhuyan offering differing views on whether Mr. Arvind Kejriwal's arrest by the Central Bureau of Investigation (CBI) was justified and lawful. However, they ultimately agreed on granting bail to Mr. Kejriwal.

Facts of the Case

The Delhi Government framed the Excise Policy 2021-2022 for liquor sales. In July 2022, the Lieutenant Governor of Delhi and the Union Home Ministry raised concerns about financial irregularities in this policy, prompting a CBI investigation and the filing of a First Information Report (FIR) for alleged criminal conspiracy, falsification of accounts, and other offenses (CBI case).

This investigation led the ED to register a related case (ED case) into the policy. Although initially unnamed in either case, Mr. Arvind Kejriwal, then Chief Minister of Delhi, was subsequently implicated.

On 21 March 2024, the ED arrested Mr. Arvind Kejriwal in the case. Although he was granted bail by the Trial Court on 20 June 2024, the Delhi High Court stayed the bail order the next day, keeping Mr. Kejriwal in custody.

The CBI, seeking to interrogate Mr. Kejriwal, obtained permission from the Trial Court and, after questioning him, applied to arrest him on 25 June 2024. The Trial Court granted the application, remanding him to judicial custody on 29 June 2024.

Meanwhile, the Supreme Court granted him bail in the ED case on 12 July 2024. Mr. Kejriwal subsequently approached the Delhi High Court, challenging his arrest by the CBI and seeking bail in the CBI case, which was declined by the High Court, prompting his appeal to the Supreme Court.

Case Background and Legal Questions

The matter revolves around allegations of irregularities in the Delhi Government's Excise Policy for 2021-2022. Following complaints from the Lieutenant Governor of Delhi and the Union Home Ministry, the CBI initiated an investigation, filing a First Information Report (FIR) against unnamed persons for criminal conspiracy and corruption.

This led the Enforcement Directorate (ED) to register a separate case regarding the liquor policy. Mr. Kejriwal, then Chief Minister of Delhi, was initially not named in either case.

In March 2024, the ED arrested Mr. Kejriwal in the ED case, but he was granted bail by the Trial Court in June. However, on the very next day, the Delhi High Court stayed the bail order, keeping him in custody.

Subsequently, the CBI sought permission from the Trial Court to interrogate and eventually arrest Mr. Kejriwal while he was still in judicial custody for the ED case. After the interrogation, the CBI moved to arrest Mr. Kejriwal, which the Trial Court allowed, resulting in his continued detention.

The Supreme Court was tasked with determining:

1. Whether Mr. Kejriwal's arrest by the CBI during his judicial custody for the ED case was lawful.
2. Whether he was entitled to bail in the CBI case.

Decision and Key Takeaways in the Arvind Kejriwal Case

The Supreme Court delivered two separate opinions, with Justice Kant affirming the legality of the arrest while Justice Bhuyan expressed doubts regarding its justification. However, both justices agreed that Mr. Kejriwal should be granted bail.

1. Legality of Arrest

The question of whether Mr. Kejriwal's arrest was lawful centered around Section 41A of the Code of Criminal Procedure (CrPC), which pertains to the procedures for arrest when an individual's detention may not be strictly necessary.

- Justice Surya Kant's Opinion: Justice Kant held that since Mr. Kejriwal was already in judicial custody for the ED case, the CBI did not violate Section 41A(1) of the CrPC, which requires notice before arrest if an individual's custody is not necessary. According to Justice Kant, the CBI appropriately sought the Trial Court's permission for Mr. Kejriwal's arrest rather than issuing a notice, thus adhering to procedural propriety. Justice Kant also emphasized that the CBI had fulfilled the requirements of Section 41A(3) of the CrPC, which permits arrest with recorded reasons, if deemed necessary by the investigating officer. The CBI had documented Mr. Kejriwal's "evasive responses" during interrogation as a reason for arrest, which Justice Kant found legally sufficient.
- Justice Ujjal Bhuyan's Opinion: Justice Bhuyan took a contrasting stance, questioning the timing and necessity of the CBI's arrest. He observed that the CBI's lack of urgency over the preceding 22 months suggested that the arrest was unnecessary and may have been conducted only to counterbalance the bail granted in the ED case. Justice Bhuyan raised concerns over potential bias, pointing out that Mr. Kejriwal's alleged lack of cooperation and silence should not be grounds for arrest, especially given his constitutional right against self-incrimination under Article 20(3) of the Constitution.

1. Grant of Bail

Both justices agreed that Mr. Kejriwal was eligible for bail in the CBI case, citing the fundamental right to personal liberty under Article 21 of the Constitution. Since the evidence in both the CBI and ED cases was largely overlapping, and Mr. Kejriwal had already been granted bail in the ED case, the Court found no justification for his continued detention.

- Conditions for Bail: The bail was subject to similar restrictions imposed by the Supreme Court when granting bail in the ED case. These conditions included restrictions on Mr. Kejriwal's access to his office and a requirement that he not engage in official matters unless they

involved obtaining approval from the Lieutenant Governor of Delhi.

Justice Bhuyan expressed reservations about the restrictions imposed on Mr. Kejriwal's office access, questioning whether these restrictions infringed upon his rights as an elected official. However, he ultimately deferred to the earlier conditions set by a bench of the same strength.

Implications of the Decision

This case sheds light on important legal principles concerning arrests during judicial custody, constitutional protections against self-incrimination, and procedural rights under the CrPC.

It highlights the Court's emphasis on upholding personal liberty and safeguarding against potential abuse of arrest powers, particularly in politically sensitive cases. Justice Bhuyan's observations underscore a need for vigilance against perceived bias and reaffirms an accused's right to remain silent, cautioning against arrests based merely on evasive or uncooperative responses during investigation.

The Supreme Court's decision also raises questions about the checks and balances between investigating agencies and judicial oversight, especially in high-profile cases involving public figures. By granting bail to Mr. Kejriwal with stringent conditions, the Court sought a balanced approach, recognizing the right to liberty while addressing public interest concerns.

Conclusion

The Supreme Court's ruling in Arvind Kejriwal v. Central Bureau of Investigation serves as a significant precedent in the context of arrest procedures and bail rights. While affirming the legality of custodial arrest under certain conditions, the decision also safeguards individual rights, emphasizing that arrests must be substantiated with genuine necessity and not be perceived as punitive measures. This ruling reflects the judiciary's commitment to upholding constitutional protections while maintaining checks on investigative authority.